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DEPARTMENT OF HEALTH SERVICES (R19-0602)

Title 9, Chapter 10, All Articles, Health Care Institutions: Licensing

Amend: R9-10-101, R9-10-102, R9-10-104, R9-10-105, R9-10-106, R9-10-108,
Table 1.1, R9-10-109, R9-10-110, R9-10-111, R9-10-112, R9-10-113, R9-10-114,
R9-10-115, R9-10-116, R9-10-118, R9-10-201, R9-10-202, R9-10-203, R9-10-206,
R9-10-207, R9-10-210, R9-10-215, R9-10-217, R9-10-219, R9-10-220, R9-10-224,
R9-10-225, R9-10-226, R9-10-233, R9-10-302, R9-10-303, R9-10-306, R9-10-307,
R9-10-308, R9-10-314, R9-10-315, R9-10-316, R9-10-321, R9-10-324, R9-10-401,
R9-10-402, R9-10-403, R9-10-408, R9-10-409, R9-10-412, R9-10-414, R9-10-415,
R9-10-418, R9-10-425, R9-10-427, R9-10-602, R9-10-607, R9-10-702, R9-10-703,
R9-10-706, R9-10-707, R9-10-708, R9-10-711, R9-10-712, R9-10-713, R9-10-714,
R9-10-715, R9-10-716, R9-10-717, R9-10-718, R9-10-719, R9-10-720, R9-10-722,
R9-10-801, R9-10-802, R9-10-803, R9-10-806, R9-10-807, R9-10-808, R9-10-810,
R9-10-814, R9-10-815, R9-10-817, R9-10-818, R9-10-820, R9-10-1002, R9-10-1003,
R9-10-1013, R9-10-1014, R9-10-1017, R9-10-1018, R9-10-1019, R9-10-1025,
R9-10-1031, R9-10-1102, R9-10-1414, R9-10-1902

Repeal: R9-10-107, R9-10-1901

New Section: R9-10-107, R9-10-717.01



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: June 4, 2019

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

FROM: Council Staff

DATE: May 8, 2019

SUBJECT: DEPARTMENT OF HEALTH SERVICES (R19-0602)
Title 9, Chapter 10, Health Care Institution: Licensing

Amend: R9-10-101, R9-10-102, R9-10-104, R9-10-105, R9-10-106 R9-10-108,
Table 1.1, R9-10-109, R9-10-110, R9-10-111, R9-10-112 , R9-10-113
R9-10-114, R9-10-115, R9-10-116, R9-10-118, R9-10-201, R9-10-202,
R9-10-203, R9-10-206, R9-10-207, R9-10-210, R9-10-215, R9-10-217
R9-10-219, R9-10-220, R9-10-224, R9-10-225, R9-10-226, R9-10-233,
R9-10-302, R9-10-303, R9-10-306, R9-10-307, R9-10-308, R9-10-314,
R9-10-315, R9-10-316, R9-10-321, R9-10-324, R9-10-401, R9-10-402,
R9-10-403, R9-10-408, R9-10-409, R9-10-412, R9-10-414, R9-10-415,
R9-10-418, R9-10-425, R9-10-427, R9-10-602, R9-10-607, R9-10-702,
R9-10-703, R9-10-706, R9-10-707, R9-10-708, R9-10-711, R9-10-712,
R9-10-713, R9-10-714, R9-10-715, R9-10-716, R9-10-717, R9-10-718,
R9-10-719, R9-10-720, R9-10-722, R9-10-801, R9-10-802, R9-10-803,
R9-10-806, R9-10-807, R9-10-808, R9-10-810, R9-10-814, R9-10-815,
R9-10-817, R9-10-818, R9-10-820, R9-10-1002, R9-10-1003, R9-10-1013,
R9-10-1014, R9-10-1017, R9-10-1018, R9-10-1019, R9-10-1025, R9-10-1031
R9-10-1102, R9-10-1414, R9-10-1902

Repeal: R9-10-107, R9-10-1901

New Section: R9-10-107, R9-10-717.01

This rulemaking from the Department of Health Services (Department) seeks to amend the rules at 9 A.A.C. 10 to comply with Laws 2017, Ch. 122. This law eliminates renewal licensure for health care institutions and states that a health care institution license remains valid unless the Department subsequently suspends or revokes the license or if the health care institution fails to pay a licensing fee by a specified due date. This law also requires the Department to establish rules relating to the payment of licensing fees and modifies information and documentation required to be submitted as part of a licensing application.

In this rulemaking, the Department also seeks to make other changes to 9 A.A.C. 10 consistent with its previously approved five year review reports. This includes amendments to the rules to implement provisions of Laws 2017, Ch. 134 related to recidivism reduction staff in adult residential care institutions.

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

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

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

No, the rules do not establish a new fee or contain a fee increase. However, the rules reinstate fees that expired under A.R.S. § 41-1008(E) on June 30, 2016. The fees are authorized under A.R.S. § 36-405(B)(5).

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

The Department licenses over 6,400 health care institutions. As of February 2019, these include:

- 110 hospitals
- 54 behavioral health inpatient facilities
- 146 nursing care institutions
- 3 recovery care centers
- 7 hospice inpatient facilities
- 208 outpatient surgical centers
- 2,472 outpatient treatment centers
- 1 behavioral health specialized transitional facility
- 3 abortion clinics
- 3 substance abuse transitional facilities
- 576 behavioral health residential facilities
- 171 hospice service agencies
- 217 home health agencies
- 2,084 assisted living facilities
- 21 adult day health care facilities
- 13 behavioral health respite homes

- 45 adult behavioral health therapeutic homes
- 239 counseling facilities
- 43 unclassified health care institutions

In this rulemaking, the Department is eliminating the requirement for health care institutions to submit renewal applications for licensure. Health care institutions will still be required to pay annual fees to keep their licenses current. The Department is also reinstating fees on some health care institutions and requiring that all health care institutions always have at least one staff member on site who is capable of communicating in English.

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

The Department concludes that the rules will remove burdensome requirements to submit renewal applications. The Department is adding minimally intrusive requirements for some health care institutions. The benefits outweigh the costs.

5. What are the economic impacts on stakeholders?

Key stakeholders are the Department, health care institutions, the personnel of health care institutions, patients of health care institutions, and the general public.

The Department will benefit from clearer rules and the elimination of license renewal requirements. The Department will still receive annual licensing fees, but there will no longer be an application submitted. The Department anticipates that this change will benefit the Department because fewer resources will be devoted to processing renewal applications.

The Department is also reinstating fees on health care facilities that previously expired on June 30, 2016. The Department estimates that it will receive approximately \$270,000 in additional annual revenue by reinstating these fees. In FY 2018, the Department received \$6.2 million in fees for health care institution licensing, and the Department estimates that it incurred \$7 million in direct and indirect expenditures. The Department notes that reinstating these fees will not fully cover the annual health care institution licensing shortfall.

The Department is reinstating annual licensing fees on the following health care institutions:

- Behavioral health facilities that provide behavioral health observation/stabilization services (\$94 per occupant)
- Hospitals or outpatient treatment centers that provide behavioral health observation/stabilization services (\$91 per occupant)
- Outpatient treatment centers providing dialysis services (\$91 per dialysis station)

- Hospital satellite facilities (\$365 per facility)

Health care institutions will benefit from this rulemaking because they will no longer be required to submit renewal applications each year. Other minor costs imposed on health care facilities include requiring one staff member to remain on site who can communicate in English and reinstating the licensure fees listed above. The Department indicates that the clarified rules will benefit regulated health care institutions.

The personnel of health care institutions, patients of health care institutions, and the general public will all benefit from this rulemaking because it makes the rules clearer and more understandable.

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

The Department indicates that it received three written comments during the public comment period. The Department held an oral proceeding on April 15, 2019. Three stakeholders attended the oral proceeding and provided oral comments. Council staff finds that the Department adequately addressed the comments. In response to one of the comments, the Department revised the language of R9-10-306(J) between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking.

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

No. The Department indicates that it made some clarifying and technical, but not substantive, changes between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking. Specifically, the Department made changes to R9-10-101, R9-10-102, R9-10-106, R9-10-201, R9-10-306(J), R9-10-401, and R9-10-801. Council staff finds that these changes are not substantially different under A.R.S. § 41-1025.

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

Not applicable.

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

The Department cites A.R.S. § 36-407 (Prohibited acts; required acts), which states that

[a] person shall not establish, conduct or maintain in this state a health care institution or any class or subclass of health care institution unless that person holds a current and valid license issued by the department specifying the class or subclass of health

care institution the person is establishing, conducting or maintaining. The license is valid only for the establishment, operation and maintenance of the class or subclass of health care institution, the type of services and, except for emergency admissions as prescribed by the director by rule, the licensed capacity specified by the license.

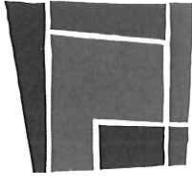
Therefore, a general permit is not applicable and is not used.

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

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

11. Conclusion

The Department is requesting an effective date of July 1, 2019 to provide sufficient time for the Department and stakeholders to implement the new rules and begin perpetual licensing as soon as possible. Council staff finds that the public interest will not be harmed with an earlier effective date. Council staff recommends approval of this rulemaking.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

April 23, 2019

Connie Wilhelm, Vice-Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: 9 A.A.C. 10, Department of Health Services – Health Care Institutions: Licensing

Dear Ms. Wilhelm:

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

The following information is provided for your use in reviewing the enclosed rule package pursuant to A.R.S. § 41-1052 and A.A.C. R1-6-104:

- The close of record:
The close of record was April 15, 2019. Submission of the rules is within the 120 days allowed for Final Rulemaking.
- Procedures followed:
As required by the Administrative Procedure Act, a Notice of Rulemaking Docket Opening was filed with the Office of the Secretary of State and published in the *Arizona Administrative Register* on September 7, 2018. A Notice of Proposed Rulemaking was filed with the Office of the Secretary of State and published in the *Arizona Administrative Register* on March 15, 2019. The Department held one oral proceeding on April 15, 2019. The Department received three written comments, and three oral comments were received during the oral proceeding.
- Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
The rulemaking for 9 A.A.C. 10 makes changes to comply with Laws 2017, Ch. 122, as well as making other changes described in seven five-year-review reports approved by the Governor's Regulatory Review Council on October 3, 2017; March 6, 2018; July 12, 2018; and October 2, 2018. The rulemaking also includes changes to implement Laws 2017, Ch. 134, related to recidivism reduction staff in adult residential care institutions, as described in the five-year-review report for 9 A.A.C. 10, Article 7, approved on October 2, 2018.

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

4. Whether the rule contains a new fee and, if it does, citation of the statute expressly authorizing the new fee:
The rulemaking does not contain a new fee, but reinstates fees that expired under A.R.S. § 41-1008(E) on June 30, 2016 and are authorized by A.R.S. § 36-405(B)(5).
5. Whether the rule contains a fee increase:
The rulemaking does not contain a fee increase.
6. Whether an immediate effective date is requested for the rule under A.R.S. § 41-1032:
The Department is requesting an effective date for this rulemaking of July 1, 2019.
7. A list of all items enclosed:
 - a. Notice of Final Rulemaking, including the Preamble, Table of Contents, and text of the rule;
 - b. Copies of the written comments;
 - c. Economic, Small Business, and Consumer Impact Statement; and
 - d. Statutory authority and references.

The Department is requesting that the rules be heard at the Council meeting on June 4, 2019.

I certify that the Preamble of this rulemaking discloses a reference to any study relevant to the rule that the Department reviewed and either did or did not rely on in its evaluation of or justification for the rule. I also certify that the Joint Legislative Budget Committee has been notified that no new full-time employees are necessary to implement and enforce the rules.

Sincerely,



Robert Lane
Director's Designee

RL:rms

Enclosures

NOTICE OF FINAL RULEMAKING
TITLE 9. HEALTH SERVICES
CHAPTER 10. DEPARTMENT OF HEALTH SERVICES
HEALTH CARE INSTITUTIONS: LICENSING

PREAMBLE

1.	<u>Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
	R9-10-101	Amend
	R9-10-102	Amend
	R9-10-104	Amend
	R9-10-105	Amend
	R9-10-106	Amend
	R9-10-107	Repeal
	R9-10-107	New Section
	R9-10-108	Amend
	Table 1.1	Amend
	R9-10-109	Amend
	R9-10-110	Amend
	R9-10-111	Amend
	R9-10-112	Amend
	R9-10-113	Amend
	R9-10-114	Amend
	R9-10-115	Amend
	R9-10-116	Amend
	R9-10-118	Amend
	R9-10-201	Amend
	R9-10-202	Amend
	R9-10-203	Amend
	R9-10-206	Amend
	R9-10-207	Amend
	R9-10-210	Amend
	R9-10-215	Amend
	R9-10-217	Amend

R9-10-219	Amend
R9-10-220	Amend
R9-10-224	Amend
R9-10-225	Amend
R9-10-226	Amend
R9-10-233	Amend
R9-10-302	Amend
R9-10-303	Amend
R9-10-306	Amend
R9-10-307	Amend
R9-10-308	Amend
R9-10-314	Amend
R9-10-315	Amend
R9-10-316	Amend
R9-10-321	Amend
R9-10-324	Amend
R9-10-401	Amend
R9-10-402	Amend
R9-10-403	Amend
R9-10-408	Amend
R9-10-409	Amend
R9-10-412	Amend
R9-10-414	Amend
R9-10-415	Amend
R9-10-418	Amend
R9-10-425	Amend
R9-10-427	Amend
R9-10-602	Amend
R9-10-607	Amend
R9-10-702	Amend
R9-10-703	Amend
R9-10-706	Amend
R9-10-707	Amend

R9-10-708	Amend
R9-10-711	Amend
R9-10-712	Amend
R9-10-713	Amend
R9-10-714	Amend
R9-10-715	Amend
R9-10-716	Amend
R9-10-717	Amend
R9-10-717.01	New Section
R9-10-718	Amend
R9-10-719	Amend
R9-10-720	Amend
R9-10-722	Amend
R9-10-801	Amend
R9-10-802	Amend
R9-10-803	Amend
R9-10-806	Amend
R9-10-807	Amend
R9-10-808	Amend
R9-10-810	Amend
R9-10-814	Amend
R9-10-815	Amend
R9-10-817	Amend
R9-10-818	Amend
R9-10-820	Amend
R9-10-1002	Amend
R9-10-1003	Amend
R9-10-1013	Amend
R9-10-1014	Amend
R9-10-1017	Amend
R9-10-1018	Amend
R9-10-1019	Amend
R9-10-1025	Amend

R9-10-1031	Amend
R9-10-1102	Amend
R9-10-1414	Amend
R9-10-1901	Repeal
R9-10-1902	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. §§ 36-132(A)(1), 36-136(G)

Implementing statutes: A.R.S. §§ 36-132(A)(17), 36-405(A) and (B), 36-406, 36-411, 36-411.01, 36-413, 36-421 through 36-425, 36-425.02, 36-425.03, 36-427, 36-429, 36-430, 36-431.01, 36-434, 36-439, 36-439.01 through 36-439.04, 36-446.01, 36-447.01, 36-447.02, 36-513, and 41-1073 through 41-1076, and Laws 2017, Ch. 122 and Laws 2017, Ch. 134

3. The effective date of the rules:

The Arizona Department of Health Services (Department) requests an effective date of July 1, 2019, to provide sufficient time for the Department and stakeholders to implement the new rules and also begin perpetual licensing as soon as possible to reduce the regulatory burden.

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: 24 A.A.R. 2502, September 7, 2018

Notice of Proposed Rulemaking: 25 A.A.R. 549, March 15, 2019

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

Name: Colby Bower, Assistant Director

Address: Department of Health Services

Public Health Licensing Services

150 N. 18th Ave., Suite 510

Phoenix, AZ 85007

Telephone: (602) 542-6383

Fax: (602) 364-4808

E-mail: Colby.Bower@azdhs.gov

or

Name: Robert Lane, Chief

Address: Arizona Department of Health Services

Office of Administrative Counsel and Rules

150 N. 18th Avenue, Suite 200

Phoenix, AZ 85007

Telephone: (602) 542-1020

Fax: (602) 364-1150

E-mail: Robert.Lane@azdhs.gov

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

In order to ensure public health, safety, and welfare, Arizona Revised Statutes (A.R.S.) §§ 36-405 and 36-406 require the Arizona Department of Health Services (Department) to adopt rules establishing minimum standards and requirements for construction, modification, and licensure of health care institutions. The Department has adopted rules for licensing health care institutions in Arizona Administrative Code (A.A.C.) Title 9, Chapter 10. Laws 2017, Ch. 122 eliminates renewal licensure for health care institutions and states that a health care institution license remains valid unless subsequently suspended or revoked by the Department or the health care institution fails to pay a licensing fee by a specified due date. Laws 2017, Ch. 122 also requires the Department to establish rules regarding the payment of licensing fees and modifies information and documentation required to be submitted as part of a licensing application. In this rulemaking, the Department is revising the rules in 9 A.A.C. 10 to comply with Laws 2017, Ch. 122. As part of the rulemaking, the Department is also making other changes to rules in 9 A.A.C. 10 described in five-year-review reports approved by the Governor's Regulatory Review Council, including changes to implement Laws 2017, Ch. 134 related to recidivism reduction staff in adult residential care institutions. The new rules conform to rulemaking format and style requirements of the Governor's Regulatory Review Council and the Office of the Secretary of State.

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

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

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

Not applicable

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

Annual cost/revenue changes are designated as minimal when \$2,000 or less, moderate when between \$2,000 and \$10,000, and substantial when \$10,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification. The Department anticipates that persons affected by the rulemaking include the Department, health care institutions, personnel members, patients of a health care institution and their families, and the general public. This summary covers costs and benefits associated with the rule changes and may refer to, but not assess, effects imposed by statutes made or changed by Laws 2017, Ch. 122 or Ch. 134.

The Department anticipates that the change to perpetual licenses for health care institutions will provide a moderate benefit to the Department through less staff time being spent processing renewal applications. Changes to clarify requirements may provide a significant benefit to the Department through less staff time being spent answering questions about the rules, and the change requiring that a personnel member who is able to read, write, understand, and communicate in English must be on the premises of the behavioral health residential facility may also reduce wasted time during an inspection and provide a significant benefit to the Department. The Department believes that the changes to the application packets and notification requirements may also provide a significant benefit to Department. Reducing the time for an applicant to supply missing information or documents before an application or written request is considered withdrawn or to submit information or documentation requested during the substantive review time-frame for a modification not requiring architectural plans and specifications may also provide a significant benefit. As part of the 2014 exempt rulemaking, the Department added fees related to licensed occupancy, dialysis stations, and satellite facilities. Because these fees were not re-made by regular rulemaking, they expired. In this rulemaking, the Department is remaking these fees, which will provide the Department with a substantial increase in revenue.

Health care institutions are expected to receive a significant benefit from not having to go through the license renewal process. The Department anticipates that a health care institution applying for licensure or for approval of a modification not requiring architectural plans and specifications may incur at most minimal additional costs due to the reduction in time for submitting missing components of an application packet or submitting information or documentation requested during the substantive review time-frame. The Department estimates that a health care institution may incur at most minimal costs for providing documentation when notifying the Department of a change affecting a license or for other clarifying changes. The

Department anticipates that changes making current requirements in the rules clearer and easier to understand may cause a health care institution that was not interpreting a requirement consistent with the Department's understanding to incur minimal-to-moderate costs for compliance.

A hospital may incur at most minimal costs from the clarification that a governing authority applying for a single group license is required to include the class or subclass of the satellite facility and the list of services to be provided at the satellite facility. The new rules also clarify the requirements for a "seclusion room" in response to a written criticism of the rules. The Department anticipates that a hospital may receive a significant benefit from the clarity of the rules and minimal-to-moderate benefit from not having to provide additional information after an application is submitted or incorrectly designing a "secure hold room" with the same characteristics as a room used for seclusion in a psychiatric unit of the hospital. However, a hospital may incur minimal-to-moderate costs due to the reinstatement of fees for satellite facilities.

The new rules address an apparent inconsistency in the use of restraints in nursing care institutions. The Department believes that a nursing care institution that was inappropriately using restraints may incur minimal-to-moderate costs to change the procedures being followed and that this clarification may provide all nursing care institutions with a significant benefit. Similarly, several changes may cause a behavioral health inpatient facility to incur minimal-to-moderate additional costs but are necessary to protect the health and safety of patients. These include requirements for establishing an acuity plan, for determining a patient's acuity, and for staffing based on patient acuity, as well as changes reducing the time to perform a medical history and physical examination on a patient after admission and to document the results. It is possible that changes to the definition of "behavioral health professional" and requirements related to an on-call physician or registered nurse practitioner, being made to protect the health and safety of patients, may also cause a behavioral health inpatient facility to incur minimal-to-moderate additional costs. To offset some of these costs, the new rules allow medical services in a behavioral health inpatient facility to be provided under the direction of a registered nurse practitioner, as well as under a physician, and include options for a behavioral health inpatient facility to ensure access to a physician or registered nurse practitioner.

The Department has learned of several instances of harm to a resident of a behavioral health residential facility due to the resident not receiving an adequate assessment of the resident's condition and needs in a timely manner. The new rules reduce the maximum time before a medical practitioner performs a medical history and physical examination or a registered nurse

performs a nursing assessment a new resident, as well as the time for documenting an interval note after new information is obtained to ensure personnel members have up-to-date information about a resident. Although the Department believes that most well-run facilities already meet these new standards, the Department anticipates that these changes may impose a minimal-to-moderate additional cost on a behavioral health residential facility that was waiting until the maximum time limit to perform these actions. The Department also believes that a behavioral health residential facility may incur at most minimal additional costs to ensure that a personnel member who can communicate in English is scheduled to work on each shift.

Changes are also being made to requirements for assisted living facilities that may affect costs. These include a requirement for policies and procedures by which an assisted living facility is aware of the general or specific whereabouts of a resident, for documenting staffing, and for the manager of an assisted living home to ensure that there is a plan for back-up so that assisted living services are provided to a resident if the manager or a caregiver assigned to work is not available or not able to provide the required assisted living services. The Department expects that these changes may cause an assisted living facility, including an assisted living home, to incur minimal costs and to receive a significant benefit from providing better care to residents.

The reinstatement of fees related to licensed occupancy and dialysis stations affect outpatient treatment centers, and fees related to licensed occupancy also affect behavioral health inpatient facilities. An outpatient treatment center providing observation stabilization services may incur a minimal-to-moderate increase in licensing fees due to the reinstatement of fees related to licensed occupancy. A behavioral health inpatient facility providing observation stabilization services may also incur a minimal-to-moderate increase due to the reinstatement of these fees. An outpatient treatment center providing dialysis services may incur a minimal-to-moderate increase due to the reinstatement of fees related to dialysis stations.

The Department anticipates that the changes clarifying requirements may provide a significant benefit to a personnel member of a health care institution by making it easier to understand and comply with the requirements. Changes adding options for ensuring access to a physician or registered nurse practitioner for a behavioral health inpatient facility may cause a personnel member to spend more time communicating and, thus, incur minimal costs. A personnel member who is an on-call physician or registered nurse practitioner may incur minimal-to-moderate costs from having to be on the premises of a behavioral health inpatient facility within 30 minutes after being summoned to come, but they may also receive a minimal-to-moderate benefit from being able to respond through teleconferencing. A personnel member who

is recidivism reduction staff may receive a significant benefit from the new rules specifying methods to comply with A.R.S. § 36-411.01 that may provide some consistency in an evaluation by a prospective employer.

A patient or resident of a health care institution may receive a significant benefit from improved services being provided by personnel members who better understand and comply with the clarified rules. A resident of a behavioral health residential facility and family members may also receive a significant benefit from the requirement for a personnel member who can communicate in English to be on the premises, especially if the resident or family member only understands English. A patient of a behavioral health inpatient facility and a resident of a behavioral health residential facility or assisted living facility, as well as their families, may also receive a significant benefit from changes in the new rules to improve the health and safety of patients/residents. The requirements in the new rules specific to recidivism reduction services may also help ensure the safety of residents receiving recidivism reduction services and improve the effectiveness of recidivism reduction services, providing a significant benefit to an individual receiving recidivism reduction services and their families.

The Department believes that the changes being made in the new rules will make the rules more effective and enable health care institutions to provide better treatment. Having rules that are more easily understood, complied with, and enforced may provide a significant benefit to the general public.

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

Changes were made to R9-10-101, R9-10-102, and R9-10-106 between the proposed rulemaking and the final rulemaking to make these rules consistent with changes made to the rules through an exempt rulemaking to comply with SB 1211 (Laws 2019, Ch. 133), filed with the Office of the Secretary of State on April 25, 2019. Definitions of “rehabilitation services” and “full-time,” added to R9-10-101 as part of that rulemaking, were removed from R9-10-201 and R9-10-401, respectively, and the definition of “common area,” included in R9-10-801 in the proposed rules, was removed. Additional changes were made to the definition of “behavioral health professional” and to R9-10-306(J) as described below and to correct typographical errors or clarify current requirements.

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

The Department received three written comments during the public comment period. The Department held an oral proceeding for the proposed rules on April 15, 2019, which three stakeholders attended and provided oral comments. The Department thanks the stakeholders for the comments. A summary of the concerns expressed in the written comments and the oral comments is provided below, along with the Department’s responses.

Comment	Department’s Response
<p>One comment was received from a representative of Partners in Recovery, a company with seven licensed outpatient treatment centers in Arizona. The individual expressed concern that the Department has changed the definition of “behavioral health professional” to remove registered nurses. The individual stated that the “Nursing Board does not currently recognize a specialization in Psychiatric Mental Health Nursing, although this is a common certification in other states.”</p>	<p>Under the 2013 exempt rulemaking for the rules in 9 A.A.C. 10, “behavioral health professional” was defined as: “behavioral health professional” means an individual licensed under A.R.S. Title 32 whose scope of practice allows the individual to: independently engage in the practice of behavioral health as defined in A.R.S. § 32-3251; or, as an exempt professional, engage in the practice of behavioral health as defined in A.R.S. § 32-3251 under direct supervision as defined in A.A.C. R4-6-101.</p> <p>The definition was changed to the current definition during the 2014 exempt rulemaking at stakeholder request. Because so many of the functions required of a behavioral health professional are outside the scope of a registered nurse without additional experience and training, the Department believed that this inclusion of a registered nurse in the list of licensed individuals eligible to be a behavioral health professional was incorrect, and the Department planned to correct the error as part of this rulemaking by removing “registered nurse” from the list. In response to stakeholder comments while the rules were being drafted, including comments from the first stakeholder who described how “Psychiatric-Mental Health Nurses are qualified behavioral health professionals,” the Department included on the list a “registered nurse with a psychiatric-mental health nursing certification” in the proposed rules. To further ease stakeholder concern, the Department plans to revise the definition of “behavioral health professional” to include a registered nurse who has a psychiatric-mental health nursing certification or one year of experience providing behavioral health services.</p>
<p>Another written comment, containing a request for three changes, was received from a stakeholder asking for the rules to be changed to include a registered nurse “with a minimum of one year experience in a behavioral health setting.”</p>	
<p>The stakeholder at the oral proceeding echoed these requests for the definition of “Behavioral Health Professional” to be expanded to include a registered nurse with one year of behavioral health work experience.</p>	
<p>One comment was received from a stakeholder asking the Department to lower the age of personnel members from 21 to 18 years of age in R9-10-306, R9-10-706, R9-10-1011, and R9-10-1405.</p>	<p>There is a difference between personnel members and other types of employees. Personnel members provide direct services to patients/residents/participants; other employees do not. When the rules in Chapter 10 were amended in 2013 to integrate behavioral health services and physical health services in health care institutions, the requirement for a personnel member providing behavioral health services to be at least 21 years of age, which had been in A.A.C. R9-20-204, was included in applicable Sections of Chapter 10. This requirement in R9-20-204 had been in place since 2001 and resulted from a consensus that individuals who provide direct services to individuals receiving behavioral health services may need more maturity than would be expected from the general 18-year-old. This topic is not part of Laws 2017, Ch. 122 or Laws 2017, Ch. 134; nor was the issue identified as part of a five-year-review of an Article in the Chapter. Two Sections mentioned in the comment are not part of the rulemaking. Therefore, it is outside the scope of the Department’s exception from the rulemaking moratorium under which this rulemaking is</p>
<p>Another request from the stakeholder above asked that existing rules in R9-10-306, R9-10-706, R9-10-1011, and R9-10-1405 be changed to lower the age of personnel members from 21 to 18 years of age, consistent with the minimum age for other employees.</p>	

holder at the oral proceeding also asked for the minimum age of personnel members providing behavioral health services to be 18 years of age.	being conducted. In addition, personnel members providing behavioral health services, who are not licensed under A.R.S. Title 32, Chapter 33, are likely to be considered behavioral health technicians or behavioral health paraprofessionals. By definition, these individuals provide services “that, if provided in a setting other than a health care institution, would be required to be provided by an individual licensed under A.R.S. Title 32, Chapter 33.” In A.R.S. § 32-3275, an applicant for licensure under A.R.S. Title 32, Chapter 33 must be at least 21 years of age. No change is being made as a result of these comments. However, the Department will consider the comments as written criticism of the rules during the next five-year review of the Sections cited.
stakeholder at the oral proceeding requested that the minimum age of personnel members be lowered to 18 years of age to allow for peer interactions for youth receiving behavioral health services.	
rd stakeholder at the oral proceeding also requested that the minimum age of personnel members providing behavioral health services be reduced to assist in workforce development.	
rd request from the stakeholder above asked for the wording of R9-10-306(J) to be changed to clarify the connection between “on-call” and telemedicine.	

partment recognizes that the wording of R9-10-306(J), as proposed, could cause some confusion and plans to revise the rule as follows:

J. An administrator shall ensure that:

1. A physician or registered nurse practitioner is:
 - a. ~~present~~ Present on the behavioral health inpatient facility’s premises; or
 - b. ~~on-call~~ On-call and:
 - i. Available through telemedicine, or
 - ii. On the premises within 30 minutes after a request to come to the behavioral health inpatient facility;

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:

A.R.S. § 36-407 prohibits a person from establishing, conducting, or maintaining “a health care institution or any class or subclass of health care institution unless that person holds a current and valid license issued by the [D]epartment specifying the class or subclass of health care institution the person is establishing, conducting or maintaining.” A health care institution license is specific to the licensee, class or subclass of health care institution, facility location, and scope of services provided. As such, a general permit is not applicable and is not used.

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

Not applicable

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

No business competitiveness analysis was received by the Department.

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

Materials incorporated by reference in the rules that are part of this rulemaking are:

- In R9-10-113(A)(2) - Guidelines for Preventing the Transmission of Mycobacterium tuberculosis in Health-care Settings, 2005
- In R9-10-1018(M) – Reprocessing of Hemodialyzers, ANSI/AAMI RD47:2008/(R)2013
- In R9-10-1018(N) - Dialysis Water and Dialysate Recommendations: A User Guide

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

Not applicable

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

TITLE 9. HEALTH SERVICES
CHAPTER 10. DEPARTMENT OF HEALTH SERVICES
HEALTH CARE INSTITUTIONS: LICENSING
ARTICLE 1. GENERAL

Section

- R9-10-101. Definitions
- R9-10-102. Health Care Institution Classes and Subclasses; Requirements
- R9-10-104. Approval of Architectural Plans and Specifications
- R9-10-105. ~~Initial~~ License Application
- R9-10-106. Fees
- R9-10-107. ~~Renewal License Application~~ Submission of Health Care Institution Licensing Fees
- R9-10-108. Time-frames
- Table 1.1.
- R9-10-109. Changes Affecting a License
- R9-10-110. Modification of a Health Care Institution
- R9-10-111. Enforcement Actions
- R9-10-112. Denial, Revocation, or Suspension of License
- R9-10-113. Tuberculosis Screening
- R9-10-114. Clinical Practice Restrictions for Hemodialysis Technician Trainees
- R9-10-115. Behavioral Health Paraprofessionals; Behavioral Health Technicians
- R9-10-116. Nutrition and Feeding Assistant Training Programs
- R9-10-118. Collaborating Health Care Institution

ARTICLE 2. HOSPITALS

Section

- R9-10-201. Definitions
- R9-10-202. Supplemental Application and Documentation Submission Requirements
- R9-10-203. Administration
- R9-10-206. Personnel
- R9-10-207. Medical Staff
- R9-10-210. Transport
- R9-10-215. Surgical Services
- R9-10-217. Emergency Services

- R9-10-219. Clinical Laboratory Services and Pathology Services
- R9-10-220. Radiology Services and Diagnostic Imaging Services
- R9-10-224. Pediatric Services
- R9-10-225. Psychiatric Services
- R9-10-226. Behavioral Health Observation/Stabilization Services
- R9-10-233. Environmental Standards

ARTICLE 3. BEHAVIORAL HEALTH INPATIENT FACILITIES

Section

- R9-10-302. Supplemental Application Requirements
- R9-10-303. Administration
- R9-10-306. Personnel
- R9-10-307. Admission; Assessment
- R9-10-308. Treatment Plan
- R9-10-314. Physical Health Services
- R9-10-315. Behavioral Health Services
- R9-10-316. Seclusion; Restraint
- R9-10-321. Food Services
- R9-10-324. Physical Plant Standards

ARTICLE 4. NURSING CARE INSTITUTIONS

Section

- R9-10-401. Definitions
- R9-10-402. Supplemental Application Requirements
- R9-10-403. Administration
- R9-10-408. Transfer; Discharge
- R9-10-409. Transport; ~~Transfer~~
- R9-10-412. Nursing Services
- R9-10-414. Comprehensive Assessment; Care Plan
- R9-10-415. Behavioral Health Services
- R9-10-418. Radiology Services and Diagnostic Imaging Services
- R9-10-425. Environmental Standards
- R9-10-427. Quality Rating

ARTICLE 6. HOSPICES

Section

R9-10-602. Supplemental Application Requirements

R9-10-607. Admission

ARTICLE 7. BEHAVIORAL HEALTH RESIDENTIAL FACILITIES

Section

R9-10-702. Supplemental Application and Documentation Submission Requirements

R9-10-703. Administration

R9-10-706. Personnel

R9-10-707. Admission; Assessment

R9-10-708. Treatment Plan

R9-10-711. Resident Rights

R9-10-712. Medical Records

R9-10-713. Transportation; Resident Outings

R9-10-714. Resident ~~Time-Out~~ Time-Out

R9-10-715. Physical Health Services

R9-10-716. Behavioral Health Services

R9-10-717. Outdoor Behavioral Health Care Programs

R9-10-717.01. Recidivism Reduction Services

R9-10-718. Medication Services

R9-10-719. Food Services

R9-10-720. Emergency and Safety Standards

R9-10-722. Physical Plant Standards

ARTICLE 8. ASSISTED LIVING FACILITIES

Section

R9-10-801. Definitions

R9-10-802. Supplemental Application Requirements

R9-10-803. Administration

R9-10-806. Personnel

R9-10-807. Residency and Residency Agreements

- R9-10-808. Service Plans
- R9-10-810. Resident Rights
- R9-10-814. Personal Care Services
- R9-10-815. Directed Care Services
- R9-10-817. Food Services
- R9-10-818. Emergency and Safety Standards
- R9-10-820. Physical Plant Standards

ARTICLE 10. OUTPATIENT TREATMENT CENTERS

Section

- R9-10-1002. Supplemental Application and Documentation Submission Requirements
- R9-10-1003. Administration
- R9-10-1013. Court-ordered Evaluation
- R9-10-1014. Court-ordered Treatment
- R9-10-1017. Diagnostic Imaging Services
- R9-10-1018. Dialysis Services
- R9-10-1019. Emergency Room Services
- R9-10-1025. Respite Services
- R9-10-1031. Colocation Requirements

ARTICLE 11. ADULT DAY HEALTH CARE FACILITIES

Section

- R9-10-1102. Supplemental Application Requirements

ARTICLE 14. SUBSTANCE ABUSE TRANSITIONAL FACILITIES

Section

- R9-10-1414. Emergency and Safety Standards

ARTICLE 19. COUNSELING FACILITIES

Section

- R9-10-1901. ~~Definitions~~ Repealed
- R9-10-1902. Supplemental Application Requirements

ARTICLE 1. GENERAL

R9-10-101. Definitions

In addition to the definitions in A.R.S. § §§ 36-401(A) and 36-439, the following definitions apply in this Chapter unless otherwise specified:

1. “Abortion clinic” has the same meaning as in A.R.S. § 36-449.01.
2. “Abuse” means:
 - a. The same:
 - i. For an individual 18 years of age or older, as in A.R.S. § 46-451; and
 - ii. For an individual less than 18 years of age, as in A.R.S. § 8-201;
 - b. A pattern of ridiculing or demeaning a patient;
 - c. Making derogatory remarks or verbally harassing a patient; or
 - d. Threatening to inflict physical harm on a patient.
3. “Accredited” has the same meaning as in A.R.S. § 36-422.
4. “Active malignancy” means a cancer for which:
 - a. A patient is undergoing treatment, such as through:
 - i. One or more surgical procedures to remove the cancer;
 - ii. Chemotherapy, as defined in A.A.C. R9-4-401; or
 - iii. Radiation treatment, as defined in A.A.C. R9-4-401;
 - b. There is no treatment; or
 - c. A patient is refusing treatment.
5. “Activities of daily living” means ambulating, bathing, toileting, grooming, eating, and getting in or out of a bed or a chair.
6. “Acuity” means a patient’s need for medical services, nursing services, or behavioral health services based on the patient’s medical condition or behavioral health issue.
7. “Acuity plan” means a method for establishing nursing personnel requirements by unit based on a patient’s acuity.
- ~~6.8.~~ “Adjacent” means not intersected by:
 - a. Property owned, operated, or controlled by a person other than the applicant or licensee; or
 - b. A public thoroughfare.
- ~~7.9.~~ “Administrative completeness review time-frame” has the same meaning as in A.R.S. § 41-1072.

- ~~8-10.~~ “Administrative office” means a location used by personnel for recordkeeping and record retention but not for providing medical services, nursing services, behavioral health services, or health-related services.
- ~~9-11.~~ “Admission” or “admitted” means, after completion of an individual’s screening or registration by a health care institution, the individual begins receiving physical health services or behavioral health services and is accepted as a patient of the health care institution.
- ~~10-12.~~ “Adult” has the same meaning as in A.R.S. § 1-215.
- ~~11-13.~~ “Adult behavioral health therapeutic home” means a residence that provides room and board, assists in acquiring daily living skills, coordinates transportation to scheduled appointments, monitors behaviors, assists in the self-administration of medication, and provides feedback to a case manager related to behavior for an individual 18 years of age or older based on the individual’s behavioral health issue and need for behavioral health services and may provide behavioral health services under the clinical oversight of a behavioral health professional.
14. “Adult residential care institution” means a subclass of behavioral health residential facility that only admits residents 18 years of age and older and provides recidivism reduction services.
- ~~12-15.~~ “Adverse reaction” means an unexpected outcome that threatens the health or safety of a patient as a result of a medical service, nursing service, or health-related service provided to the patient.
16. “Affiliated counseling facility” means a counseling facility that shares administrative support with one or more other counseling facilities that operate under the same governing authority.
17. “Affiliated outpatient treatment center” means an outpatient treatment center authorized by the Department to provide behavioral health services that provides administrative support to a counseling facility or counseling facilities that operate under the same governing authority as the outpatient treatment center.
18. “Alternate licensing fee due date” means the last calendar day in a month each year, other than the anniversary date of a facility’s health care institution license, by which a licensee is required to pay the applicable fees in R9-10-106.
- ~~13-19.~~ “Ancillary services” means services other than medical services, nursing services, or health-related services provided to a patient.

- ~~14~~20. “Anesthesiologist” means a physician granted clinical privileges to administer anesthesia.
- ~~15~~21. “Applicant” means a governing authority requesting:
- a. Approval of a health care institution’s architectural plans and specifications for construction or modification,
 - b. Approval of a modification,
 - c. Approval of an alternate licensing fee due date, or
 - ~~b~~d. A health care institution license.
- ~~16~~22. “Application packet” means the information, documents, and fees required by the Department for the:
- a. Approval of a health care institution's ~~modification or~~ architectural plans and specifications for construction or modification,
 - b. Approval of a modification,
 - c. Approval of an alternate licensing fee due date, or
 - ~~b~~d. Licensing of a health care institution.
- ~~17~~23. “Assessment” means an analysis of a patient’s need for physical health services or behavioral health services to determine which services a health care institution will provide to the patient.
- ~~18~~24. “Assistance in the self-administration of medication” means restricting a patient’s access to the patient’s medication and providing support to the patient while the patient takes the medication to ensure that the medication is taken as ordered.
- ~~19~~25. “Attending physician” means a physician designated by a patient to participate in or coordinate the medical services provided to the patient.
- ~~20~~26. “Authenticate” means to establish authorship of a document or an entry in a medical record by:
- a. A written signature;
 - b. An individual’s initials, if the individual’s written signature appears on the document or in the medical record;
 - c. A rubber-stamp signature; or
 - d. An electronic signature code.
- ~~21~~27. “Authorized service” means specific medical services, nursing services, behavioral health services, or health-related services provided by a specific health care institution class or subclass for which the health care institution is required to obtain approval from the Department before providing the medical services, nursing services, or health-related

services.

~~22-28.~~ “Available” means:

- a. For an individual, the ability to be contacted and to provide an immediate response by any means possible;
- b. For equipment and supplies, physically retrievable at a health care institution; and
- c. For a document, retrievable by a health care institution or accessible according to the applicable time-frames in this Chapter.

~~23-29.~~ “Behavioral care”:

- a. Means limited behavioral health services, provided to a patient whose primary admitting diagnosis is related to the patient’s need for physical health services, that include:
 - i. Assistance with the patient’s psychosocial interactions to manage the patient’s behavior that can be performed by an individual without a professional license or certificate including:
 - (1) Direction provided by a behavioral health professional, and
 - (2) Medication ordered by a medical practitioner or behavioral health professional; or
 - ii. Behavioral health services provided by a behavioral health professional on an intermittent basis to address the patient’s significant psychological or behavioral response to an identifiable stressor or stressors; and
- b. Does not include court-ordered behavioral health services.

~~24-30.~~ “Behavioral health facility” means a behavioral health inpatient facility, a behavioral health residential facility, a substance abuse transitional facility, a behavioral health specialized transitional facility, an outpatient treatment center that only provides behavioral health services, an adult behavioral health therapeutic home, a behavioral health respite home, or a counseling facility.

~~25-31.~~ “Behavioral health inpatient facility” means a health care institution that provides continuous treatment to an individual experiencing a behavioral health issue that causes the individual to:

- a. Have a limited or reduced ability to meet the individual’s basic physical needs;
- b. Suffer harm that significantly impairs the individual’s judgment, reason, behavior, or capacity to recognize reality;
- c. Be a danger to self;

- d. Be a danger to others;
 - e. Be persistently or acutely disabled, as defined in A.R.S. § 36-501; or
 - f. Be gravely disabled.
- ~~26-32.~~ “Behavioral health issue” means an individual’s condition related to a mental disorder, a personality disorder, substance abuse, or a significant psychological or behavioral response to an identifiable stressor or stressors.
- ~~27-33.~~ “Behavioral health observation/stabilization services” means crisis services provided, in an outpatient setting, to an individual whose behavior or condition indicates that the individual:
- a. Requires nursing services,
 - b. May require medical services, and
 - c. May be a danger to others or a danger to self.
- ~~28-34.~~ “Behavioral health paraprofessional” means an individual who is not a behavioral health professional who provides, ~~under supervision by a behavioral health professional,~~ the following services to a patient to address the patient’s behavioral health issue:
- a. ~~Services~~ Under supervision by a behavioral health professional, services that, if provided in a setting other than a health care institution, would be required to be provided by an individual licensed under ~~A.R.S.~~ A.R.S. Title 32, Chapter 33; or
 - b. Health-related services.
- ~~29-35.~~ “Behavioral health professional” means:
- a. An individual licensed under A.R.S. Title 32, Chapter 33, whose scope of practice allows the individual to:
 - i. Independently engage in the practice of behavioral health, as defined in A.R.S. § 32-3251; or
 - ii. Except for a licensed substance abuse technician, engage in the practice of behavioral health, as defined in A.R.S. § 32-3251, under direct supervision as defined in A.A.C. R4-6-101;
 - b. A psychiatrist as defined in A.R.S. § 36-501;
 - c. A psychologist as defined in A.R.S. § 32-2061;
 - d. A physician;
 - e. A behavior analyst as defined in A.R.S. § 32-2091; or
 - f. A registered nurse practitioner licensed as an adult psychiatric and mental health nurse; or

- g. A registered nurse with:
 - i. A psychiatric-mental health nursing certification, or
 - ii. One year of experience providing behavioral health services.
- ~~30-36.~~ 30-36. “Behavioral health residential facility” means a health care institution that provides treatment to an individual experiencing a behavioral health issue that:
- a. Limits the individual’s ability to be independent, or
 - b. Causes the individual to require treatment to maintain or enhance independence.
- ~~31-37.~~ 31-37. “Behavioral health respite home” means a residence where respite care services, which may include assistance in the self-administration of medication, are provided to an individual based on the individual’s behavioral health issue and need for behavioral health services.
- ~~32-38.~~ 32-38. “Behavioral health specialized transitional facility” means a health care institution that provides inpatient behavioral health services and physical health services to an individual determined to be a sexually violent person according to A.R.S. Title 36, Chapter 37.
- ~~33.~~ 33. ~~“Behavioral health staff” means a:~~
- ~~a. Behavioral health paraprofessional,~~
 - ~~b. Behavioral health technician, or~~
 - ~~c. Personnel member in a nursing care institution or assisted living facility who provides behavioral care.~~
- ~~34-39.~~ 34-39. “Behavioral health technician” means an individual who is not a behavioral health professional who provides, ~~with clinical oversight by a behavioral health professional,~~ the following services to a patient to address the patient’s behavioral health issue:
- a. Services With clinical oversight by a behavioral health professional, services that, if provided in a setting other than a health care institution, would be required to be provided by an individual licensed under ~~A.R.S.~~ A.R.S. Title 32, Chapter 33; or
 - b. Health-related services.
- ~~35-40.~~ 35-40. “Benzodiazepine” means any one of a class of sedative-hypnotic medications, characterized by a chemical structure that includes a benzene ring linked to a seven-membered ring containing two nitrogen atoms, that are commonly used in the treatment of anxiety.
- ~~36-41.~~ 36-41. “Biohazardous medical waste” has the same meaning as in A.A.C. R18-13-1401.
- ~~37-42.~~ 37-42. “Calendar day” means each day, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period

unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.

- ~~38~~43. “Case manager” means an individual assigned by an entity other than a health care institution to coordinate the physical health services or behavioral health services provided to a patient at the health care institution.
- ~~39~~44. “Certification” means, in this Article, a written statement that an item or a system complies with the applicable requirements incorporated by reference in A.A.C. R9-1-412.
- ~~40~~45. “Certified health physicist” means an individual recognized by the American Board of Health Physics as complying with the health physics criteria and examination requirements established by the American Board of Health Physics.
- ~~41~~46. “Change in ownership” means conveyance of the ability to appoint, elect, or otherwise designate a health care institution’s governing authority from an owner of the health care institution to another person.
- ~~42~~47. “Chief administrative officer” or “administrator” means an individual designated by a governing authority to implement the governing authority’s direction in a health care institution.
- ~~43~~48. “Clinical laboratory services” means the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or impairment of a human being, or for the assessment of the health of a human being, including procedures to determine, measure, or otherwise describe the presence or absence of various substances or organisms in the body.
- ~~44~~49. “Clinical oversight” means:
- a. Monitoring the behavioral health services provided by a behavioral health technician to ensure that the behavioral health technician is providing the behavioral health services according to the health care institution’s policies and procedures; and, if applicable, a patient’s treatment plan;
 - b. Providing on-going review of a behavioral health technician’s skills and knowledge related to the provision of behavioral health services; and
 - c. Providing guidance to improve a behavioral health technician’s skills and knowledge related to the provision of behavioral health services; and

- d. Recommending training for a behavior health technician to improve the behavioral health technician's skills and knowledge related to the provision of behavioral health services.
- ~~45~~.50. "Clinical privileges" means authorization to a medical staff member to provide medical services granted by a governing authority or according to medical staff bylaws.
- ~~46~~.51. "Collaborating health care institution" means a health care institution licensed to provide outpatient behavioral health services that has a written agreement with an adult behavioral health therapeutic home or a behavioral health respite home to:
- a. Coordinate behavioral health services provided to a resident at the adult behavioral health therapeutic home or a recipient at a behavioral health respite home, and
 - b. Work with the provider to ensure a resident at the adult behavioral health therapeutic home or a recipient at a behavioral health respite home receives behavioral health services according to the resident's treatment plan.
- ~~47~~.52. "Common area" means licensed space in health care institution that is:
- a. Not a resident's bedroom or a residential unit,
 - b. Not restricted to use by employees or volunteers of the health care institution, and
 - c. Available for use by visitors and other individuals on the premises.
- ~~48~~.53. "Communicable disease" has the same meaning as in A.R.S. § 36-661.
- ~~49~~.54. "Conspicuously posted" means placed:
- a. At a location that is visible and accessible; and
 - b. Unless otherwise specified in the rules, within the area where the public enters the premises of a health care institution.
- ~~50~~.55. "Consultation" means an evaluation of a patient requested by a medical staff member or personnel member.
- ~~51~~.56. "Contracted services" means medical services, nursing services, behavioral health services, health-related services, ancillary services, or environmental services provided according to a documented agreement between a health care institution and the person providing the medical services, nursing services, health-related services, ancillary services, or environmental services.
- ~~52~~.57. "Contractor" has the same meaning as in A.R.S. § 32-1101.
- ~~53~~.58. "Controlled substance" has the same meaning as in A.R.S. § 36-2501.
- ~~54~~.59. "Counseling" has the same meaning as "practice of professional counseling" in A.R.S. §

32-3251.

- ~~55-60.~~ “Counseling facility” means a health care institution that only provides counseling, which may include:
- a. DUI screening, education, or treatment according to the requirements in 9 A.A.C. 20, Article 1; or
 - b. Misdemeanor domestic violence offender treatment according to the requirements in 9 A.A.C. 20, Article 2.
- ~~56-61.~~ “Court-ordered evaluation” has the same meaning as “evaluation” in A.R.S. § 36-501.
- ~~57.~~ ~~“Court-ordered pre-petition screening” has the same meaning as in A.R.S. § 36-501.~~
- ~~58-62.~~ “Court-ordered treatment” means treatment provided according to A.R.S. Title 36, Chapter 5.
- ~~59-63.~~ “Crisis services” means immediate and unscheduled behavioral health services provided to a patient to address an acute behavioral health issue affecting the patient.
- ~~60-64.~~ “Current” means up-to-date, extending to the present time.
- ~~61-65.~~ “Daily living skills” means activities necessary for an individual to live independently and include meal preparation, laundry, housecleaning, home maintenance, money management, and appropriate social interactions.
- ~~62-66.~~ “Danger to others” has the same meaning as in A.R.S. § 36-501.
- ~~63-67.~~ “Danger to self” has the same meaning as in A.R.S. § 36-501.
- ~~64-68.~~ “Detoxification services” means behavioral health services and medical services provided to an individual to:
- a. Treat the individual’s signs or symptoms of withdrawal from alcohol or other drugs,
and
 - ~~a.b.~~ Reduce or eliminate the individual’s dependence on alcohol or other drugs; ~~or~~
 - b. ~~Provide treatment for the individual’s signs or symptoms of withdrawal from alcohol or other drugs.~~
- ~~65-69.~~ “Diagnostic procedure” means a method or process performed to determine whether an individual has a medical condition or behavioral health issue.
- ~~66-70.~~ “Dialysis” means the process of removing dissolved substances from a patient’s body by diffusion from one fluid compartment to another across a semi-permeable membrane.
- ~~67-71.~~ “Dialysis services” means medical services, nursing services, and health-related services provided to a patient receiving dialysis.
- ~~68-72.~~ “Dialysis station” means a designated treatment area approved by the Department for use

by a patient receiving dialysis or dialysis services.

- ~~69-73.~~ “Dialyzer” means an apparatus containing semi-permeable membranes used as a filter to remove wastes and excess fluid from a patient’s blood.
- ~~70-74.~~ “Disaster” means an unexpected occurrence that adversely affects a health care institution’s ability to provide services.
- ~~71-75.~~ “Discharge” means a documented termination of services to a patient by a health care institution.
- ~~72-76.~~ “Discharge instructions” means documented information relevant to a patient’s medical condition or behavioral health issue provided by a health care institution to the patient or the patient’s representative at the time of the patient’s discharge.
- ~~73-77.~~ “Discharge planning” means a process of establishing goals and objectives for a patient in preparation for the patient’s discharge.
- ~~74-78.~~ “Discharge summary” means a documented brief review of services provided to a patient, current patient status, and reasons for the patient’s discharge.
- ~~75-79.~~ “Disinfect” means to clean in order to prevent the growth of or to destroy disease-causing microorganisms.
- ~~76-80.~~ “Documentation” or “documented” means information in written, photographic, electronic, or other permanent form.
- ~~77-81.~~ “Drill” means a response to a planned, simulated event.
- ~~78-82.~~ “Drug” has the same meaning as in A.R.S. § 32-1901.
- ~~79-83.~~ “Electronic” has the same meaning as in A.R.S. § 44-7002.
- ~~80-84.~~ “Electronic signature” has the same meaning as in A.R.S. § 44-7002.
- ~~81-85.~~ “Emergency” means an immediate threat to the life or health of a patient.
- ~~82-86.~~ “Emergency medical services provider” has the same meaning as in A.R.S. § 36-2201.
- ~~87.~~ “Emergency services” means unscheduled medical services provided in a designated area to an outpatient in an emergency.
- ~~83-88.~~ “End-of-life” means that a patient has a documented life expectancy of six months or less.
- ~~84-89.~~ “Environmental services” means activities such as housekeeping, laundry, facility maintenance, or equipment maintenance.
- ~~85-90.~~ “Equipment” means, in this Article, an apparatus, a device, a machine, or a unit that is required to comply with the specifications incorporated by reference in A.A.C. R9-1-412.
- ~~86-91.~~ “Exploitation” has the same meaning as in A.R.S. § 46-451.

- ~~87-92.~~ “Factory-built building” has the same meaning as in A.R.S. § ~~41-2142~~ 41-4001.
- ~~88-93.~~ “Family” or “family member” means an individual’s spouse, sibling, child, parent, grandparent, or another individual designated by the individual.
94. “Follow-up instructions” means information relevant to a patient’s medical condition or behavioral health issue that is provided to the patient, the patient’s representative, or a health care institution.
- ~~89-95.~~ “Food services” means the storage, preparation, serving, and cleaning up of food intended for consumption in a health care institution.
- ~~90-96.~~ “Full-time” means 40 hours or more every consecutive seven calendar days.
- ~~91-97.~~ “Garbage” has the same meaning as in A.A.C. R18-13-302.
- ~~92-98.~~ “General consent” means documentation of an agreement from an individual or the individual’s representative to receive physical health services to address the individual’s medical condition or behavioral health services to address the individual’s behavioral health issues.
- ~~93-99.~~ “General hospital” means a subclass of hospital that provides surgical services and emergency services.
- ~~94-100.~~ “Gravely disabled” has the same meaning as “grave disability” in A.R.S. § 36-501.
- ~~95-101.~~ “Hazard” or “hazardous” means a condition or situation where a patient or other individual may suffer physical injury.
- ~~96-102.~~ “Health care directive” has the same meaning as in A.R.S. § 36-3201.
- ~~97-103.~~ “Hemodialysis” means the process for removing wastes and excess fluids from a patient’s blood by passing the blood through a dialyzer.
- ~~98-104.~~ “Home health agency” has the same meaning as in A.R.S. § 36-151.
- ~~99-105.~~ “Home health aide” means an individual employed by a home health agency to provide home health services under the direction of a registered nurse or therapist.
- ~~100-106.~~ “Home health aide services” means those tasks that are provided to a patient by a home health aide under the direction of a registered nurse or therapist.
- ~~101-107.~~ “Home health services” has the same meaning as in A.R.S. § 36-151.
- ~~102-108.~~ “Hospice inpatient facility” means a subclass of hospice that provides hospice services to a patient on a continuous basis with the expectation that the patient will remain on the hospice’s premises for 24 hours or more.
- ~~103-109.~~ “Hospital” means a class of health care institution that provides, through an organized medical staff, inpatient beds, medical services, continuous nursing services,

and diagnosis or treatment to a patient.

~~104~~.110. “Immediate” means without delay.

~~105~~.111. “Incident” means an unexpected occurrence that harms or has the potential to harm a patient, while the patient is:

- a. On the premises of a health care institution, or
- b. Not on the premises of a health care institution but directly receiving physical health services or behavioral health services from a personnel member who is providing the physical health services or behavioral health services on behalf of the health care institution.

~~106~~.112. “Infection control” means to identify, prevent, monitor, and minimize infections.

113. “Infectious tuberculosis” has the same meaning as “infectious active tuberculosis” in A.A.C. R9-6-101.

~~107~~.114. “Informed consent” means:

- a. Advising a patient of a proposed treatment, surgical procedure, psychotropic ~~drug~~ medication, opioid, or diagnostic procedure; alternatives to the treatment, surgical procedure, psychotropic ~~drug~~ medication, opioid, or diagnostic procedure; and associated risks and possible complications; and
- b. Obtaining documented authorization for the proposed treatment, surgical procedure, psychotropic ~~drug~~ medication, opioid, or diagnostic procedure from the patient or the patient’s representative.

~~108~~.115. “In-service education” means organized instruction or information that is related to physical health services or behavioral health services and that is provided to a medical staff member, personnel member, employee, or volunteer.

~~109~~.116. “Interdisciplinary team” means a group of individuals consisting of a resident’s attending physician, a registered nurse responsible for the resident, and other individuals as determined in the resident’s comprehensive assessment or, if applicable, placement evaluation.

~~110~~.117. “Intermediate care facility for individuals with intellectual disabilities” or “ICF/IID” has the same meaning as in A.R.S. § 36-551.

~~111~~.118. “Interval note” means documentation updating a patient’s:

- a. Medical condition after a medical history and physical examination is performed, or
- b. Behavioral health issue after an assessment is performed.

~~112~~.119. “Isolation” means the separation, during the communicable period, of infected

individuals from others, to limit the transmission of infectious agents.

~~113~~.120. “Leased facility” means a facility occupied or used during a set time period in exchange for compensation.

~~114~~.121. “License” means:

- a. Written approval issued by the Department to a person to operate a class or subclass of health care institution at a specific location; or
- b. Written approval issued to an individual to practice a profession in this state.

~~115~~.122. “Licensed occupancy” means the total number of individuals for whom a health care institution is authorized by the Department to provide crisis services in a unit providing behavioral health observation/stabilization services.

~~116~~.123. “Licensee” means an owner approved by the Department to operate a health care institution.

~~117~~.124. “Manage” means to implement policies and procedures established by a governing authority, an administrator, or an individual providing direction to a personnel member.

~~118~~.125. “Medical condition” means the state of a patient’s physical or mental health, including the patient’s illness, injury, or disease.

~~119~~.126. “Medical director” means a physician who is responsible for the coordination of medical services provided to patients in a health care institution.

~~120~~.127. “Medical history” means an account of a patient’s health, including past and present illnesses, diseases, or medical conditions.

~~121~~.128. “Medical practitioner” means a physician, physician assistant, or registered nurse practitioner.

~~122~~.129. “Medical record” has the same meaning as “medical records” in A.R.S. § 12-2291.

~~123~~.130. “Medical staff” means physicians and other individuals licensed pursuant to A.R.S. Title 32 who have clinical privileges at a health care institution.

~~124~~.131. “Medical staff ~~by-laws~~ bylaws” means standards, approved by the medical staff and the governing authority, that provide the framework for the organization, responsibilities, and self-governance of the medical staff.

~~125~~.132. “Medical staff member” means an individual who is part of the medical staff of a health care institution.

~~126~~.133. “Medication” means one of the following used to maintain health or to prevent or treat a medical condition or behavioral health issue:

- a. Biologicals as defined in A.A.C. R18-13-1401,

- b. Prescription medication as defined in A.R.S. § 32-1901, or
 - c. Nonprescription ~~medication~~ drug as defined in A.R.S. § 32-1901.
- ~~127~~.134. “Medication administration” means restricting a patient’s access to the patient’s medication and providing the medication to the patient or applying the medication to the patient’s body, as ordered by a medical practitioner.
- ~~128~~.135. “Medication error” means:
- a. The failure to administer an ordered medication;
 - b. The administration of a medication not ordered; or
 - c. The administration of a medication:
 - i. In an incorrect dosage,
 - ii. More than 60 minutes before or after the ordered time of administration unless ordered to do so, or
 - iii. By an incorrect route of administration.
- ~~129~~.136. “Mental disorder” means the same as in A.R.S. § 36-501.
- ~~130~~.137. “Mobile clinic” means a movable structure that:
- a. Is not physically attached to a health care institution’s facility;
 - b. Provides medical services, nursing services, behavioral health services, or health related service to an outpatient under the direction of the health care institution’s personnel; and
 - c. Is not intended to remain in one location indefinitely.
- ~~131~~.138. “Monitor” or “monitoring” means to check systematically on a specific condition or situation.
- ~~132~~.139. “Neglect” has the same meaning:
- a. For an individual less than 18 years of age, as in A.R.S. § 8-201; and
 - b. For an individual 18 years of age or older, as in A.R.S. § 46-451.
- ~~133~~.140. “Nephrologist” means a physician who is board eligible or board certified in nephrology by a professional credentialing board.
- ~~134~~.141. “Nurse” has the same meaning as “registered nurse” or “practical nurse” as defined in A.R.S. § 32-1601.
- ~~135~~.142. “Nursing personnel” means individuals authorized according to A.R.S. Title 32, Chapter 15 to provide nursing services.
- ~~136~~.143. “Observation chair” means a physical piece of equipment that:
- a. Is located in a designated area where behavioral health observation/stabilization

services are provided,

- b. Allows an individual to fully recline, and
- c. Is used by the individual while receiving crisis services.

~~137-144.~~ “Occupational therapist” has the same meaning as in A.R.S. § 32-3401.

~~138-145.~~ “Occupational ~~therapist~~ therapy assistant” has the same meaning as in A.R.S. § 32-3401.

~~139-146.~~ “Ombudsman” means a resident advocate who performs the duties described in A.R.S. § 46-452.02.

~~140-147.~~ “On-call” means a time during which an individual is available and required to come to a health care institution when requested by the health care institution.

~~141-148.~~ “Opioid” means a controlled substance, as defined in A.R.S. § 36-2501, that meets the definition of “opiate” in A.R.S. § 36-2501.

~~149.~~ “Opioid agonist treatment medication” means a prescription medication that is approved by the U.S. Food and Drug Administration under 21 U.S.C. § 355 for use in the treatment of opioid-related substance use disorder.

~~142-150.~~ “Opioid antagonist” means a prescription medication, as defined in A.R.S. § 32-1901, that:

- a. Is approved by the U.S. Department of Health and Human Services, Food and Drug Administration; and
- b. When administered, reverses, in whole or in part, the pharmacological effects of an opioid in the body.

~~143-151.~~ “Opioid treatment” means providing medical services, nursing services, behavioral health services, health-related services, and ancillary services to a patient receiving an opioid agonist treatment medication for ~~opiate addiction~~ opioid-related substance use disorder.

~~144.~~ ~~“Opioid agonist treatment medication” means a prescription medication that is approved by the U.S. Food and Drug Administration under 21 U.S.C. § 355 for use in the treatment of opiate addiction.~~

~~145-152.~~ “Order” means instructions to provide:

- a. Physical health services to a patient from a medical practitioner or as otherwise provided by law; or
- b. Behavioral health services to a patient from a behavioral health professional.

~~146-153.~~ “Orientation” means the initial instruction and information provided to an individual

before the individual starts work or volunteer services in a health care institution.

~~147:~~154. “Outing” means a social or recreational activity that:

- a. Occurs away from the premises,
- b. Is not part of a behavioral health inpatient facility’s or behavioral health residential facility’s daily routine, and
- c. Lasts longer than four hours.

~~148:~~155. “Outpatient surgical center” means a class of health care institution that has the facility, staffing, and equipment to provide surgery and anesthesia services to a patient whose recovery, in the opinions of the patient’s surgeon and, if an anesthesiologist would be providing anesthesia services to the patient, the anesthesiologist, does not require inpatient care in a hospital.

~~149:~~156. “Outpatient treatment center” means a class of health care institution without inpatient beds that provides physical health services or behavioral health services for the diagnosis and treatment of patients.

~~150:~~157. “Overall time-frame” means the same as in A.R.S. § 41-1072.

~~151:~~158. “Owner” means a person who appoints, elects, or designates a health care institution’s governing authority.

~~152:~~159. “Pain management clinic” has the same meaning as in A.R.S. § 36-448.01.

~~153:~~160. “Participant” means a patient receiving physical health services or behavioral health services from an adult day health care facility or a substance abuse transitional facility.

~~154:~~161. “Participant’s representative” means the same as “patient’s representative” for a participant.

~~155:~~162. “Patient” means an individual receiving physical health services or behavioral health services from a health care institution.

~~156.~~ ~~“Patient follow-up instructions” means information relevant to a patient’s medical condition or behavioral health issue that is provided to the patient, the patient’s representative, or a health care institution.~~

~~157:~~163. “Patient’s representative” means:

- a. A patient’s legal guardian;
- b. If a patient is less than 18 years of age and not an emancipated minor, the patient’s parent;
- c. If a patient is 18 years of age or older or an emancipated minor, an individual acting on behalf of the patient with the written consent of the patient or patient’s legal

guardian; or

d. A surrogate as defined in A.R.S. § 36-3201.

~~158:164.~~ “Person” means the same as in A.R.S. § 1-215 and includes a governmental agency.

~~159:165.~~ “Personnel member” means, except as defined in specific Articles in this Chapter and excluding a medical staff member, a student, or an intern, an individual providing physical health services or behavioral health services to a patient.

~~160:166.~~ “Pest control program” means activities that minimize the presence of insects and vermin in a health care institution to ensure that a patient’s health and safety is not at risk.

~~161:167.~~ “Pharmacist” has the same meaning as in A.R.S. § 32-1901.

~~162:168.~~ “Physical examination” means to observe, test, or inspect an individual’s body to evaluate health or determine cause of illness, injury, or disease.

~~163:169.~~ “Physical health services” means medical services, nursing services, health-related services, or ancillary services provided to an individual to address the individual’s medical condition.

~~164:170.~~ “Physical therapist” has the same meaning as in A.R.S. § 32-2001.

~~165:171.~~ “Physical therapist assistant” has the same meaning as in A.R.S. § 32-2001.

~~166:172.~~ “Physician assistant” has the same meaning as in A.R.S. § 32-2501.

~~167:173.~~ “Placement evaluation” means the same as in A.R.S. § 36-551.

~~174.~~ “Pre-petition screening” has the same meaning as “prepetition screening” in A.R.S. § 36-501.

~~168:175.~~ “Premises” means property that is designated by an applicant or licensee and licensed by the Department as part of a health care institution where physical health services or behavioral health services are provided to a patient.

~~169:176.~~ “Prescribe” means to issue written or electronic instructions to a pharmacist to deliver to the ultimate user, or another individual on the ultimate user’s behalf, a specific dose of a specific medication in a specific quantity and route of administration.

~~170:177.~~ “Professional credentialing board” means a non-governmental organization that designates individuals who have met or exceeded established standards for experience and competency in a specific field.

~~171:178.~~ “Progress note” means documentation by a medical staff member, nurse, or personnel member of:

a. An observed patient response to a physical health service or behavioral health service provided to the patient,

- b. A patient’s significant change in condition, or
 - c. Observed behavior of a patient related to the patient’s medical condition or behavioral health issue.
- ~~172~~.179. “PRN” means *pro re nata* or given as needed.
- ~~173~~.180. “Project” means specific construction or modification of a facility stated on an architectural plans and specifications approval application.
- ~~174~~.181. “Provider” means an individual to whom the Department issues a license to operate an adult behavioral health therapeutic home or a behavioral health respite home in the individual’s place of residence.
- ~~175~~.182. “Provisional license” means the Department’s written approval to operate a health care institution issued to an applicant or licensee that is not in substantial compliance with the applicable laws and rules for the health care institution.
- ~~176~~.183. “Psychotropic medication” means a chemical substance that:
- a. Crosses the blood-brain barrier and acts primarily on the central nervous system where it affects brain function, resulting in alterations in perception, mood, consciousness, cognition, and behavior; and
 - b. Is provided to a patient to address the patient’s behavioral health issue.
- ~~177~~.184. “Quality management program” means ongoing activities designed and implemented by a health care institution to improve the delivery of medical services, nursing services, health-related services, and ancillary services provided by the health care institution.
- ~~178~~.185. “Recovery care center” has the same meaning as in A.R.S. § 36-448.51.
- ~~179~~.186. “Referral” means providing an individual with a list of the class or subclass of health care institution or type of health care professional that may be able to provide the behavioral health services or physical health services that the individual may need and may include the name or names of specific health care institutions or health care professionals.
- ~~180~~.187. “Registered dietitian” means an individual approved to work as a dietitian by the American Dietetic Association’s Commission on Dietetic Registration.
- ~~181~~.188. “Registered nurse” has the same meaning as in A.R.S. § 32-1601.
- ~~182~~.189. “Registered nurse practitioner” has the same meaning as A.R.S. § 32-1601.
- ~~183~~.190. “Regular basis” means at recurring, fixed, or uniform intervals.
- ~~184~~.191. “Rehabilitation services” means medical services provided to a patient to restore or to optimize functional capability.

- ~~185-192.~~ “Research” means the use of a human subject in the systematic study, observation, or evaluation of factors related to the prevention, assessment, treatment, or understanding of a medical condition or behavioral health issue.
- ~~186-193.~~ “Resident” means an individual living in and receiving physical health services or behavioral health services, including rehabilitation services or habilitation services if applicable, from a nursing care institution, an intermediate care facility for individuals with intellectual disabilities, a behavioral health residential facility, an assisted living facility, or an adult behavioral health therapeutic home.
- ~~187-194.~~ “Resident’s representative” means the same as “patient’s representative” for a resident.
- ~~188-195.~~ “Respiratory care services” has the same meaning as “practice of respiratory care” as defined in A.R.S. § 32-3501.
- ~~189-196.~~ “Respiratory therapist” has the same meaning as in A.R.S. § 32-3501.
197. “Respite capacity” means the total number of children who do not stay overnight for whom an outpatient treatment center or a behavioral health residential facility is authorized by the Department to provide respite services on the premises of the outpatient treatment center or behavioral health residential facility.
- ~~190-198.~~ “Respite services” means respite care services provided to an individual who is receiving behavioral health services.
- ~~191-199.~~ “Restraint” means any physical or chemical method of restricting a patient’s freedom of movement, physical activity, or access to the patient’s own body.
- ~~192-200.~~ “Risk” means potential for an adverse outcome.
- ~~193-201.~~ “Room” means space contained by a floor, a ceiling, and walls extending from the floor to the ceiling that has at least one door.
- ~~194-202.~~ “Rural general hospital” means a subclass of hospital:
- ~~a. having~~ Having 50 or fewer inpatient beds,
 - ~~b. and located~~ Located more than 20 surface miles from a general hospital or another rural general hospital, and
 - ~~c. that requests~~ Requesting to be and is being licensed as a rural general hospital rather than a general hospital.
- ~~195-203.~~ “Satellite facility” has the same meaning as in A.R.S. § 36-422.
- ~~196-204.~~ “Scope of services” means a list of the behavioral health services or physical health services the governing authority of a health care institution has designated as being

available to a patient at the health care institution.

~~197-205.~~ “Seclusion” means the involuntary solitary confinement of a patient in a room or an area where the patient is prevented from leaving.

~~198-206.~~ “Sedative-hypnotic medication” means any one of several classes of drugs that have sleep-inducing, anti-anxiety, anti-convulsant, and muscle-relaxing properties.

~~199-207.~~ “Self-administration of medication” means a patient having access to and control of the patient’s medication and may include the patient receiving limited support while taking the medication.

~~200-208.~~ “Sexual abuse” means the same as in A.R.S. § 13-1404(A).

~~201-209.~~ “Sexual assault” means the same as in A.R.S. § 13-1406(A).

~~202-210.~~ “Shift” means the beginning and ending time of a continuous work period established by a health care institution’s policies and procedures.

~~203-211.~~ “Short-acting opioid antagonist” means an opioid antagonist that, when administered, quickly but for a small period of time reverses, in whole or in part, the pharmacological effects of an opioid in the body.

~~204-212.~~ “Signature” means:

- a. A handwritten or stamped representation of an individual’s name or a symbol intended to represent an individual’s name, or
- b. An electronic signature.

~~205-213.~~ “Significant change” means an observable deterioration or improvement in a patient’s physical, cognitive, behavioral, or functional condition that may require an alteration to the physical health services or behavioral health services provided to the patient.

~~214.~~ “Single group license” means a license that includes authorization to operate health care institutions according to A.R.S. § 36-422(F) or (G).

~~206-215.~~ “Speech-language pathologist” means an individual licensed according A.R.S. Title ~~35~~ 36, Chapter 17, Article 4 to engage in the practice of speech-language pathology, as defined in A.R.S. § 36-1901.

~~207-216.~~ “Special hospital” means a subclass of hospital that:

- a. Is licensed to provide hospital services within a specific branch of medicine; or
- b. Limits admission according to age, gender, type of disease, or medical condition.

~~208-217.~~ “Student” means an individual attending an educational institution and working under supervision in a health care institution through an arrangement between the health care institution and the educational institution.

218. “Substance abuse” means an individual’s misuse of alcohol or other drug or chemical that:
- a. Alters the individual’s behavior or mental functioning;
 - b. Has the potential to cause the individual to be psychologically or physiologically dependent on alcohol or other drug or chemical; and
 - c. Impairs, reduces, or destroys the individual’s social or economic functioning.
219. “Substance abuse transitional facility” means a class of health care institution that provides behavioral health services to an individual over 18 years of age who is intoxicated or may have a substance abuse problem.
- ~~209-220.~~ “Substance use disorder” means a condition in which the misuse or dependence on alcohol or a drug results in adverse physical, mental, or social effects on an individual.
- ~~210-221.~~ “Substance use risk” means an individual’s unique likelihood for addiction, misuse, diversion, or another adverse consequence resulting from the individual being prescribed or receiving treatment with opioids.
- ~~211-222.~~ “Substantial” when used in connection with a modification means:
- a. An addition or removal of an authorized service;
 - b. The addition or removal of a collocator;
 - ~~a-c.~~ A change in a health care institution’s licensed capacity, licensed occupancy, respite capacity, or the number of dialysis stations;
 - ~~b.~~ ~~An addition or deletion of an authorized service;~~
 - ~~e-d.~~ A change in the physical plant, including facilities or equipment, that costs more than \$300,000; or
 - ~~d-e.~~ A change in the building where a health care institution is located that affects compliance with:
 - i. ~~applicable~~ Applicable physical plant codes and standards incorporated by reference in A.A.C. R9-1-412, or
 - ii. Physical plant requirements in the specific Article in this Chapter applicable to the health care institution.
212. “Substance abuse” means an individual’s misuse of alcohol or other drug or chemical that:
- a. ~~Alters the individual’s behavior or mental functioning;~~
 - b. ~~Has the potential to cause the individual to be psychologically or physiologically dependent on alcohol or other drug or chemical; and~~

- e. ~~Impairs, reduces, or destroys the individual's social or economic functioning.~~
- ~~213.~~ “Substance abuse transitional facility” means a class of health care institution that provides behavioral health services to an individual over 18 years of age who is intoxicated or may have a substance abuse problem.
- ~~214.~~ “Supportive services” has the same meaning as in A.R.S. § 36-151.
- ~~215-223.~~ “Substantive review time-frame” means the same as in A.R.S. § 41-1072.
- ~~224.~~ “Supportive services” has the same meaning as in A.R.S. § 36-151.
- ~~216-225.~~ “Surgical procedure” means the excision ~~of~~ or incision ~~of~~ in a patient’s body for the:
- a. Correction of a deformity or defect;
 - b. Repair of an injury; or
 - c. Diagnosis, amelioration, or cure of disease.
- ~~217-226.~~ “Swimming pool” has the same meaning as “semipublic swimming pool” in A.A.C. R18-5-201.
- ~~218-227.~~ “System” means interrelated, interacting, or interdependent elements that form a whole.
- ~~219-228.~~ “Tapering” means the gradual reduction in the dosage of a medication administered to a patient, often with the intent of eventually discontinuing the use of the medication for the patient.
- ~~220-229.~~ “Tax ID number” means a numeric identifier that a person uses to report financial information to the United States Internal Revenue Service.
- ~~221-230.~~ “Telemedicine” has the same meaning as in A.R.S. § 36-3601.
- ~~222-231.~~ “Therapeutic diet” means foods or the manner in which food is to be prepared that are ordered for a patient.
- ~~223-232.~~ “Therapist” means an occupational therapist, a physical therapist, a respiratory therapist, or a speech-language pathologist.
- ~~224-233.~~ “Time-out” means providing a patient a voluntary opportunity to regain self-control in a designated area from which the patient is not physically prevented from leaving.
- ~~225-234.~~ “Transfer” means a health care institution discharging a patient and sending the patient to another licensed health care institution as an inpatient or resident without intending that the patient be returned to the sending health care institution.
- ~~226-235.~~ “Transport” means a licensed health care institution:
- a. Sending a patient to a receiving licensed health care institution for outpatient services with the intent of the patient returning to the sending licensed health care

institution, or

- b. Discharging a patient to return to a sending licensed health care institution after the patient received outpatient services from the receiving licensed health care institution.

~~227-236.~~ “Treatment” means a procedure or method to cure, improve, or palliate an individual’s medical condition or behavioral health issue.

~~228-237.~~ “Treatment plan” means a description of the specific physical health services or behavioral health services that a health care institution anticipates providing to a patient.

~~229-238.~~ “Unclassified health care institution” means a health care institution not classified or subclassified in statute or in rule.

~~230-239.~~ “Vascular access” means the point on a patient’s body where blood lines are connected for hemodialysis.

~~231-240.~~ “Volunteer” means an individual authorized by a health care institution to work for the health care institution on a regular basis without compensation from the health care institution and does not include a medical staff member who has clinical privileges at the health care institution.

~~232-241.~~ “Working day” means a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state and federal holiday or a statewide furlough day.

R9-10-102. Health Care Institution Classes and Subclasses; Requirements

- A. A person may apply for a license as ~~a health care institution class or subclass in A.R.S. Title 36, Chapter 4 or this Chapter,~~ or one of the following classes or subclasses of health care institution:
1. General hospital,
 2. Rural general hospital,
 3. Special hospital,
 4. Behavioral health inpatient facility,
 5. Nursing care institution,
 6. Intermediate care facility for individuals with intellectual disabilities,
 7. Recovery care center,
 8. Hospice inpatient facility,
 9. Hospice service agency,
 10. Behavioral health residential facility,
 11. Adult residential care institution,
 - ~~11-12.~~ Assisted living center,

- ~~12.13.~~ Assisted living home,
- ~~13.14.~~ Adult foster care home,
- ~~14.15.~~ Outpatient surgical center,
- ~~15.16.~~ Outpatient treatment center,
- ~~16.17.~~ Abortion clinic,
- ~~17.18.~~ Adult day health care facility,
- ~~18.19.~~ Home health agency,
- ~~19.20.~~ Substance abuse transitional facility,
- ~~20.21.~~ Behavioral health specialized transitional facility,
- ~~21.22.~~ Counseling facility,
- ~~22.23.~~ Adult behavioral health therapeutic home,
- ~~23.24.~~ Behavioral health respite home,
- ~~24.25.~~ Unclassified health care institution, or
- ~~25.26.~~ Pain management clinic.

B. A person shall apply for a license for the class or subclass that authorizes the provision of the highest level of physical ~~care~~ health services or behavioral health services the proposed health care institution plans to provide.

C. The Department shall review ~~the~~ a proposed health care institution’s scope of services to determine whether the requested health care institution class or subclass is appropriate.

~~C.~~D. A health care institution shall comply with the requirements in Article 17 of this Chapter if:

1. There are no specific rules in another Article of this Chapter for the health care institution’s class or subclass, or
2. The Department determines that the health care institution is an unclassified health care institution.

R9-10-104. Approval of Architectural Plans and Specifications

A. For approval of architectural plans and specifications for the construction or modification of a health care institution that is required by this Chapter to comply with any of the physical plant codes and standards incorporated by reference in A.A.C. R9-1-412, an applicant shall submit to the Department an application packet including:

1. An application in a Department-provided format ~~provided by the Department~~ that contains:
 - a. For construction of a new health care institution:
 - i. The health care institution’s name, street address, city, state, zip code,

rooms or inpatient beds designated for providing the medical services, nursing services, or health-related services;

~~g-h.~~ If providing or planning to provide behavioral health observation/stabilization services, the number of ~~behavioral health observation/stabilization~~ observation chairs designated for providing the behavioral health observation/stabilization services;

~~h-i.~~ For construction of a new health care institution and if modification of a health care institution requires a project architect, a statement signed and sealed by the project architect, according to the requirements in 4 A.A.C. 30, Article 3, that the:

- i. Project architect has complied with A.A.C. R4-30-301; and
- ii. Architectural plans and specifications comply with applicable licensing requirements in A.R.S. Title 36, Chapter 4 and this Chapter;

~~i-j.~~ If construction or modification of a health care institution requires a project engineer, a statement signed and sealed by the project engineer, according to the requirements in 4 A.A.C. 30, Article 3, that the project engineer has complied with A.A.C. R4-30-301; and

~~j-k.~~ A statement signed by the governing authority or the licensee that the architectural plans and specifications comply with applicable licensing requirements in A.R.S. Title 36, Chapter 4 and this Chapter;

2. If the health care institution is located on land under the jurisdiction of a local governmental agency, one of the following:

a. A building permit for the construction or modification issued by the local governmental agency; or

b. If a building permit issued by the local governmental agency is not required, zoning clearance issued by the local governmental agency that includes:

i. The health care institution's name, street address, city, state, zip code, and county;

ii. The health care institution's class or subclass and each type of medical services, nursing services, or health-related services to be provided; and

iii. A statement signed by a representative of the local governmental agency stating that the address listed is zoned for the health care institution's class or subclass;

3. The following information that is as necessary to demonstrate that the project described on the application complies with applicable codes and standards incorporated by reference in A.A.C. R9-1-412:
 - a. A table of contents containing:
 - i. The architectural plans and specifications submitted;
 - ii. The physical plant codes and standards incorporated by reference in A.A.C. R9-1-412 that apply to the project;
 - iii. The physical plant codes and standards that are required by a local governmental agency, if applicable;
 - iv. An index of the abbreviations and symbols used in the architectural plans and specifications; and
 - v. The facility's specific International Building Code construction type and International Building Code occupancy type;
 - b. If the facility is larger than 3,000 square feet and is or will be occupied by more than 20 individuals, the seal of an architect on the architectural plans and specifications according to the requirements in A.R.S. Title 32, Chapter 1 and 4 A.A.C. 30, Article 3;
 - c. A site plan, drawn to scale, of the entire premises showing streets, property lines, facilities, parking areas, outdoor areas, fences, swimming pools, fire access roads, fire hydrants, and access to water mains;
 - d. For each facility, on architectural plans and specifications:
 - i. A floor plan, drawn to scale, for each level of the facility, showing the layout and dimensions of each room, the name and function of each room, means of egress, and natural and artificial lighting sources;
 - ii. A diagram of a section of the facility, drawn to scale, showing the vertical cross-section view from foundation to roof and specifying construction materials;
 - iii. Building elevations, drawn to scale, showing the outside appearance of each facility;
 - iv. The materials used for ceilings, walls, and floors;
 - v. The location, size, and fire rating of each door and each window and the materials and hardware used, including safety features such as fire exit door hardware and fireproofing materials;

- vi. A ceiling plan, drawn to scale, showing the layout of each light fixture, each fire protection device, and each element of the mechanical ventilation system;
 - vii. An electrical floor plan, drawn to scale, showing the wiring diagram and the layout of each lighting fixture, each outlet, each switch, each electrical panel, and electrical equipment;
 - viii. A mechanical floor plan, drawn to scale, showing the layout of heating, ventilation, and air conditioning systems;
 - ix. A plumbing floor plan, drawn to scale, showing the layout and materials used for water, sewer, and medical gas systems, including the water supply and plumbing fixtures;
 - x. A floor plan, drawn to scale, showing the communication system within the health care institution including the nurse call system, if applicable;
 - xi. A floor plan, drawn to scale, showing the automatic fire extinguishing, fire detection, and fire alarm systems; and
 - xii. Technical specifications or drawings describing installation of equipment or medical gas and the materials used for installation in the health care institution;
4. ~~The estimated total project cost including the costs of:~~
- a: ~~Site acquisition;~~
 - b: ~~General construction;~~
 - e: ~~Architect fees;~~
 - d: ~~Fixed equipment, and~~
 - e: ~~Movable equipment;~~
- 5.4. The following, as applicable:
- a. If the health care institution is located on land under the jurisdiction of a local governmental agency, one of the following provided by the local governmental agency:
 - i. A copy of the certificate of occupancy for the facility,
 - ii. Documentation that the facility was approved for occupancy, or
 - iii. Documentation that a certificate of occupancy for the facility is not available;
 - b. A certification and a statement that the construction or modification of the

facility is in substantial compliance with applicable licensing requirements in A.R.S. Title 36, Article 4 and this Chapter signed by the project architect, the contractor, and the owner;

- c. A written description of any work necessary to complete the construction or modification submitted by the project architect;
- d. If the construction or modification affects the health care institution's fire alarm system, a contractor certification and description of the fire alarm system in a Department-provided format ~~provided by the Department~~;
- e. If the construction or modification affects the health care institution's automatic fire extinguishing system, a contractor certification of the automatic fire extinguishing system in a Department-provided format ~~provided by the Department~~;
- f. If the construction or modification affects the health care institution's heating, ventilation, or air conditioning system, a copy of the heating, ventilation, air conditioning, and air balance tests and a contractor certification of the heating, ventilation, or air conditioning system;
- g. If draperies, cubicle curtains, or floor coverings are installed or replaced, a copy of the manufacturer's certification of flame spread for the draperies, cubicle curtains, or floor coverings;
- h. For a health care institution using inhalation anesthetics or nonflammable medical gas, a copy of the Compliance Certification for Inhalation Anesthetics or Nonflammable Medical Gas System required in the National Fire Codes incorporated by reference in A.A.C. R9-1-412;
- i. If a generator is installed, a copy of the installation acceptance required in the National Fire Codes incorporated by reference in A.A.C. R9-1-412;
- j. If equipment is installed, a certification from an engineer or from a technical representative of the equipment's manufacturer that the equipment has been installed according to the manufacturer's recommendations and, if applicable, calibrated;
- k. For a health care institution providing radiology, a written report from a certified health physicist of the location, type, and amount of radiation protection; and
- l. If a factory-built building is used by a health care institution:
 - i. A copy of the installation permit and the copy of a certificate of

occupancy for the factory-built building from the Office of Manufactured Housing; or

- ii. A written report from an individual registered as an architect or a professional structural engineer under 4 A.A.C. 30, Article 2, stating that the factory-built building complies with applicable design standards;

~~6.5.~~ For construction of a new health care institution and for a modification of a health care institution that requires a project architect, a statement signed by the project architect that final architectural plans and specifications have been submitted to the person applying for a health care institution license or the licensee of the health care institution;

~~7.6.~~ For modification of a health care institution that does not require a project architect, a statement signed by the project engineer or other individual responsible for the completion of the modification that final architectural plans and specifications have been submitted to the person applying for a health care institution license or the licensee of the health care institution; and

~~8.7.~~ The applicable fee required by R9-10-106.

- B.** Before an applicant submits an application for approval of architectural plans and specifications for the construction or modification of a health care institution, an applicant may request an architectural evaluation by ~~submitting~~ providing the documents in subsection (A)(3) to the Department.
- C.** The Department may conduct on-site facility reviews during the construction or modification of a health care institution.
- D.** The Department shall approve or deny an application for approval of architectural plans and specifications of a health care institution in this Section according to R9-10-108.
- E.** In addition to obtaining an approval of a health care institution's architectural plans and specifications, a person shall obtain a health care institution license before operating the health care institution.

R9-10-105. Initial License Application

A. A person applying for ~~an initial~~ a health care institution license shall submit to the Department an application packet that contains:

1. An application in a Department-provided format ~~provided by the Department~~ including:
 - a. The health care institution's:
 - i. Name;
 - ii. ~~street~~ Street address, city, state, zip code;

- iii. ~~mailing~~ Mailing address;
 - iv. ~~telephone~~ Telephone number; ~~and~~;
 - v. ~~e-mail~~ E-mail address;
 - ~~ii-vi.~~ Tax ID number; and
 - ~~iii-vii.~~ Class or subclass listed in R9-10-102 for which licensing is requested;
- b. Except for a home health agency; or hospice service agency, ~~or behavioral health facility~~, whether the health care institution is located within 1/4 mile of agricultural land;
 - c. Whether the health care institution is located in a leased facility;
 - d. Whether the health care institution is ready for a licensing inspection by the Department;
 - e. If the health care institution is not ready for a licensing inspection by the Department, the date the health care institution will be ready for a licensing inspection;
 - f. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-10-108;
 - g. Owner information including:
 - i. The owner's name, mailing address, telephone number, and e-mail address;
 - ii. Whether the owner is a sole proprietorship, a corporation, a partnership, a limited liability partnership, a limited liability company, or a governmental agency;
 - iii. If the owner is a partnership or a limited liability partnership, the name of each partner;
 - iv. If the owner is a limited liability company, the name of the designated manager or, if no manager is designated, the names of any two members of the limited liability company;
 - v. If the owner is a corporation, the name and title of each corporate officer;
 - vi. If the owner is a governmental agency, the name and title of the individual in charge of the governmental agency or the name of an individual in charge of the health care institution designated in writing by the individual in charge of the governmental agency;
 - vii. Whether the owner or any person with 10% or more business interest in

- the health care institution has had a license to operate a health care institution denied, revoked, or suspended; the reason for the denial, suspension, or revocation; the date of the denial, suspension, or revocation; and the name and address of the licensing agency that denied, suspended, or revoked the license;
- viii. Whether the owner or any person with 10% or more business interest in the health care institution has had a health care professional license or certificate denied, revoked, or suspended; the reason for the denial, suspension, or revocation; the date of the denial, suspension, or revocation; and the name and address of the licensing agency that denied, suspended, or revoked the license or certificate; and
 - ix. The name, title, address, and telephone number of the owner's statutory agent or the individual designated by the owner to accept service of process and subpoenas;
 - h. The name and mailing address of the governing authority;
 - i. The chief administrative officer's:
 - i. Name,
 - ii. Title,
 - iii. Highest educational degree, and
 - iv. Work experience related to the health care institution class or subclass for which licensing is requested; and
 - j. Signature required in A.R.S. § 36-422(B);
2. If the health care institution is located in a leased facility, a copy of the lease showing the rights and responsibilities of the parties and exclusive rights of possession of the leased facility;
 3. If applicable, a copy of the owner's articles of incorporation, partnership or joint venture documents, or limited liability documents;
 4. If applicable, the name and mailing address of each owner or lessee of any agricultural land regulated under A.R.S. § 3-365 and a copy of the written agreement between the applicant and the owner or lessee of agricultural land as prescribed in A.R.S. § 36-421(D);
 5. Except for a home health agency or a hospice service agency, one of the following:
 - a. If the health care institution or a part of the health care institution is required by

this Chapter to comply with any of the physical plant codes and standards incorporated by reference in A.A.C. R9-1-412;

i. An application packet for approval of architectural plans and specifications in R9-10-104(A), or

ii. ~~documentation~~ Documentation of the Department's approval of the health care institution's architectural plans and specifications approval in R9-10-104 R9-10-104(D); or

b. If ~~a no part of the~~ health care institution ~~or a part of the health care institution~~ is ~~not~~ required by this Chapter to comply with any of the physical plant codes and standards incorporated by reference in A.A.C. R9-1-412:

i. One of the following:

(1) Documentation from the local jurisdiction of compliance with applicable local building codes and zoning ordinances; or

(2) If documentation from the local jurisdiction is not available, documentation of the unavailability of the local jurisdiction compliance and documentation of a general contractor's inspection of the facility that states the facility is safe for occupancy as the applicable health care institution class or subclass;

ii. ~~If applicable, the~~ The licensed capacity requested by the applicant for the health care institution;

iii. If applicable, the licensed occupancy requested by the applicant for the health care institution;

iv. ~~If applicable, the~~ respite capacity requested by the applicant for the health care institution;

~~iv-v.~~ A site plan showing each facility, the property lines of the health care institution, each street and walkway adjacent to the health care institution, parking for the health care institution, fencing and each gate on the health care institution premises, and, if applicable, each swimming pool on the health care institution premises; and

~~v-vi.~~ A floor plan showing, for each story of a facility, the room layout, room usage, each door and each window, plumbing fixtures, each exit, and the location of each fire protection device;

6. The health care institution's proposed scope of services; and
 7. The applicable application fee required by R9-10-106.
- B.** In addition to the ~~initial~~ license application requirements in this Section, an applicant shall comply with the supplemental application requirements in specific rules in this Chapter for the health care institution class or subclass for which licensing is requested.
- C.** The Department shall approve or deny ~~an~~ a license application in this Section according to R9-10-108.
- D.** A health care institution license is valid:
1. Unless, as specified in A.R.S. §36-425(C):
 - a. The Department revokes or suspends the license according to R9-10-112, or
 - b. The license is considered void because the licensee did not pay the applicable fees in R9-10-106 according to R9-10-107; or
 2. Until a licensee voluntarily surrenders the license to the Department when terminating the operation of the health care institution, according to R9-10-109(B).

R9-10-106. Fees

- A.** An applicant who submits to the Department architectural plans and specifications for the construction or modification of a health care institution shall also submit an architectural ~~drawing~~ plans and specifications review fee as follows:
1. Fifty dollars for a project with a cost of \$100,000 or less;
 2. One hundred dollars for a project with a cost of more than \$100,000 but less than \$500,000; or
 3. One hundred fifty dollars for a project with a cost of \$500,000 or more.
- B.** An applicant submitting an ~~initial application or a renewal~~ application for a health care institution license shall submit to the Department an application fee of \$50.
- C.** Except as provided in subsection (D) or (E), an applicant submitting an ~~initial~~ application for a health care institution license or a ~~renewal application for a health care institution license~~ licensee submitting annual health care institution licensing fees shall submit to the Department ~~a licensing fee as follows~~ the following licensing fee:
1. For an adult day health care facility, assisted living home, or assisted living center:
 - a. For a facility with no licensed capacity, \$280;
 - b. For a facility with a licensed capacity of one to 59 beds, \$280, plus the licensed capacity times \$70;

- c. For a facility with a licensed capacity of 60 to 99 beds, \$560, plus the licensed capacity times \$70;
 - d. For a facility with a licensed capacity of 100 to 149 beds, \$840, plus the licensed capacity times \$70; or
 - e. For a facility with a licensed capacity of 150 beds or more, \$1,400, plus the licensed capacity times \$70;
2. For a behavioral health facility:
- a. For a facility with no licensed capacity, \$375;
 - b. For a facility with a licensed capacity of one to 59 beds, \$375, plus the licensed capacity times \$94;
 - c. For a facility with a licensed capacity of 60 to 99 beds, \$750, plus the licensed capacity times \$94;
 - d. For a facility with a licensed capacity of 100 to 149 beds, \$1,125, plus the licensed capacity times \$94; or
 - e. For a facility with a licensed capacity of 150 beds or more, \$1,875, plus the licensed capacity times \$94;
3. For a behavioral health facility providing behavioral health observation/stabilization services, in addition to the applicable fee in subsection (C)(2), the licensed occupancy times \$94;
4. For a nursing care institution or an intermediate care facility for individuals with intellectual disabilities:
- a. For a facility with a licensed capacity of one to 59 beds, \$290, plus the licensed capacity times \$73;
 - b. For a facility with a licensed capacity of 60 to 99 beds, \$580, plus the licensed capacity times \$73;
 - c. For a facility with a licensed capacity of 100 to 149 beds, \$870, plus the licensed capacity times \$73; or
 - d. For a facility with a licensed capacity of 150 beds or more, \$1,450, plus the licensed capacity times \$73;
5. For a hospital, a home health agency, a hospice service agency, a hospice inpatient facility, an abortion clinic, a recovery care center, an outpatient surgical center, an outpatient treatment center that is not a behavioral health facility, a pain management clinic, or an unclassified health care institution:

- a. For a facility with no licensed capacity, \$365;
 - b. For a facility with a licensed capacity of one to 59 beds, \$365, plus the licensed capacity times \$91;
 - c. For a facility with a licensed capacity of 60 to 99 beds, \$730, plus the licensed capacity times \$91;
 - d. For a facility with a licensed capacity of 100 to 149 beds, \$1,095, plus the licensed capacity times \$91; or
 - e. For a facility with a licensed capacity of 150 beds or more, \$1,825, plus the licensed capacity times \$91;
6. For a hospital providing behavioral health observation/stabilization services, in addition to the applicable fee in subsection (C)(5), the licensed occupancy times \$91; and
7. For an outpatient treatment center that is not a behavioral health facility and provides:
- a. Dialysis services, in addition to the applicable fee in subsection (C)(5), the number of dialysis stations times \$91; and
 - b. Behavioral health observation/stabilization services, in addition to the applicable fee in subsection (C)(5), the licensed occupancy times \$91.

D. In addition to the applicable fees in subsections (C)(5) and (C)(6), an applicant submitting an ~~initial application or a renewal application~~ for a single group hospital license or a licensee with a single group license submitting annual health care institution licensing fees shall submit to the Department an additional fee of \$365 for each of the hospital's satellite facilities and, if applicable, the fees required in subsection (C)(7).

E. Subsections (C) and (D) do not apply to a health care institution operated by a state agency according to state or federal law or to an adult foster care home.

F. In addition to the applicable fees in subsections (C) and (D), a licensee shall submit a late payment fee of \$250 if submitting annual licensing fees according to R9-10-107(E)(1) or (2)(d).

F.G. All fees are nonrefundable except as provided in A.R.S. § 41-1077.

R9-10-107. ~~Renewal License Application~~ Submission of Health Care Institution Licensing Fees

A. ~~A licensee applying to renew a health care institution license shall submit an application packet to the Department at least 60 calendar days but not more than 120 calendar days before the expiration date of the current license that contains:~~

- ~~1. A renewal application in a format provided by the Department including:~~
 - ~~a. The health care institution's:~~

- i. ~~Name, license number, mailing address, telephone number, and e-mail address; and~~
- ii. ~~Class or subclass;~~
- b. ~~Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-10-108;~~
- e. ~~Owner information including:~~
 - i. ~~The owner's name, address, telephone number, and e-mail address;~~
 - ii. ~~Whether the owner is a sole proprietorship, a corporation, a partnership, a limited liability partnership, a limited liability company, or a governmental agency;~~
 - iii. ~~If the owner is a partnership or a limited liability partnership, the name of each partner;~~
 - iv. ~~If the owner is a limited liability company, the name of the designated manager or, if no manager is designated, the names of any two members of the limited liability company;~~
 - v. ~~If the owner is a corporation, the name and title of each corporate officer;~~
 - vi. ~~If the owner is a governmental agency, the name and title of the individual in charge of the governmental agency or the individual designated in writing by the individual in charge of the governmental agency;~~
 - vii. ~~Whether the owner or any person with 10% or more business interest in the health care institution has had a license to operate a health care institution denied, revoked, or suspended since the previous license application was submitted; the reason for the denial, suspension, or revocation; the date of the denial, suspension, or revocation; and the name and address of the licensing agency that denied, suspended, or revoked the license;~~
 - viii. ~~Whether the owner or any person with 10% or more business interest in the health care institution has had a health care professional license or certificate denied, revoked, or suspended since the previous license application was submitted; the reason for the denial, suspension, or revocation; the date of the denial, suspension, or revocation; and the~~

- ~~name and address of the licensing agency that denied, suspended, or
revoked the license or certificate; and~~
- ~~ix: The name, title, address, and telephone number of the owner's statutory agent or the individual designated by the owner to accept service of process and subpoenas;~~
 - ~~d: The name and address of the governing authority;~~
 - ~~e: The chief administrative officer's:

 - ~~i: Name;~~
 - ~~ii: Title;~~
 - ~~iii: Highest educational degree; and~~
 - ~~iv: Work experience related to the health care institution class or subclass for which licensing is requested; and~~~~
 - ~~f: Signature required in A.R.S. § 36-422(B);~~
 - ~~2: The health care institution's scope of services;~~
 - ~~3: If the health care institution is located in a leased facility, a copy of the lease showing the rights and responsibilities of the parties and exclusive rights of possession of the leased facility; and~~
 - ~~4: The applicable application and licensing fees required by R9-10-106.~~
- B.** ~~A licensee may submit a health care institution's current accreditation report from a nationally recognized accrediting organization as part of the application packet in subsection (A).~~
- C.** ~~If a licensee submits a health care institution's current accreditation report from a nationally recognized accrediting organization, the Department shall not conduct an onsite compliance inspection of the health care institution during the time the accreditation report is valid.~~
- D.** ~~The Department shall approve or deny a renewal license according to R9-10-108.~~
- E.** ~~The Department shall issue a renewal license for:~~
- ~~1: One year; or~~
 - ~~2: Three years, if:

 - ~~a: A licensee's health care institution is a hospital accredited by a nationally recognized accreditation organization; and~~
 - ~~b: The licensee submits a copy of the hospital's current accreditation report.~~~~
- A.** An applicant for a health care institution license shall submit the applicable licensing fees in R9-10-106 to the Department:
- 1. Within 60 calendar days after the date of the written notice of approval in

R9-10-108(C)(3); or

2. Within 90 calendar days after the date of the written notice of approval in R9-10-108(C)(3), with the payment of an additional late payment fee of \$250.

B. The Department shall notify a licensee of the due date of the facility's health care institution licensing fees no later than 90 calendar days before the date the facility's health care institution licensing fee is due to the Department.

C. Except as specified in subsection (E), a licensee shall submit to the Department, no earlier than 60 calendar days before the anniversary date of the facility's health care institution license:

1. The following information in a Department-provided format:
 - a. The licensee's name, and
 - b. The facility's name and license number;
2. Verification of the information in the Department's current records for the health care institution;
3. If applicable, information or documentation required in another Article of this Chapter, specific to the health care institution, to be submitted with the relevant fees required in R9-10-106; and
4. The applicable annual licensing fees in R9-10-106.

D. If any information in the Department's current records for a health care institution is incorrect, before a licensee submits annual licensing fees according to subsection (C), the licensee shall comply with the applicable requirements in R9-10-109 or R9-10-110 to update the Department's records for the health care institution.

E. A licensee may submit to the Department the information in subsection (C)(1), verification in subsection (C)(2), applicable information or documentation in subsection (C)(3), and applicable annual licensing fees in R9-10-106:

1. Within 30 calendar days after the anniversary date of the facility's health care institution license, with the payment of the additional late payment fee in R9-10-106(F); or
2. If an alternate licensing fee due date has been established for the licensee according to subsections (F) and (G):
 - a. By the anniversary date of the facility's health care institution license, with the appropriate fee amount to prorate the annual licensing fees in R9-10-106 for a facility to the alternate licensing fee due date;
 - b. By the alternate licensing fee due date;
 - c. If a new alternate licensing fee due date has been established, by the current

alternate licensing fee due date, with the appropriate fee amount to prorate the annual licensing fees in R9-10-106 for a facility to the new alternate licensing fee due date; or

- d. Within 30 calendar days after the alternate licensing fee due date, with the payment of the additional late payment fee in R9-10-106(F).

F. Except as specified in subsection (H), a licensee may request a licensing fee due date for a facility that is different from the anniversary date of a facility's health care institution license by submitting an application for an alternate licensing fee due date to the Department, at least 30 calendar days before the anniversary date of the facility's health care institution license, that includes the following information in a Department-provided format:

1. The licensee's name and e-mail address.
2. The facility's name and license number.
3. The current licensing fee due date.
4. The proposed alternate licensing fee due date.
5. The reason the licensee is requesting an alternate licensing fee due date, and
6. The name of the health care institution's administrator's or individual representing the health care institution as designated in A.R.S. § 36-422 and the dated signature of the administrator or individual.

G. The Department shall review a request made according to subsection (F) according to R9-10-108.

H. A licensee may not request an alternate licensing fee due date according to subsection (F):

1. More frequently than once in each three-year period, or
2. For a facility for which the payment of licensing fees is not up-to-date.

R9-10-108. Time-frames

A. The overall time-frame for each type of approval granted by the Department is listed in Table 1.1. The applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame. The substantive review time-frame and the overall time-frame may not be extended by more than 25% of the overall time-frame.

B. The administrative completeness review time-frame for each type of approval granted by the Department as prescribed in this Article is listed in Table 1.1. The administrative completeness review time-frame begins on the date the Department receives an application packet or a written request for ~~a change in a health care institution license according to R9-10-109(F):~~ an alternate licensing fee due date.

1. The application packet for ~~an initial~~ a health care institution license is not complete until the applicant provides the Department with written notice that the health care institution is ready for a licensing inspection by the Department.
 2. If the application packet or written request is incomplete, the Department shall provide a written notice to the applicant specifying the missing document or incomplete information. The administrative completeness review time-frame and the overall time-frame are suspended from the date of the notice until the date the Department receives the missing document or information from the applicant.
 3. When an application packet or written request is complete, the Department shall provide a written notice of administrative completeness to the applicant.
 4. For an application packet for review of architectural plans and specifications, initial a health care institution license application packet, an application packet for a modification not requiring review of architectural plans and specifications, or a written request for an alternate licensing fee due date, the Department shall consider the application or written request withdrawn if the applicant fails to supply the missing documents or information included in the notice described in subsection (B)(2) within ~~180~~ 60 calendar days after the date of the notice described in subsection (B)(2).
 5. If the Department issues a license or grants an approval during the time provided to assess administrative completeness, the Department shall not issue a separate written notice of administrative completeness.
- C. The substantive review time-frame is listed in Table 1.1 and begins on the date of the notice of administrative completeness.
1. The Department may conduct an onsite inspection of the facility:
 - a. As part of the substantive review for approval of architectural plans and specifications;
 - b. As part of the substantive review for issuing a health care institution ~~initial or renewal~~ license; or
 - c. As part of the substantive review for approving a modification ~~in~~ of a health care institution's license.
 2. During the substantive review time-frame, the Department may make one comprehensive written request for additional information or documentation. If the Department and the applicant agree in writing, the Department may make supplemental requests for additional information or documentation. The time-frame for the Department to complete

- the substantive review is suspended from the date of a written request for additional information or documentation until the Department receives the additional information or documentation.
3. The Department shall send a written notice of approval ~~or a license~~ to an applicant ~~who~~ that is in substantial compliance with applicable requirements in A.R.S. Title 36, Chapter 4 and this Chapter.
 4. After an applicant for ~~an initial~~ a health care institution license receives the written notice of approval in subsection (C)(3), the applicant shall submit the applicable health care institution license fee in R9-10-106 ~~to the Department within 60 calendar days after the date of the written notice of approval~~ according to R9-10-107(A).
 5. After receiving the applicable health care institution licensing fee from an applicant according to subsection (C)(4) and R9-10-107(A), the Department shall send a health care institution license to the applicant.
 - 5-6. The Department shall provide a written notice of denial that complies with A.R.S. § 41-1076 to an applicant who does not:
 - a. For ~~an initial~~ a health care institution license application or a request for approval of a modification of a health care institution requiring architectural plans and specifications, submit the information or documentation in subsection (C)(2) within 120 calendar days after the Department's written request to the applicant;
 - b. For a request for approval of a modification of a health care institution not requiring architectural plans and specifications or a written request for an alternate licensing fee due date, submit the information or documentation in subsection (C)(2) within 30 calendar days after the Department's written request to the applicant;
 - ~~b.c.~~ Comply with the applicable requirements in A.R.S. Title 36, Chapter 4 and this Chapter; or
 - ~~e.d.~~ Submit the fee ~~If applicable, submit a fee~~ required in R9-10-106 or R9-10-107.
 - 6-7. An applicant may file a written notice of appeal with the Department within 30 calendar days after receiving the notice described in subsection ~~(C)(5)~~ (C)(6). The appeal shall be conducted according to A.R.S. Title 41, Chapter 6, Article 10.
 - 7-8. If a time-frame's last day falls on a Saturday, a Sunday, or an official state holiday, the Department shall consider the next working day to be the time-frame's last day.

Table 1.1.

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Time-frame	Substantive Review Time-frame
Approval of architectural plans and specifications R9-10-104	A.R.S. §§ 36-405, 36-406(1)(b), and 36-421	105 calendar days	45 calendar days	60 calendar days
Health care institution initial license R9-10-105	A.R.S. §§ 36-405, 36-407, 36-421, 36-422, 36-424, and 36-425	120 calendar days	30 calendar days	90 calendar days
Health care institution renewal license <u>Approval of an alternate licensing fee due date</u> R9-10-107	A.R.S. §§ 36-405, 36-407, 36-422, 36-424, and 36-425	90 <u>30</u> calendar days	30 <u>10</u> calendar days	60 <u>20</u> calendar days
Approval of a modification of a health care institution R9-10-110	A.R.S. §§ 36-405, 36-407, and 36-422	75 calendar days	15 calendar days	60 calendar days

R9-10-109. Changes Affecting a License

A. A licensee shall ensure that:

1. ~~the~~ The Department is notified in writing at least 30 calendar days before the effective date of:

~~1.a.~~ A ~~Except as provided in subsection (I), a~~ change in the name of:

~~a.i.~~ A health care institution, or

~~b.ii.~~ The licensee; ~~or~~

b. A change in the hours of operation:

i. Of an administrative office, or

ii. For providing physical health services or behavioral health services to patients of the health care institution;

~~2.c.~~ A change in the address of a health care institution that does not provide medical services, nursing services, behavioral health services, or health-related services on the premises; or

d. A change in the geographic region to be served by the hospice service agency or home health agency; and

2. Documentation supporting the change is provided to the Department with the notification required in subsection (A)(1).

B. If a licensee intends to terminate the operation of a health care institution ~~either during or at the expiration of the health care institution's license~~, the licensee shall ensure that the Department is notified in writing of:

1. The termination of the health care institution's operations, as required in A.R.S. § 36-422(D), at least 30 calendar days before the termination, and
2. The address and contact information for the location where the health care institution's medical records will be retained as required in A.R.S. § 12-2297.

C. A licensee shall ensure that the Department is notified in writing, according to A.R.S. § 36-425(I), of a change in the chief administrative officer of the health care institution.

D. If a health care institution is accredited by a nationally recognized accrediting organization, a licensee may submit to the Department the health care institution's current accreditation report.

E. If a licensee submits to the Department a health care institution's current accreditation report from a nationally recognized accrediting organization, the Department shall not conduct an onsite compliance inspection of the health care institution during the time the accreditation report is valid.

~~**F.**~~ If a licensee is an adult behavioral health therapeutic home or a behavioral health respite home, the licensee shall ensure that:

1. The Department is notified in writing if the licensee does not have a written agreement with a collaborating health care institution, as required in ~~R9-10-1603(A)(4)~~ R9-10-1603(A)(3) or ~~R9-10-1803(A)(5)~~ R9-10-1803(A)(3) as applicable; and
2. The adult behavioral health therapeutic home or behavioral health respite home does not accept an individual as a resident or recipient, as applicable, or provide services to a resident or recipient, as applicable, until:
 - a. The adult behavioral health therapeutic home or behavioral health respite home has a written agreement with a collaborating health care institution;
 - b. The collaborating health care institution has approved the adult behavioral health

therapeutic home's or behavioral health respite home's:

- i. Scope of services, and
- ii. Policies and procedures; and
- c. The collaborating health care institution has verified the provider's skills and knowledge.

D.G. If a licensee is an affiliated outpatient treatment center, the licensee shall ensure that if the affiliated outpatient treatment center:

1. Plans to begin providing administrative support to a counseling facility at a time other than during the affiliated outpatient treatment center's ~~initial or renewal~~ license application process, the following information for each counseling facility is submitted to the Department before the affiliated outpatient treatment center begins providing administrative support:
 - a. The counseling facility's name,
 - b. The license number assigned to the counseling facility by the Department, and
 - c. The date the affiliated outpatient treatment center will begin providing administrative support to the counseling facility; or
2. No longer provides administrative support to a counseling facility previously identified by the affiliated outpatient treatment center as receiving administrative support from the affiliated outpatient treatment center, ~~at a time other than during the initial or renewal license application process~~, the following information for each counseling facility is submitted to the Department within 30 calendar days after the affiliated outpatient treatment center no longer provides administrative support:
 - a. The counseling facility's name,
 - b. The license number assigned to the counseling facility by the Department, and
 - c. The date the affiliated outpatient treatment center stopped providing administrative support to the counseling facility.

E.H. If a licensee is a counseling facility, the licensee shall ensure that if the counseling facility:

1. Plans to begin receiving administrative support from an affiliated outpatient treatment center at a time other than during the counseling facility's ~~initial or renewal~~ license application process, the following information for the affiliated outpatient treatment center is submitted to the Department before the counseling facility begins receiving administrative support:
 - a. The affiliated outpatient treatment center's name,

- b. The license number assigned to the affiliated outpatient treatment center by the Department, and
 - c. The date the counseling facility will begin receiving administrative support; ~~or~~
- 2. No longer receives administrative support from an affiliated outpatient treatment center previously identified by the counseling facility as providing administrative support to the counseling facility, ~~at a time other than during the counseling facility's initial or renewal license application process~~; the following information for the affiliated outpatient treatment center is submitted to the Department within 30 calendar days after the counseling facility no longer receives administrative support from the affiliated outpatient treatment center:
 - a. The affiliated outpatient treatment center's name,
 - b. The license number assigned to the affiliated outpatient treatment center by the Department, and
 - c. The date the counseling facility stopped receiving administrative support from the affiliated outpatient treatment center;
- 3. Plans to begin sharing administrative support with an affiliated counseling facility at a time other than during the counseling facility's ~~initial or renewal~~ license application process, the following information for each affiliated counseling facility sharing administrative support with the counseling facility is submitted to the Department before the counseling facility and affiliated counseling facility begin sharing administrative support:
 - a. The affiliated counseling facility's name,
 - b. The license number assigned to the affiliated counseling facility by the Department, and
 - c. The date the counseling facility and the affiliated counseling facility will begin sharing administrative support; or
- 4. No longer shares administrative support with an affiliated counseling facility previously identified by the counseling facility as sharing administrative support with the counseling facility ~~at a time other than during the counseling facility's initial or renewal license application process~~; the following information is submitted for each affiliated counseling facility within 30 calendar days after the counseling facility and affiliated counseling facility no longer share administrative support:
 - a. The affiliated counseling facility's name,

- b. The license number assigned to the affiliated counseling facility by the Department, and
- c. The date the counseling facility and affiliated counseling facility will no longer be sharing administrative support.

F.I. A governing authority shall submit ~~an initial~~ a license application required in R9-10-105 for:

- 1. A change in ownership of a health care institution;
- 2. A change in the address or location of a health care institution that provides medical services, nursing services, health-related services, or behavioral health services on the premises; or
- 3. A change in a health care institution's class or subclass.

G.J. A governing authority is not required to submit the documentation ~~of a health care institution's architectural plans and specifications~~ required in R9-10-105(A)(5) for ~~an initial~~ a license application if:

- 1. The health care institution has not ceased operations for more than 30 calendar days,
- 2. A modification has not been made to the health care institution,
- 3. The services the health care institution is authorized by the Department to provide are not changed, and
- 4. The location of the health care institution's premises is not changed.

H. ~~The Department shall approve or deny a request for a change in services or another modification described in this Section according to R9-10-108.~~

I. ~~A licensee shall not implement a change in services or another modification described in this Section until an approval or amended license is issued by the Department.~~

R9-10-110. Modification of a Health Care Institution

A. A licensee shall submit a request for approval of a modification of a health care institution when planning to make:

- 1. An addition or removal of an authorized service;
- 2. An addition or removal of a colocator;
- 3. A change in a health care institution's licensed capacity, licensed occupancy, respite capacity, or the number of dialysis stations;
- 4. A change in the physical plant, including facilities or equipment, that costs more than \$300,000; or
- 5. A change in the building where a health care institution is located that affects compliance with:

- a. Applicable physical plant codes and standards incorporated by reference in A.A.C. R9-1-412, or
- b. Physical plant requirements in the specific Article in this Chapter applicable to the health care institution.

A.B. A licensee of a health care institution that is required by this Chapter to comply with any of the physical plant codes and standards incorporated by reference in A.A.C. R9-1-412 shall submit an application ~~packet, according to R9-10-104(A),~~ for approval of architectural plans and specifications for a modification of the health care institution described in subsection (A)(3) through (5).

B.C. A licensee of a health care institution shall submit ~~a written request~~ an application packet for a modification of the health care institution ~~in a Department-provided format~~ that contains:

1. The following information in a Department-provided format:

a. The health care institution's name, mailing address, e-mail address, and license number;

~~2.b.~~ A narrative description of the modification, including as applicable:

i. The services the licensee is requesting be added or removed as an authorized service;

ii. The name and license number of an associated licensed provider being added or removed as a colocator;

iii. The name and professional license number of an exempt health care provider being added or removed as a colocator;

iv. If an associated licensed provider or exempt health care provider is being added as a colocator, the proposed scope of services;

v. The current and proposed licensed capacity, licensed occupancy, respite capacity, and number of dialysis stations;

v. The change being made in the physical plant; and

vi. The change being made that affects compliance with applicable physical plant codes and standards incorporated by reference in A.A.C. R9-1-412; and

~~3.c.~~ The name and e-mail address of the health care institution's administrator's or individual representing the health care institution as designated ~~in~~ according to A.R.S. § 36-422 and the dated signature of the administrator or individual; ~~and~~

4. ~~One of the following:~~

- a. ~~For a health care institution that is required to comply with the physical plant codes and standards incorporated by reference in A.A.C. R9-10-412 for the building, documentation of the health care institution's architectural plans and specifications approval in R9-10-104; or~~
- b. ~~For a health care institution that is not required to comply with the physical plant codes and standards, documentation that demonstrates that the requested modification complies with applicable requirements in this Chapter.~~

2. Documentation that demonstrates that the requested modification complies with applicable requirements in this Chapter, including as applicable:

- a. A floor plan showing the location of each colocator's proposed treatment area and the areas of the collaborating outpatient treatment center's premises shared with a colocator;
- b. For a change in the licensed capacity, licensed occupancy, respite capacity, or number of dialysis stations or a modification of the physical plant:
 - i. A floor plan showing, for each story of the facility affected by the modification, the room layout, room usage, each door and each window, plumbing fixtures, each exit, and the location of each fire protection device; or
 - ii. For a health care institution or part of the health care institution that is required to comply with the physical plant codes and standards incorporated by reference in A.A.C. R9-1-412 for the building, documentation of the Department's approval of the health care institution's architectural plans and specifications in R9-10-104(D); and
- c. Any other documentation to support the requested modification; and

3. If applicable, a copy of the written agreement the associated licensed provider or exempt health care provider has with the collaborating outpatient treatment center.

~~C.D.~~ The Department shall approve or deny a request for a modification described in subsection ~~(B)~~ (C) according to R9-10-108.

~~D.E.~~ A licensee shall not implement a modification described in subsection ~~(B)~~ (C) until an approval or amended license is issued by the Department.

R9-10-111. Enforcement Actions

A. If the Department determines that an applicant or licensee is violating applicable statutes and rules and the violation poses a direct risk to the life, health, or safety of a patient, the Department may:

1. Issue a provisional license to the applicant or licensee under A.R.S. § 36-425,
2. Assess a civil penalty under A.R.S. § 36-431.01,
3. Impose an intermediate sanction under A.R.S. § 36-427,
4. Remove a licensee and appoint another person to continue operation of the health care institution pending further action under A.R.S. § 36-429,
5. Suspend or revoke a license under A.R.S. § 36-427 and ~~R9-10-111~~ R9-10-112,
6. Deny a license under A.R.S. § 36-425 and ~~R9-10-111~~ R9-10-112, or
7. Issue an injunction under A.R.S. § 36-430.

B. In determining which action in subsection (A) is appropriate, the Department shall consider the direct risk to the life, health, or safety of a patient in the health care institution based on:

1. Repeated violations of statutes or rules,
2. Pattern of violations,
3. Types of violation,
4. Severity of violation, and
5. Number of violations.

R9-10-112. Denial, Revocation, or Suspension of License

A. The Department may deny, revoke, or suspend a license to operate a health care institution if an applicant, a licensee, or a controlling person of the health care institution:

1. Provides false or misleading information to the Department;
2. Has had in any state or jurisdiction any of the following:
 - a. An application or license to operate a health care institution denied, suspended, or revoked, unless the denial was based on failure to complete the licensing process or to pay a required licensing fee within a required time-frame; or
 - b. A health care professional license or certificate denied, revoked, or suspended; ~~or~~
3. Does not comply with the applicable requirements in A.R.S. Title 36, Chapter 4 and this Chapter; or
- ~~3.4.~~ Has operated a health care institution, within the ~~ten years~~ preceding ~~the date of the most recent license application~~ ten years, in violation of A.R.S. Title 36, Chapter 4 or this Chapter, that posed a direct risk to the life, health, or safety of a patient.

B. The Department shall suspend or revoke a hospital's license if the Department receives, pursuant to A.R.S. § 36-2901.08(H), notice from the Arizona Health Care Cost Containment System that the hospital's provider agreement registration with the Arizona Health Care Cost Containment System has been suspended or revoked.

R9-10-113. Tuberculosis Screening

A. A health care institution's chief administrative officer shall ensure that the health care institution complies with one of the following if tuberculosis screening is required by this Chapter at the health care institution:

1. Screens for infectious tuberculosis according to subsection (B); or
2. Establishes, documents, and implements a tuberculosis infection control program that complies with the Guidelines for Preventing the Transmission of *Mycobacterium tuberculosis* in Health-care Settings, 2005, published by the U.S. Department of Health and Human Services, Atlanta, GA 30333 and available at <http://www.cdc.gov/mmwr/PDF/RR/rr5417.pdf>, incorporated by reference, on file with the Department, and including no future editions or amendments and includes:
 - a. Conducting tuberculosis risk assessments, conducting tuberculosis screening testing, screening for signs or symptoms of tuberculosis, and providing training and education related to recognizing the signs and symptoms of tuberculosis; and
 - b. Maintaining documentation of any:
 - i. Tuberculosis risk assessment;
 - ii. Tuberculosis screening test of an individual who is employed by the health care institution, provides volunteer services for the health care institution, or is admitted to the health care institution; and
 - iii. Screening for signs or symptoms of tuberculosis of an individual who is employed by the health care institution, provides volunteer services for the health care institution, or is admitted to the health care institution.

B. For each individual required to be screened for infectious tuberculosis, ~~the health care institution obtains~~ a health care institution's chief administrative officer shall obtain from the individual:

- ~~a.1.~~ On or before the date specified in the applicable Section of this Chapter, one of the following as evidence of freedom from infectious tuberculosis:
 - ~~i.a.~~ Documentation of a negative Mantoux skin test or other tuberculosis screening test recommended by the U.S. Centers for Disease Control and Prevention (CDC) administered within 12 months before the date the individual begins providing services at or on behalf of the health care institution or is admitted to the health care institution that includes the date and the type of tuberculosis screening test;
or
 - ~~ii.b.~~ If the individual had a positive Mantoux skin test or other tuberculosis screening

test, a written statement that the individual is free from infectious tuberculosis signed by a medical practitioner dated within 12 months before the date the individual begins providing services at or on behalf of the health care institution or is admitted to the health care institution; and

~~b.2.~~ Every 12 months after the date of the individual's most recent tuberculosis screening test or written statement, one of the following as evidence of freedom from infectious tuberculosis:

~~i.a.~~ Documentation of a negative Mantoux skin test or other tuberculosis screening test recommended by the CDC administered to the individual within 30 calendar days before or after the anniversary date of the most recent tuberculosis screening test or written statement that includes the date and the type of tuberculosis screening test; or

~~ii.b.~~ If the individual has had a positive Mantoux skin test or other tuberculosis screening test, a written statement that the individual is free from infectious tuberculosis signed by a medical practitioner dated within 30 calendar days before or after the anniversary date of the most recent tuberculosis screening test or written statement; ~~or.~~

~~2.~~ Establish, document, and implement a tuberculosis infection control program that complies with the Guidelines for Preventing the Transmission of *Mycobacterium tuberculosis* in Health-care Settings, 2005, published by the U.S. Department of Health and Human Services, Atlanta, GA 30333 and available at <http://www.cdc.gov/mmwr/PDF/RR/rr5417.pdf>, incorporated by reference, on file with the Department, and including no future editions or amendments and includes:

~~a.~~ Conducting tuberculosis risk assessments, conducting tuberculosis screening testing, screening for signs or symptoms of tuberculosis, and providing training and education related to recognizing the signs and symptoms of tuberculosis; and

~~b.~~ Maintaining documentation of any:

~~i.~~ Tuberculosis risk assessment;

~~ii.~~ Tuberculosis screening test of an individual who is employed by the health care institution, provides volunteer services for the health care institution, or is admitted to the health care institution; and

~~iii.~~ Screening for signs or symptoms of tuberculosis of an individual who is employed by the health care institution, provides volunteer services for

~~the health care institution, or is admitted to the health care institution.~~

R9-10-114. Clinical Practice Restrictions for Hemodialysis Technician Trainees

A. The following definitions apply in this Section:

1. “Assess” means collecting data about a patient by:
 - a. Obtaining a history of the patient,
 - b. Listening to the patient’s heart and lungs, and
 - c. Checking the patient for edema.
2. “Blood-flow rate” means the quantity of blood pumped into a dialyzer per minute of hemodialysis.
3. “Blood lines” means the tubing used during hemodialysis to carry blood between a vascular access and a dialyzer.
4. “Central line catheter” means a type of vascular access created by surgically implanting a tube into a large vein.
5. “Clinical practice restriction” means a limitation on the hemodialysis tasks that may be performed by a hemodialysis technician trainee.
6. “Conductivity test” means a determination of the electrolytes in a dialysate.
7. “Dialysate” means a mixture of water and chemicals used in hemodialysis to remove wastes and excess fluid from a patient’s body.
8. “Dialysate-flow rate” means the quantity of dialysate pumped per minute of hemodialysis.
9. “Directly observing” or “direct observation” means a medical person stands next to an inexperienced hemodialysis technician trainee and watches the inexperienced hemodialysis technician trainee perform a hemodialysis task.
10. “Direct supervision” has the same meaning as “supervision” in A.R.S. § 36-401.
11. “Electrolytes” means chemical compounds that break apart into electrically charged particles, such as sodium, potassium, or calcium, when dissolved in water.
12. “Experienced hemodialysis technician trainee” means an individual who has passed all didactic, skills, and competency examinations provided by a health care institution that measure the individual’s knowledge and ability to perform hemodialysis.
13. “Fistula” means a type of vascular access created by a surgical connection between an artery and vein.
14. “Fluid-removal rate” means the quantity of wastes and excess fluid eliminated from a patient’s blood per minute of hemodialysis to achieve the patient’s prescribed weight, determined by:

- a. Dialyzer size,
 - b. Blood-flow rate,
 - c. Dialysate-flow rate, and
 - d. Hemodialysis duration.
15. “Germicide-negative test” means a determination that a chemical used to kill microorganisms is not present.
16. “Germicide-positive test” means a determination that a chemical used to kill microorganisms is present.
17. “Graft” means a vascular access created by a surgical connection between an artery and vein using a synthetic tube.
18. “Hemodialysis machine” means a mechanical pump that controls:
- a. The blood-flow rate,
 - b. The mixing and temperature of dialysate,
 - c. The dialysate-flow rate,
 - d. The addition of anticoagulant, and
 - e. The fluid-removal rate.
19. “Hemodialysis technician” has the same meaning as in A.R.S. § 36-423(A).
20. “Hemodialysis technician trainee” means an individual who is working in a health care institution to assist in providing hemodialysis and who is not certified as a hemodialysis technician according to A.R.S. § 36-423(A).
21. “Inexperienced hemodialysis technician trainee” means an individual who has not passed all didactic, skills, and competency examinations provided by a health care institution that measure the individual’s knowledge and ability to perform hemodialysis.
22. “Medical person” means:
- a. A physician who is experienced in dialysis;
 - b. A registered nurse practitioner who is experienced in dialysis;
 - c. A nurse who is experienced in dialysis;
 - d. A hemodialysis technician who meets the requirements in A.R.S. § 36-423(A) approved by the governing authority; and
 - e. An experienced hemodialysis technician trainee approved by the governing authority.
23. “Not established” means not approved by a patient’s nephrologist for use in hemodialysis.
24. “Patient” means an individual who receives hemodialysis.
25. “pH test” means a determination of the acidity of a dialysate.

26. "Preceptor course" means a health care institution's instruction and evaluation provided to a nurse, hemodialysis technician, or hemodialysis technician trainee that enables the nurse, hemodialysis technician, or hemodialysis technician trainee to provide direct observation and education to hemodialysis technician trainees.
 27. "Respond" means to mute, shut off, reset, or troubleshoot an alarm.
 28. "Safety check" means successful completion of tests recommended by the manufacturer of a hemodialysis machine, a dialyzer, or a water system used for hemodialysis before initiating a patient's hemodialysis.
 29. "Water-contaminant test" means a determination of the presence of chlorine or chloramine in a water system used for hemodialysis.
- B.** An experienced hemodialysis technician trainee may:
1. Perform hemodialysis under direct supervision, and
 2. Provide direct observation to another hemodialysis technician trainee only after completing the health care institution's preceptor course approved by the governing authority.
- C.** An experienced hemodialysis technician trainee shall not access a patient's:
1. Fistula that is not established, or
 2. Graft that is not established.
- D.** An inexperienced hemodialysis technician trainee may perform the following hemodialysis tasks only under direct observation:
1. Access a patient's central line catheter;
 2. Respond to a hemodialysis-machine alarm;
 3. Draw blood for laboratory tests;
 4. Perform a water-contaminant test on a water system used for hemodialysis;
 5. Inspect a dialyzer and perform a germicide-positive test before priming a dialyzer;
 6. Set up a hemodialysis machine and blood lines before priming a dialyzer;
 7. Prime a dialyzer;
 8. Test a hemodialysis machine for germicide presence;
 9. Perform a hemodialysis machine safety check;
 10. Prepare a dialysate;
 11. Perform a conductivity test and a pH test on a dialysate;
 12. Assess a patient;
 13. Check and record a patient's vital signs, weight, and temperature;
 14. Determine the amount and rate of fluid removal from a patient;

15. Administer local anesthetic at an established fistula or graft, administer anticoagulant, or administer replacement saline solution;
16. Perform a germicide-negative test on a dialyzer before initiating hemodialysis;
17. Initiate or discontinue a patient's hemodialysis;
18. Adjust blood-flow rate, dialysate-flow rate, or fluid-removal rate during hemodialysis; or
19. Prepare a blood, water, or dialysate culture to determine microorganism presence.

E. An inexperienced hemodialysis technician trainee shall not:

1. Access a patient's:
 - a. Fistula that is not established, or
 - b. Graft that is not established; or
2. Provide direct observation.

F. When a hemodialysis technician trainee performs hemodialysis tasks for a patient, the patient's medical record shall include:

1. The name of the hemodialysis technician trainee;
2. The date, time, and hemodialysis task performed;
3. The name of the medical person directly observing or the nurse or physician directly supervising the hemodialysis technician trainee; and
4. The initials or signature of the medical person directly observing or the nurse or physician directly supervising the hemodialysis technician trainee.

G. If the Department determines that a health care institution is not in substantial compliance with this Section, the Department may take enforcement action according to ~~R9-10-110~~ R9-10-111.

R9-10-115. Behavioral Health Paraprofessionals; Behavioral Health Technicians

If a health care institution is a behavioral health facility or is authorized by the Department to provide behavioral health services, an administrator shall ensure that:

1. Policies and procedures are established, documented, and implemented that:
 - a. Delineate the services a behavioral health paraprofessional is allowed to provide at or for the health care institution;
 - b. Cover supervision of a behavioral health paraprofessional, including documentation of supervision;
 - c. Establish the qualifications for a behavioral health professional providing supervision to a behavioral health paraprofessional;
 - d. Delineate the services a behavioral health technician is allowed to provide at or for the health care institution;

- e. Cover clinical oversight for a behavioral health technician, including documentation of clinical oversight;
 - f. Establish the qualifications for a behavioral health professional providing clinical oversight to a behavioral health technician;
 - g. Delineate the methods used to provide clinical oversight, including when clinical oversight is provided on an individual basis or in a group setting; and
 - h. Establish the process by which information pertaining to services provided by a behavioral health technician is provided to the behavioral health professional who is responsible for the clinical oversight of the behavioral health technician;
2. A behavioral health paraprofessional receives supervision according to policies and procedures;
 3. Clinical oversight is provided to a behavioral health technician to ensure that patient needs are met based on, for each behavioral health technician:
 - a. The scope and extent of the services provided,
 - b. The acuity of the patients receiving services, and
 - c. The number of patients receiving services;
 4. A behavioral health technician receives clinical oversight at least once during each two week period, if the behavioral health technician provides services related to patient care at the health care institution during the two week period;
 5. When clinical oversight is provided electronically:
 - a. The clinical oversight is provided verbally with direct and immediate interaction between the behavioral health professional providing and the behavioral health technician receiving the clinical oversight,
 - b. A secure connection is used, and
 - c. The identities of the behavioral health professional providing and the behavioral health technician receiving the clinical oversight are verified before clinical oversight is provided; and
 6. A behavioral health professional provides supervision to a behavioral health paraprofessional or clinical oversight to behavioral health technician within the behavioral health professional's scope of practice established in the applicable licensing requirements under A.R.S. Title 32.

R9-10-116. Nutrition and Feeding Assistant Training Programs

- A.** For the purposes of this Section, “agency” means an entity other than a nursing care institution that provides the nutrition and feeding assistant training required in A.R.S. § 36-413.
- B.** An agency shall apply for approval to operate a nutrition and feeding assistant training program by submitting:
1. An application in a Department-provided format ~~provided by the Department~~ that contains:
 - a. The name of the agency;
 - b. The name, telephone number, and e-mail address of the individual in charge of the proposed nutrition and feeding assistant training program;
 - c. The address where the nutrition and feeding assistant training program records are maintained;
 - d. A description of the training course being offered by the nutrition and feeding assistant training program including for each topic in subsection (I):
 - i. The information presented for each topic,
 - ii. The amount of time allotted to each topic,
 - iii. The skills an individual is expected to acquire for each topic, and
 - iv. The testing method used to verify an individual has acquired the stated skills for each topic;
 - e. Whether the agency agrees to allow the Department to submit supplemental requests for information as specified in subsection (F)(2); and
 - f. The signature of the individual in charge of the proposed nutrition and feeding assistant training program and the date signed; and
 2. A copy of the materials used for providing the nutrition and feeding assistant training program.
- C.** For an application for an approval of a nutrition and feeding assistant training program, the administrative review time-frame is 30 calendar days, the substantive review time-frame is 30 calendar days, and the overall time-frame is 60 calendar days.
- D.** Within 30 calendar days after the receipt of an application in subsection (B), the Department shall:
1. Issue an approval of the agency’s nutrition and feeding assistant training program;
 2. Provide a notice of administrative completeness to the agency that submitted the application;
- or
3. Provide a notice of deficiencies to the agency that submitted the application, including a list of the information or documents needed to complete the application.
- E.** If the Department provides a notice of deficiencies to an agency:

1. The administrative completeness review time-frame and the overall time-frame are suspended from the date of the notice of deficiencies until the date the Department receives the missing information or documents from the agency;
2. If the agency does not submit the missing information or documents to the Department within 30 calendar days, the Department shall consider the application withdrawn; and
3. If the agency submits the missing information or documents to the Department within 30 calendar days, the substantive review time-frame begins on the date the Department receives the missing information or documents.

F. Within the substantive review time-frame, the Department:

1. Shall issue or deny an approval of a nutrition and feeding assistant training program; and
2. May make one written comprehensive request for more information, unless the Department and the agency agree in writing to allow the Department to submit supplemental requests for information.

G. If the Department issues a written comprehensive request or a supplemental request for information:

1. The substantive review time-frame and the overall time-frame are suspended from the date of the written comprehensive request or the supplemental request for information until the date the Department receives the information requested, and
2. The agency shall submit to the Department the information and documents listed in the written comprehensive request or supplemental request for information within 10 working days after the date of the comprehensive written request or supplemental request for information.

H. The Department shall issue:

1. An approval for an agency to operate a nutrition and feeding assistant training program if the Department determines that the agency and the application ~~complies~~ comply with A.R.S. § 36-413 and this Section; or
2. A denial for an agency that includes the reason for the denial and the process for appeal of the Department's decision if:
 - a. The Department determines that the agency does not comply with A.R.S. § 36-413 and this Section; or
 - b. The agency does not submit information and documents listed in the written comprehensive request or supplemental request for information within 10 working days after the date of the comprehensive written request or supplemental request for information.

- I.** An individual in charge of a nutrition and feeding assistant training program shall ensure that:
1. The materials and coursework for the nutrition and feeding assistant training program demonstrate ~~includes~~ the inclusion of the following topics:
 - a. Feeding techniques;
 - b. Assistance with feeding and hydration;
 - c. Communication and interpersonal skills;
 - d. Appropriate responses to resident behavior;
 - e. Safety and emergency procedures, including the Heimlich maneuver;
 - f. Infection control;
 - g. Resident rights;
 - h. Recognizing a change in a resident that is inconsistent with the resident's normal behavior; and
 - i. Reporting a change in subsection (I)(1)(h) to a nurse at a nursing care institution;
 2. An individual providing the training course is:
 - a. A physician,
 - b. A physician assistant,
 - c. A registered nurse practitioner,
 - d. A registered nurse,
 - e. A registered dietitian,
 - f. A licensed practical nurse,
 - g. A speech-language pathologist, or
 - h. An occupational therapist; and
 3. An individual taking the training course completes:
 - a. At least eight hours of classroom time, and
 - b. Demonstrates that the individual has acquired the skills the individual was expected to acquire.
- J.** An individual in charge of a nutrition and feeding assistant training program shall issue a certificate of completion to an individual who completes the training course and demonstrates the skills the individual was expected to acquire as a result of completing the training course that contains:
1. The name of the agency approved to operate the nutrition and feeding assistant training program;
 2. The name of the individual completing the training course;
 3. The date of completion;

4. The name, signature, and professional license of the individual providing the training course;
and
5. The name and signature of the individual in charge of the nutrition and feeding assistant training program.

K. The Department may deny, revoke, or suspend an approval to operate a nutrition and feeding assistant training program if an agency operating or applying to operate a nutrition and feeding assistance training program:

1. Provides false or misleading information to the Department;
2. Does not comply with the applicable statutes and rules;
3. Issues a training completion certificate to an individual who did not:
 - a. Complete the nutrition and feeding assistant training program, or
 - b. Demonstrate the skills the individual was expected to acquire; or
4. Does not implement the nutrition and feeding assistant training program as described in or use the materials submitted with the agency's application.

L. In determining which action in subsection (K) is appropriate, the Department shall consider the following:

1. Repeated violations of statutes or rules,
2. Pattern of non-compliance,
3. Types of violations,
4. Severity of violations, and
5. Number of violations.

R9-10-118. Collaborating Health Care Institution

A. An administrator of a collaborating health care institution shall ensure that:

1. A list is maintained of adult behavioral health therapeutic homes and behavioral health respite homes for which the collaborating health care institution serves as a collaborating health care institution;
2. For each adult behavioral health therapeutic home or behavioral health respite home in subsection (A)(1), the collaborating health care institution maintains the following information:
 - a. A copy of the documented agreement that establishes the responsibilities of the adult behavioral health therapeutic home or behavioral health respite home and the collaborating health care institution consistent with the requirements in this Chapter;

- b. For the adult behavioral health therapeutic home or behavioral health respite home, the following information:
 - i. Provider's name;
 - ii. Street address;
 - iii. License number;
 - iv. Whether the residence is an adult behavioral health therapeutic home or a behavioral health respite home;
 - v. If the residence is a behavioral health respite home, whether the behavioral health respite home provides respite care services to:
 - (1) Individuals 18 years of age or older, or
 - (2) Individuals less than 18 years of age;
 - vi. The beginning and ending dates of the documented agreement in subsection (A)(2)(a); and
 - vii. The name and contact information for the individual assigned by the collaborating health care institution to monitor the adult behavioral health therapeutic home or behavioral health respite home;
- c. For the adult behavioral health therapeutic home or behavioral health respite home, a copy of the following that have been approved by the collaborating health care institution:
 - i. Scope of services,
 - ii. Policies and procedures, and
 - iii. Documentation of the review and update of policies and procedures;
- d. A description of the required skills and knowledge for a provider, based on the scope of services of the adult behavioral health therapeutic home or behavioral health respite home, as established by the collaborating health care institution; and
- e. For a provider in the adult behavioral health therapeutic home or behavioral health respite home, documentation of:
 - i. The provider's skills and knowledge;
 - ii. If applicable, the provider's completion of training in assistance in the self-administration of medication;
 - iii. Verification of the provider's skills and knowledge; and
 - iv. If the provider is required to have clinical oversight according to R9-10-1805(C), the provider's receiving clinical oversight;

3. A provider's skills and knowledge are verified by a personnel member according to policies and procedures;
 4. A provider who provides behavioral health services receives clinical oversight, required in R9-10-1805(C), from a behavioral health professional; and
 5. A provider, other than a provider who is a medical practitioner or nurse, receives training in assistance in the self-administration of medication:
 - a. From a medical practitioner or registered nurse or from a personnel member of the collaborating health care institution trained by a medical practitioner or registered nurse;
 - b. That includes:
 - i. A demonstration of the provider's skills and knowledge necessary to provide assistance in the self-administration of medication,
 - ii. Identification of medication errors and medical emergencies related to medication that require emergency medical intervention, and
 - iii. The process for notifying the appropriate entities when an emergency medical intervention is needed; and
 - c. That is documented.
- B.** For a patient referred to an adult behavioral health therapeutic home or a behavioral health respite home, an administrator shall ensure that:
1. A resident or recipient accepted by and receiving services from the adult behavioral health therapeutic home or behavioral health respite home does not present a threat to the referred patient, based on the resident's or recipient's developmental levels, social skills, verbal skills, and personal history;
 2. The referred patient does not present a threat to a resident or recipient accepted by and receiving services from the adult behavioral health therapeutic home or behavioral health respite home based the referred patient's developmental levels, social skills, verbal skills, and personal history;
 3. The referred patient requires services within the adult behavioral health therapeutic home's or behavioral health respite home's scope of services;
 4. A provider of the adult behavioral health therapeutic home or behavioral health respite home has the verified skills and knowledge to provide behavioral health services to the referred patient;

5. A treatment plan for the referred patient, which ~~that~~ includes information necessary for a provider to meet the referred patient's needs for behavioral health services, is completed and forwarded to the provider before the referred patient is accepted as a resident or recipient;
6. A patient's treatment plan is reviewed and updated at least once every twelve months, and a copy of the patient's updated treatment plan is forwarded to the patient's provider;
7. If documentation of a significant change in a patient's behavioral, physical, cognitive, or functional condition and the action taken by a provider to address patient's changing needs is received by the collaborating health care institution, a behavioral health professional or behavioral health technician reviews the documentation and:
 - a. Documents the review; and
 - b. If applicable:
 - i. Updates the patient's treatment plan, and
 - ii. Forwards the updated treatment plan to the provider within 10 working days after receipt of the documentation of a significant change;
8. If the review and updated treatment plan required in subsection ~~(7)~~ (B)(7) is performed by a behavioral health technician, a behavioral health professional reviews and signs the review and updated treatment plan to ensure the patient is receiving the appropriate behavioral health services; and
9. In addition to the requirements for a medical record for a patient in this Chapter, a referred patient's medical record contains:
 - a. The provider's name and the street address and license number of the adult behavioral health therapeutic home or behavioral health respite home to which the patient is referred,
 - b. A copy of the treatment plan provided to the adult behavioral health therapeutic home or behavioral health respite home,
 - c. Documentation received according to and required by subsection ~~(7)~~ (B)(7),
 - d. Any information about the patient received from the adult behavioral health therapeutic home or behavioral health respite home, and
 - e. Any follow-up actions taken by the collaborating health care institution related to the patient.

- C. For a patient referred to an adult behavioral health therapeutic home, an administrator shall ensure that the collaborating health care institution has documentation in the patient's medical record of evidence of freedom from infectious tuberculosis that meets the requirements in R9-10-113.

ARTICLE 2. HOSPITALS

R9-10-201. Definitions

In addition to the definitions in A.R.S. § 36-401 and R9-10-101, the following definitions apply in this Article unless otherwise specified:

- ~~1.~~ “Acuity” means a patient’s need for hospital services based on the patient’s medical condition.
- ~~2.~~ “Acuity plan” means a method for establishing nursing personnel requirements by unit based on a patient’s acuity.
- ~~3.~~1. “Adult” means an individual the hospital designates as an adult based on the hospital’s criteria.
- ~~4.~~2. “Care plan” means a documented guide for providing nursing services and rehabilitation services to a patient that includes measurable objectives and the methods for meeting the objectives.
- ~~5.~~3. “Continuing care nursery” means a nursery where medical services and nursing services are provided to a neonate who does not require intensive care services.
- ~~6.~~4. “Critically ill inpatient” means an inpatient whose severity of medical condition requires the nursing services of specially trained registered nurses for:
 - a. Continuous monitoring and multi-system assessment,
 - b. Complex and specialized rapid intervention, and
 - c. Education of the inpatient or inpatient’s representative.
- ~~7.~~5. “Device” has the same meaning as in A.R.S. § 32-1901.
- ~~8.~~6. “Diet” means food and drink provided to a patient.
- ~~9.~~7. “Diet manual” means a written compilation of diets.
- ~~10.~~8. “Dietary services” means providing food and drink to a patient according to an order.
- ~~11.~~9. “Diversion” means notification to an emergency medical services provider, as defined in A.R.S. § 36-2201, that a hospital is unable to receive a patient from an emergency medical services provider.
- ~~12.~~10. “Drug formulary” means a written list of medications available and authorized for use developed according to R9-10-218.
- ~~13.~~ “Emergency services” means unscheduled medical services provided in a designated area to an outpatient in an emergency.

- ~~14~~11. “Gynecological services” means medical services for the diagnosis, treatment, and management of conditions or diseases of the female reproductive organs or breasts.
- ~~15~~12. “Hospital services” means medical services, nursing services, and health-related services provided in a hospital.
- ~~16~~13. “Infection control risk assessment” means determining the probability for transmission of communicable diseases.
- ~~17~~14. “Inpatient” means an individual who:
- a. Is admitted to a hospital as an inpatient according to policies and procedures,
 - b. Is admitted to a hospital with the expectation that the individual will remain and receive hospital services for 24 consecutive hours or more, or
 - c. Receives hospital services for 24 consecutive hours or more.
- ~~18~~15. “Intensive care services” means hospital services provided to a critically ill inpatient who requires the services of specially trained nursing and other personnel members as specified in policies and procedures.
- ~~19~~16. “Medical staff regulations” means standards, approved by the medical staff, that govern the day-to-day conduct of the medical staff members.
- ~~20~~17. “Multi-organized service unit” means an inpatient unit in a hospital where more than one organized service may be provided to a patient in the inpatient unit.
- ~~21~~18. “Neonate” means an individual:
- a. From birth until discharge following birth, or
 - b. Who is designated as a neonate by hospital criteria.
- ~~22~~19. “Nurse anesthetist” means a registered nurse who meets the requirements of A.R.S. § ~~32-1661~~ 32-1601 and who has clinical privileges to administer anesthesia.
- ~~23~~20. “Nurse executive” means a registered nurse accountable for the direction of nursing services provided in a hospital.
- ~~24~~21. “Nursery” means an area in a hospital designated only for neonates.
- ~~25~~22. “Nurse supervisor” means a registered nurse accountable for managing nursing services provided in an organized service in a hospital.
- ~~26~~23. “Nutrition assessment” means a process for determining a patient’s dietary needs using information contained in the patient’s medical record.
- ~~27~~24. “On duty” means that an individual is at work and performing assigned responsibilities.

- ~~28-25.~~ “Organized service” means specific medical services, such as surgical services or emergency services, provided in an area of a hospital designated for the provision of those medical services.
- ~~29-26.~~ “Outpatient” means an individual who:
- a. Is admitted to a hospital with the expectation that the individual will receive hospital services for less than 24 consecutive hours; or
 - b. Except as provided in subsection (17) receives, hospital services for less than 24 consecutive hours.
- ~~30-27.~~ “Pathology” means an examination of human tissue for the purpose of diagnosis or treatment of an illness or disease.
- ~~31-28.~~ “Patient care” means hospital services provided to a patient by a personnel member or a medical staff member.
- ~~32-29.~~ “Pediatric” means pertaining to an individual designated by a hospital as a child based on the hospital’s criteria.
- ~~33-30.~~ “Perinatal services” means medical services for the treatment and management of obstetrical patients and neonates.
- ~~34-31.~~ “Post-anesthesia care unit” means a designated area for monitoring a patient following a medical procedure for which anesthesia was administered to the patient.
- ~~35-32.~~ “Private duty staff” means an individual, excluding a personnel member, compensated by a patient or the patient’s representative.
- ~~36-33.~~ “Psychiatric services” means the diagnosis, treatment, and management of a mental disorder.
- ~~37.~~ ~~“Rehabilitation services” means medical services provided to a patient to restore or to optimize functional capability.~~
- ~~38.~~ ~~“Single group license” means a license that includes authorization to operate health care institutions according to A.R.S. § 36-422(F) or (G).~~
- ~~39-34.~~ “Social services” means assistance, other than medical services or nursing services, provided by a personnel member to a patient to assist the patient to cope with concerns about the patient’s illness or injury while in the hospital or the anticipated needs of the patient after discharge.
- ~~40-35.~~ “Specialty” means a specific branch of medicine practiced by a licensed individual who has obtained education or qualifications in the specific branch in addition to the education or qualifications required for the individual’s license.

- ~~41-36.~~ “Surgical services” means medical services involving a surgical procedure.
- ~~42-37.~~ “Transfusion” means the introduction of blood or blood products from one individual into the body of another individual.
- ~~43-38.~~ “Unit” means a designated area of an organized service.
- ~~44-39.~~ “Vital record” has the same meaning as in A.R.S. § 36-301.
- ~~45-40.~~ “Well-baby bassinet” means a receptacle used for holding a neonate who does not require treatment and whose anticipated discharge is within 96 hours after birth.

R9-10-202. Supplemental Application, Notification, and Documentation Submission Requirements

- A. In addition to the license application requirements in A.R.S. § 36-422 and ~~9 A.A.C. 10~~, Article 1 of this Chapter, an applicant for ~~an initial~~ a hospital license shall include:
1. On the application the requested licensed capacity for the hospital, including:
 - a. The number of inpatient beds for each organized service, not including well-baby bassinets; and
 - b. If applicable, the number of inpatient beds for each multi-organized service unit;
 2. On the application, if applicable, the requested licensed occupancy for providing behavioral health observation/stabilization services to:
 - a. Individuals who are under 18 years of age, and
 - b. Individuals 18 years of age and older; and
 3. A list, in a Department-provided format ~~provided by the Department~~, of medical staff specialties and subspecialties.
- B. For a single group license authorized in A.R.S. § 36-422(F), in addition to the requirements in subsection (A), a governing authority applying for ~~an initial or renewal~~ a license shall submit the following to the Department, in a Department-provided format ~~provided by the Department~~, for each satellite facility under the single group license:
1. The name, address, e-mail address, and telephone number of the satellite facility;
 2. The class or subclass of the satellite facility, according to R9-10-102;
 - ~~2-3.~~ The name and e-mail address of the administrator;
 4. A list of services to be provided at the satellite facility; and
 - ~~3-5.~~ The hours of operation during which the satellite facility provides medical services, nursing services, behavioral health services, or health-related services.
- C. For a single group license authorized in A.R.S. § 36-422(G), in addition to the requirements in subsection (A), a governing authority applying for ~~an initial or renewal~~ a license shall submit the following to the Department in a Department-provided format ~~provided by the Department~~ for

each accredited satellite facility under the single group license:

1. The name, address, e-mail address, and telephone number of the accredited satellite facility;
2. The class or subclass of the accredited satellite facility, according to R9-10-102;
- ~~2-3.~~ The name and e-mail address of the administrator;
4. A list of services to be provided at the accredited satellite facility;
- ~~3-5.~~ The hours of operation during which the accredited satellite facility provides medical services, nursing services, behavioral health services, or health-related services; and
- ~~4-6.~~ A copy of the accredited satellite facility's current accreditation report.

D. A licensee with a single group license shall submit to the Department, with the relevant fees required in R9-10-106(D) and in a Department-provided format, the following, as applicable:

1. The information required in subsections (B)(1) through (5), or
2. The information and documentation required in subsections (C)(1) through (6).

~~D.E.~~ A governing authority shall:

1. Notify the Department:
 - a. ~~at~~ At least 30 calendar days before a satellite facility or an accredited satellite facility on a single group license terminates operations;
 - b. Within 30 calendar days after adding a satellite facility or an accredited satellite facility under a single group license and provide, as applicable:
 - i. The information required in subsections (B)(1) through (5), or
 - ii. The information and documentation required in subsections (C)(1) through (6); and
 - c. At least 60 calendar days before a satellite facility or an accredited satellite facility licensed under a single group license anticipates providing medical services, nursing services, behavioral health services, or health-related services under a license separate from the single group license; and
2. ~~Submit~~ Upon notifying the Department according to subsection (E)(1)(c), submit an application, according to the requirements in 9 A.A.C. 10, Article 1, at least 60 calendar days but not more than 120 calendar days before a satellite facility or an accredited satellite facility licensed under a single group license anticipates providing medical services, nursing services, behavioral health services, or health-related services under a license separate from the single group license.

R9-10-203. Administration

A. A governing authority shall:

1. Consist of one or more individuals responsible for the organization, operation, and administration of a hospital;
2. Establish, in writing:
 - a. A hospital's scope of services,
 - b. Qualifications for an administrator,
 - c. Which organized services are to be provided in the hospital, and
 - d. The organized services that are to be provided in a multi-organized service unit according to R9-10-228(A);
3. Designate, in writing, an administrator who has the qualifications established in subsection (A)(2)(b);
4. Grant, deny, suspend, or revoke a clinical privilege of a medical staff member or delegate authority to an individual to grant or suspend a clinical privilege for a limited time, according to medical staff ~~by-laws~~ bylaws;
5. Adopt a quality management program according to R9-10-204;
6. Review and evaluate the effectiveness of the quality management program at least once every 12 months;
7. Designate, in writing, an acting administrator who has the qualifications established in subsection (A)(2)(b) if the administrator is:
 - a. Expected not to be present on a hospital's premises for more than 30 calendar days,
 - or
 - b. Not present on a hospital's premises for more than 30 calendar days;
8. Except as provided in (A)(7), notify the Department according to A.R.S. § 36-425(I) if there is a change of administrator and identify the name and qualifications of the new administrator; and
9. For a health care institution under a single group license, ensure that the health care institution complies with the applicable requirements in this Chapter for the class or subclass of the health care institution.

B. An administrator:

1. Is directly accountable to the governing authority of a hospital for the daily operation of the hospital and hospital services and environmental services provided by or at the hospital;
2. Has the authority and responsibility to manage the hospital; and
3. Except as provided in subsection (A)(7), shall designate, in writing, an individual who is present on a hospital's premises and available and accountable for hospital services and

environmental services when the administrator is not present on the hospital's premises.

C. An administrator shall ensure that:

1. Policies and procedures are established, documented, and implemented to protect the health and safety of a patient that:
 - a. Cover job descriptions, duties, and qualifications, including required skills and knowledge for personnel members, employees, volunteers, and students;
 - b. Cover orientation and in-service education for personnel members, employees, volunteers, and students;
 - c. Include how a personnel member may submit a complaint relating to patient care;
 - d. Cover the requirements in Title 36, Chapter 4, Article 11;
 - e. Cover cardiopulmonary resuscitation training required in R9-10-206(5) including:
 - i. The method and content of cardiopulmonary resuscitation training,
 - ii. The qualifications for an individual to provide cardiopulmonary resuscitation training,
 - iii. The time-frame for renewal of cardiopulmonary resuscitation training, and
 - iv. The documentation that verifies an individual has received cardiopulmonary resuscitation training;
 - f. Cover use of private duty staff, if applicable;
 - g. Cover diversion, including:
 - i. The criteria for initiating diversion;
 - ii. The categories or levels of personnel or medical staff that may authorize or terminate diversion;
 - iii. The method for notifying emergency medical services providers of initiation of diversion, the type of diversion, and termination of diversion; and
 - iv. When the need for diversion will be reevaluated;
 - h. Include a method to identify a patient to ensure the patient receives hospital services as ordered;
 - i. Cover patient rights, including assisting a patient who does not speak English or who has a disability to become aware of patient rights;
 - j. Cover health care directives;
 - k. Cover medical records, including electronic medical records;
 - l. Cover quality management, including incident ~~report~~ reports and supporting documentation;

- m. Cover contracted services;
 - n. Cover tissue and organ procurement and transplant; and
 - o. Cover when an individual may visit a patient in a hospital, including visiting a neonate in a nursery, if applicable;
2. Policies and procedures for hospital services are established, documented, and implemented to protect the health and safety of a patient that:
 - a. Cover patient screening, admission, transport, transfer, discharge planning, and discharge;
 - b. Cover the provision of hospital services;
 - c. Cover acuity, including a process for obtaining sufficient nursing personnel to meet the needs of patients;
 - d. Include when general consent and informed consent are required;
 - e. Include the age criteria for providing hospital services to pediatric patients;
 - f. Cover dispensing, administering, and disposing of medication;
 - g. Cover prescribing a controlled substance to minimize substance abuse by a patient;
 - h. Cover infection control;
 - i. Cover restraints that:
 - i. Require an order, including the frequency of monitoring and assessing the restraint; or
 - ii. Are necessary to prevent imminent harm to self or others, including how personnel members will respond to a patient's sudden, intense, or out-of-control behavior;
 - j. Cover seclusion of a patient including:
 - i. The requirements for an order, and
 - ii. The frequency of monitoring and assessing a patient in seclusion;
 - k. Cover communicating with a midwife when the midwife's client begins labor and ends labor;
 - l. Cover telemedicine, if applicable; and
 - m. Cover environmental services that affect patient care;
 3. Policies and procedures are reviewed at least once every three years and updated as needed;
 4. Policies and procedures are available to personnel members;
 5. The licensed capacity in an organized service is not exceeded, except for an emergency admission of a patient;

6. A patient is only admitted to an organized service that has exceeded the organized service's licensed capacity after a medical staff member reviews the medical history of the patient and determines that the patient's admission is an emergency; and
7. Unless otherwise stated:
 - a. Documentation required by this Article is provided to the Department within two hours after a Department request; and
 - b. When documentation or information is required by this Chapter to be submitted on behalf of a hospital, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the hospital.

D. An administrator of a special hospital shall ensure that:

1. Medical services are available to an inpatient in an emergency based on the inpatient's medical conditions and the scope of services provided by the special hospital; and
2. A physician or nurse, qualified in cardiopulmonary resuscitation, is on the hospital premises.

R9-10-206. Personnel

An administrator shall ensure that:

1. The qualifications, skills, and knowledge required for each type of personnel member:
 - a. Are based on:
 - i. The type of physical health services or behavioral health services expected to be provided by the personnel member according to the established job description, and
 - ii. The acuity of the patients receiving physical health services or behavioral health services from the personnel member according to the established job description; and
 - b. Include:
 - i. The specific skills and knowledge necessary for the personnel member to provide the expected physical health services and behavioral health services listed in the established job description,
 - ii. The type and duration of education that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected physical health services or behavioral health services listed in the established job description, and
 - iii. The type and duration of experience that may allow the personnel member to have acquired the specific skills and knowledge for the personnel

member to provide the expected physical health services or behavioral health services listed in the established job description;

2. A personnel member's skills and knowledge are verified and documented:
 - a. Before the personnel member provides physical health services or behavioral health services, and
 - b. According to policies and procedures;
3. Sufficient personnel members are present on a hospital's premises with the qualifications, skills, and knowledge necessary to:
 - a. Provide the services in the hospital's scope of services,
 - b. Meet the needs of a patient, and
 - c. Ensure the health and safety of a patient;
4. Orientation occurs within the first 30 calendar days after a personnel member begins providing hospital services and includes:
 - a. Informing a personnel member about Department rules for licensing and regulating hospitals and where the rules may be obtained,
 - b. Reviewing the process by which a personnel member may submit a complaint about patient care to a hospital, and
 - c. Providing the information required by policies and procedures;
5. Policies and procedures designate the categories of personnel providing medical services or nursing services who are:
 - a. Required to be qualified in cardiopulmonary resuscitation within 30 calendar days after the individual's starting date, and
 - b. Required to maintain current qualifications in cardiopulmonary resuscitation;
6. A personnel record for each personnel member is established and maintained and includes:
 - a. The personnel member's name, date of birth, and contact telephone number;
 - b. The personnel member's starting date and, if applicable, ending date;
 - c. Verification of a personnel member's certification, license, or education, if necessary for the position held;
 - d. Documentation of evidence of freedom from infectious tuberculosis required in ~~R9-10-230(A)(5)~~ R9-10-230(5);
 - e. Verification of current cardiopulmonary resuscitation qualifications, if necessary for the position held; and

- f. Orientation documentation;
- 7. Personnel receive in-service education according to criteria established in policies and procedures;
- 8. In-service education documentation for a personnel member includes:
 - a. The subject matter,
 - b. The date of the in-service education, and
 - c. The signature of the personnel member;
- 9. Personnel records and in-service education documentation are maintained by the hospital for at least 24 months after the last date the personnel member worked; and
- 10. Personnel records and in-service education documentation, for a personnel member who has not worked in the hospital during the previous 12 months, are provided to the Department within 72 hours after the Department's request.

R9-10-207. Medical Staff

- A. A governing authority shall ensure that:
 - 1. The organized medical staff is directly accountable to the governing authority for the quality of care provided by a medical staff member to a patient in a hospital;
 - 2. The medical staff bylaws and medical staff regulations are approved according to the medical staff bylaws and governing authority requirements;
 - 3. A medical staff member complies with medical staff bylaws and medical staff regulations;
 - 4. The medical staff of a general hospital or a special hospital includes at least two physicians who have clinical privileges to admit inpatients to the general hospital or special hospital;
 - 5. The medical staff of a rural general hospital includes at least one physician who has clinical privileges to admit inpatients to the rural general hospital and one additional physician who serves on a committee according to subsection (A)(7)(c);
 - 6. A medical staff member is available to direct patient care;
 - 7. Medical staff bylaws or medical staff regulations are established, documented, and implemented for the process of:
 - a. Conducting peer review according to A.R.S. Title 36, Chapter 4, Article 5;
 - b. Appointing members to the medical staff, subject to approval by the governing authority;
 - c. Establishing committees including identifying the purpose and organization of each committee;
 - d. Appointing one or more medical staff members to a committee;

- e. Obtaining and documenting permission for an autopsy of a patient, performing an autopsy, and notifying, if applicable, the medical practitioner coordinating the patient's medical services when an autopsy is performed;
 - f. Requiring that each inpatient has a medical practitioner who coordinates the inpatient's care;
 - g. Defining the responsibilities of a medical staff member to provide medical services to the medical staff member's patient;
 - h. Defining a medical staff member's responsibilities for the transport or transfer of a patient;
 - i. Specifying requirements for oral, telephone, and electronic orders, including which orders require identification of the time of the order;
 - j. Establishing a time-frame for a medical staff member to complete a patient's medical record;
 - k. Establishing criteria for granting, denying, revoking, and suspending clinical privileges;
 - l. Specifying pre-anesthesia and post-anesthesia responsibilities for medical staff members; and
 - m. Approving the use of medication and devices under investigation by the U.S. Department of Health and Human Services, Food and Drug Administration including:
 - i. Establishing criteria for patient selection;
 - ii. Obtaining informed consent before administering the investigational medication or device; and
 - iii. Documenting the administration of and, if applicable, the adverse reaction to an investigational medication or device; and
8. The organized medical staff reviews the medical staff bylaws and the medical staff regulations at least once every three years and updates the bylaws and regulations as needed.

B. An administrator shall ensure that:

- 1. A medical staff member provides evidence of freedom from infectious tuberculosis according to the requirements in ~~R9-10-230(A)(5)~~ R9-10-230(5);
- 2. A record for each medical staff member is established and maintained that includes:
 - a. A completed application for clinical privileges;

- b. The dates and lengths of appointment and reappointment of clinical privileges;
 - c. The specific clinical privileges granted to the medical staff member, including revision or revocation dates for each clinical privilege; and
 - d. A verification of current Arizona health care professional active license according to A.R.S. Title 32; and
3. Except for documentation of peer review conducted according to A.R.S. § 36-445, a record under subsection (B)(2) is provided to the Department for review:
- a. As soon as possible, but not more than two hours after the time of the Department's request, if the individual is a current medical staff member; and
 - b. Within 72 hours after the time of the Department's request if the individual is no longer a current medical staff member.

R9-10-210. Transport

- A. For a transport of a patient, the administrator of a sending hospital shall ensure that:
- 1. Policies and procedures are established, documented, and implemented that:
 - a. Specify the process by which the sending hospital personnel members coordinate the transport and the medical services provided to a patient to protect the health and safety of the patient;
 - b. Require an assessment of the patient by a registered nurse or a medical staff member before transporting the patient and after the patient's return;
 - c. Specify the information in the sending hospital's patient medical record that is required to accompany the patient, which shall include the information related to the medical services to be provided to the patient at the receiving health care institution;
 - d. Specify how the sending hospital personnel members communicate patient medical record information that the sending hospital does not provide at the time of transport but is requested by the receiving health care institution; and
 - e. Specify how a medical staff member explains the risks and benefits of a transport to the patient or the patient's representative based on the:
 - i. Patient's medical condition, and
 - ii. Mode of transport; and
 - 2. Documentation in the patient's medical record includes:
 - a. Consent for transport by the patient or the patient's representative or why consent could not be obtained;

- b. The acceptance of the patient by and communication with an individual at the receiving health care institution;
- c. The date and the time of the transport to the receiving health care institution;
- d. The date and time of the patient's return to the sending hospital, if applicable;
- e. The mode of transportation; and
- f. The type of personnel member or medical staff member assisting in the transport if an order requires that a patient be assisted during transport.

B. For a transport of a patient to a receiving hospital, the administrator of the receiving hospital shall ensure that:

1. Policies and procedures are established, documented, and implemented that:
 - a. Specify the process by which the receiving hospital personnel members coordinate the transport and the medical services provided to a patient to protect the health and safety of the patient;
 - b. Require an assessment of the patient by a registered nurse or a medical staff member upon arrival of the patient and before the patient is returned to the sending ~~hospital~~ health care institution unless the receiving facility is a satellite facility, as established in A.R.S. § 36-422, and does not have a registered nurse or a medical staff member at the satellite facility;
 - c. Specify the information in the receiving hospital's patient medical record required to accompany the patient when the patient is returned to the sending ~~hospital~~ health care institution, if applicable; and
 - d. Specify how the receiving hospital personnel members communicate patient medical record information to the sending ~~hospital~~ health care institution that is not provided at the time of the patient's return; and
2. Documentation in the patient's medical record includes:
 - a. The date and time the patient ~~arrives~~ arrived at the receiving hospital;
 - b. The medical services provided to the patient at the receiving hospital;
 - c. Any adverse reaction or negative outcome the patient ~~experiences~~ experienced at the receiving hospital, if applicable;
 - d. The date and time the receiving hospital ~~returns~~ returned the patient to the sending ~~hospital~~ health care institution, if applicable;
 - e. The mode of transportation to return the patient to the sending ~~hospital~~ health care institution, if applicable; and

- f. The type of personnel member or medical staff member assisting in the transport if an order requires that a patient be assisted during transport.

R9-10-215. Surgical Services

An administrator of a general hospital shall ensure that:

1. There is an organized service that provides surgical services under the direction of a medical staff member;
2. There is a designated area for providing surgical services as an organized service;
3. The area of the hospital designated for surgical services is managed by a registered nurse or a physician;
4. Documentation is available in the surgical services area that specifies each medical staff member's clinical privileges to perform surgical procedures in the surgical services area;
5. Postoperative orders are documented in the patient's medical record;
6. There is a chronological log of surgical procedures performed in the surgical services area that contains:
 - a. The date of the surgical procedure,
 - b. The patient's name,
 - c. The type of surgical procedure,
 - d. The time in and time out of the operating room,
 - e. The name and title of each individual performing or assisting in the surgical procedure,
 - f. The type of anesthesia used,
 - g. An identification of the operating room used, and
 - h. The disposition of the patient after the surgical procedure;
7. The chronological log required in subsection ~~(A)(6)~~ (6) is maintained in the surgical services area for at least 12 months after the date of the surgical procedure and then maintained by the hospital for an additional 12 months;
8. The medical staff designate in writing the surgical procedures that may be performed in areas other than the surgical services area;
9. The hospital has the medical staff members, personnel members, and equipment to provide the surgical procedures offered in the surgical services area;
10. A patient and the surgical procedure to be performed on the patient are identified before initiating the surgical procedure;
11. Except in an emergency, a medical staff member or a surgeon performs a medical history and

physical examination within 30 calendar days before performing a surgical procedure on a patient;

12. Except ~~in an emergency~~ as provided in subsection (14), a medical staff member or a surgeon enters an interval note in the patient's medical record before performing a surgical procedure;
13. Except ~~in an emergency~~ as provided in subsection (14), the following are documented in a patient's medical record before a surgical procedure:
 - a. A preoperative diagnosis;
 - b. Each diagnostic test performed in the hospital;
 - c. A medical history and physical examination as required in subsection ~~(A)(11)~~ (11) and an interval note as required in subsection ~~(A)(12)~~ (12);
 - d. A consent or refusal for blood or blood products signed by the patient or the patient's representative, if applicable; and
 - e. Informed consent according to policies and procedures; and
14. ~~Within~~ In an emergency, the documentation required in subsections (12) and (13) is completed within 24 hours after a surgical procedure on a patient is completed.

R9-10-217. Emergency Services

- A. An administrator of a general hospital or a rural general hospital shall ensure that:
 1. Emergency services are provided 24 hours a day in a designated area of the hospital;
 2. Emergency services are provided as an organized service under the direction of a medical staff member;
 3. The scope and extent of emergency services offered are documented in the hospital's scope of services;
 4. Emergency services are provided to an individual, including a woman in active labor, requesting emergency services;
 5. If emergency services cannot be provided at the hospital to meet the needs of a patient in an emergency, measures and procedures are implemented to minimize risk to the patient until the patient is transported or transferred to another hospital;
 6. A roster of on-call medical staff members is available in the emergency services area;
 7. There is a chronological log of emergency services provided to patients that includes:
 - a. The patient's name;
 - b. The date, time, and mode of arrival; and
 - c. The disposition of the patient including discharge, transfer, or admission; and

8. The chronological log required in subsection (A)(7) is maintained:
 - a. In the emergency services area for at least 12 months after the date of the emergency services; and
 - b. By the hospital for at least an additional four years.
- B.** An administrator of a special hospital that provides emergency services shall comply with subsection (A).
- C.** An administrator of a hospital that provides emergency services, but does not provide perinatal organized services, shall ensure that emergency perinatal services are provided within the hospital's capabilities to meet the needs of a patient and a neonate, including the capability to deliver a neonate and to keep the neonate warm until transfer to a hospital providing perinatal organized services.
- D.** An administrator of a hospital that provides emergency services shall ensure that a room used for seclusion in a designated area of the hospital used for providing emergency services, complies with applicable physical plant health and safety codes and standards for ~~seclusion rooms~~ a secure hold room as described in the American Institute of Architects and Facilities Guidelines Institute, Guidelines for Design and Construction of Health Care Facilities, incorporated by reference in A.A.C. R9-1-412.

R9-10-219. Clinical Laboratory Services and Pathology Services

An administrator shall ensure that:

1. Clinical laboratory services and pathology services are provided by a hospital through a laboratory that holds a certificate of accreditation or certificate of compliance issued by the United States Department of Health and Human Services under the 1988 amendments to the Clinical Laboratories Improvement Act of 1967;
2. A copy of the certificate of accreditation or certificate of compliance in subsection (1) is provided to the Department for review upon the Department's request;
3. A general hospital or a rural general hospital provides clinical laboratory services 24 hours a day on the hospital's premises to meet the needs of a patient in an emergency;
4. A special hospital whose patients require clinical laboratory services:
 - a. Is able to provide clinical laboratory services when needed by the patients,
 - b. Obtains specimens for clinical laboratory services without transporting the patients from the special hospital's premises, and
 - c. Has the examination of the specimens performed by a clinical laboratory on the special hospital's premises or by arrangement with a clinical laboratory not on the

special hospital's premises;

5. A hospital that provides clinical laboratory services 24 hours a day has on duty or on-call laboratory personnel authorized by policies and procedures to perform testing;
6. A hospital that offers surgical services provides pathology services on the hospital's premises or by contracted service to meet the needs of a patient;
7. Clinical laboratory and pathology test results are:
 - a. Available to the medical staff:
 - i. Within 24 hours after the test is completed if the test is performed at a laboratory on the hospital's premises, or
 - ii. Within 24 hours after the test result is received if the test is performed at a laboratory not on the hospital's premises; and
 - b. Documented in a patient's medical record;
8. If a test result is obtained that indicates a patient may have an emergency medical condition, as established by medical staff, laboratory personnel notify the ordering medical staff member or a registered nurse in the patient's assigned unit;
9. If a clinical laboratory report, a pathology report, or an autopsy report is completed on a patient, a copy of the report is included in the patient's medical record;
10. Policies and procedures are established, documented, and implemented for:
 - a. Procuring, storing, transfusing, and disposing of blood and blood products;
 - b. Blood typing, antibody detection, and blood compatibility testing; and
 - c. Investigating transfusion adverse reactions that specify a process for review through the quality management program;
11. If blood and blood products are provided by contract, the contract includes:
 - a. The availability of blood and blood products ~~from the contractor~~ through the contract, and
 - b. The process for delivery of blood and blood products ~~from the contractor~~ through the contract; and
12. Expired laboratory supplies are discarded according to policies and procedures.

R9-10-220. Radiology Services and Diagnostic Imaging Services

- A. An administrator shall ensure that:
 1. Radiology services and diagnostic imaging services are provided in compliance with A.R.S. Title 30, Chapter 4 and ~~12 A.A.C. 1~~ 9 A.A.C. 7;
 2. A copy of a certificate documenting compliance with subsection ~~(1)~~ (A)(1) is provided to the

Department for review upon the Department's request;

3. A general hospital or a rural general hospital provides radiology services 24 hours a day on the hospital's premises to meet the emergency needs of a patient;
 4. A hospital that provides surgical services has radiology services and diagnostic imaging services on the hospital's premises to meet the needs of patients;
 5. A general hospital or a rural general hospital has a radiologic technologist on duty or on-call; and
 6. Except as provided in subsection (A)(4), a special hospital whose patients require radiology services and diagnostic imaging services is able to provide the radiology services and diagnostic imaging services when needed by the patients:
 - a. On the special hospital's premises, or
 - b. By arrangement with a radiology and diagnostic imaging facility that is not on the special hospital's premises.
- B.** An administrator of a hospital that provides radiology services or diagnostic imaging services on the hospital's premises shall ensure that:
1. Radiology services and diagnostic imaging services are provided:
 - a. Under the direction of a medical staff member; and
 - b. According to an order that includes:
 - i. The patient's name,
 - ii. The name of the ordering individual,
 - iii. The radiological or diagnostic imaging procedure ordered, and
 - iv. The reason for the procedure;
 2. A medical staff member or radiologist interprets the radiologic or diagnostic image;
 3. A radiologic or diagnostic imaging patient report is prepared that includes:
 - a. The patient's name;
 - b. The date of the procedure;
 - c. A medical staff member's or radiologist's interpretation of the image;
 - d. The type and amount of radiopharmaceutical used, if applicable; and
 - e. The adverse reaction to the radiopharmaceutical, if any; and
 4. A radiologic or diagnostic imaging report is included in the patient's medical record.

R9-10-224. Pediatric Services

- A.** An administrator of a hospital that provides pediatric services or ~~organized~~ pediatric organized services according to the requirements in this Section shall ensure that:

1. Consistent with the health and safety of a pediatric patient, arrangements are made for a parent or a guardian of the pediatric patient to stay overnight;
 2. Policies and procedures are established, documented, and implemented for:
 - a. Infection control for shared toys, books, stuffed animals, and other items in a community playroom; and
 - b. Visitation of a pediatric patient, including age limits if applicable;
 3. A pediatric inpatient is only admitted if the hospital has the staff, equipment, and supplies available to meet the needs of the pediatric patient based on the pediatric patient's medical condition and the hospital's scope of services; and
 4. If the hospital provides pediatric intensive care services, the pediatric intensive care services comply with intensive care services requirements in R9-10-221.
- B.** An administrator of a hospital that provides pediatric organized services shall ensure that pediatric services are provided in a designated area under the direction of a medical staff member.
- C.** An administrator shall ensure that in a multi-organized service unit or a patient care unit that is providing medical and nursing services to an adult patient and a pediatric patient according to this Section:
1. A pediatric patient is not placed in a patient room with an adult patient, and
 2. A medication for a pediatric patient that is stored in the patient care unit is stored separately from a medication for an adult patient.
- ~~**D.** Except as provided in subsections (F) and (G), an administrator of a hospital that does not provide pediatric organized services may admit a pediatric inpatient only in an emergency.~~
- E.D.** A hospital may use a bed in a pediatric organized services patient care unit for an adult patient if an administrator establishes, documents, and implements policies and procedures that:
1. Delineate the specific conditions under which an adult patient is placed in a bed in the pediatric organized services unit, and
 2. Except as provided in ~~subsection~~ subsections (H) and (I), ensure that an adult patient is:
 - a. Not placed in a pediatric organized services patient care unit if a pediatric patient is admitted to and present in the pediatric organized services patient care unit, and
 - b. Transferred out of the pediatric organized services patient care unit to an appropriate level of care when a pediatric patient is admitted to the pediatric organized services patient care unit.
- E.** Except as provided in subsections (F) and (G), an administrator of a hospital that does not provide pediatric organized services may admit a pediatric inpatient only in an emergency.

- F.** Subsection (G) only applies to a general hospital or rural general hospital that:
1. Does not provide pediatric organized services;
 2. Has designated in the general hospital's or rural general hospital's scope of services, inpatient services that are available to a pediatric patient;
 3. Has a licensed capacity of less than 100; and
 4. Is located in a county with a population of less than 500,000.
- G.** An administrator of a general hospital or rural general hospital that meets the criteria in subsection (F) shall ensure that:
1. There are pediatric-appropriate equipment and supplies available, based on the hospital services designated for pediatric patients in the general hospital or rural general hospital's scope of services; and
 2. Personnel members that are or may be assigned to provide hospital services to a pediatric patient have the appropriate skills and knowledge for providing hospital services to a pediatric patient, based on the general hospital's or rural general hospital's scope of services.
- H.** Subsection (I) only applies to a general hospital or a rural general hospital that:
1. Provides ~~organized~~ pediatric organized services in a patient care unit;
 2. Has designated in the general hospital's or rural general hospital's scope of services, inpatient services that are available to an adult patient in an ~~organized~~ pediatric organized services patient care unit;
 3. Has a licensed capacity of less than 100; and
 4. Is located in a county with a population of less than 500,000.
- I.** An administrator of a general hospital or rural general hospital that meets the criteria in subsection (H) shall comply with the requirements in subsection ~~(E)~~(D)(1).

R9-10-225. Psychiatric Services

- A.** An administrator of a hospital that contains an organized psychiatric services unit or a special hospital licensed to provide psychiatric services shall ensure that in the organized psychiatric unit or special hospital:
1. Psychiatric services are provided under the direction of a medical staff member;
 2. An inpatient admitted to the organized psychiatric services unit or special hospital has a principal diagnosis of a mental disorder, a personality disorder, substance abuse, or a significant psychological or behavioral response to an identifiable stressor;
 3. Except in an emergency, a patient receives a nursing assessment before treatment for the

patient is initiated;

4. An individual whose medical needs cannot be met while the individual is an inpatient in an organized psychiatric services unit or a special hospital is not admitted to or is transferred out of the organized psychiatric services unit or special hospital;
5. Policies and procedures for the organized psychiatric services unit or special hospital are established, documented, and implemented that:
 - a. Establish qualifications for medical staff members and personnel members who provide clinical oversight to behavioral health technicians;
 - b. Establish the process for patient assessment, including identification of a patient's medical conditions and criteria for the on-going monitoring of any identified medical condition;
 - c. Establish the process for developing and implementing a patient's care plan including:
 - i. Obtaining the patient's or the patient's representative's participation in the development of the patient's care plan;
 - ii. Ensuring that the patient is informed of the modality, frequency, and duration of any treatments that are included in the patient's care plan;
 - iii. Informing the patient that the patient has the right to refuse any treatment;
 - iv. Updating the patient's care plan and informing the patient of any changes to the patient's care plan; and
 - v. Documenting the actions in subsection (A)(5)(c)(i) through (iv) in the patient's medical record;
 - d. Establish the process for warning an identified or identifiable individual, as described in A.R.S. § 36-517.02 (B) through (C), if a patient communicates to a medical staff member or personnel member a threat of imminent serious physical harm or death to the individual and the patient has the apparent intent and ability to carry out the threat;
 - e. Establish the criteria for determining when an inpatient's absence is unauthorized, including whether the inpatient:
 - i. Was admitted under A.R.S. Title 36, Chapter 5, Articles 1, 2, or 3;
 - ii. Is absent against medical advice; or
 - iii. Is under 18 years of age;

- f. Identify each type of restraint and seclusion used in the organized psychiatric services unit or special hospital and include for each type of restraint and seclusion used:
- i. The qualifications of a medical staff member or personnel member who can:
 - (1) Order the restraint or seclusion,
 - (2) Place a patient in the restraint or seclusion,
 - (3) Monitor a patient in the restraint or seclusion,
 - (4) Evaluate a patient's physical and psychological well-being after being placed in the restraint or seclusion and when released from the restraint or seclusion, or
 - (5) Renew the order for restraint or seclusion;
 - ii. On-going training requirements for a medical staff member or personnel member who has direct patient contact while the patient is in a restraint or in seclusion; and
 - iii. Criteria for monitoring and assessing a patient including:
 - (1) Frequencies of monitoring and assessment based on a patient's condition, cognitive status, situational factors, and risks associated with the specific restraint or seclusion;
 - (2) For the renewal of an order for restraint or seclusion, whether an assessment is required before the order is renewed and, if an assessment is required, who may conduct the assessment;
 - (3) Assessment content, which may include, depending on a patient's condition, the patient's vital signs, respiration, circulation, hydration needs, elimination needs, level of distress and agitation, mental status, cognitive functioning, neurological functioning, and skin integrity;
 - (4) If a mechanical restraint is used, how often the mechanical restraint is monitored or loosened; and
 - (5) A process for meeting a patient's nutritional needs and elimination needs;
- g. Establish the criteria and procedures for renewing an order for restraint or seclusion;

- h. Establish procedures for internal review of the use of restraint or seclusion;
 - i. Establish requirements for notifying the parent or guardian of a patient who is under 18 years of age and who is restrained or secluded; and
 - j. Establish medical record and personnel record documentation requirements for restraint and seclusion, if applicable;
6. If ~~time-out~~ time-out is used in the organized psychiatric services unit or special hospital, a ~~time-out~~ time-out:
- a. Takes place in an area that is unlocked, lighted, quiet, and private;
 - b. Does not take place in the room approved for seclusion by the Department under R9-10-104;
 - c. Is time-limited and does not exceed two hours per incident or four hours per day;
 - d. Does not result in a patient's missing a meal if the patient is in ~~time-out~~ time-out at mealtime;
 - e. Includes monitoring of the patient by a medical staff member or personnel member at least once every 15 minutes to ensure the patient's health, safety, and welfare and to determine if the patient is ready to leave ~~time-out~~ time-out; and
 - f. Is documented in the patient's medical record, to include:
 - i. The date of the ~~time-out~~ time-out,
 - ii. The reason for the ~~time-out~~ time-out,
 - iii. The duration of the ~~time-out~~ time-out, and
 - iv. The action planned and taken to address the reason for the ~~time-out~~ time-out;
7. Restraint or seclusion is:
- a. Not used as a means of coercion, discipline, convenience, or retaliation;
 - b. Only used when all of the following conditions are met:
 - i. Except as provided in subsection (A)(8), after obtaining an order for the restraint or seclusion;
 - ii. For the management of a patient's aggressive, violent, or self-destructive behavior;
 - iii. When less restrictive interventions have been determined to be ineffective; and
 - iv. To ensure the immediate physical safety of the patient, to prevent imminent harm to the patient or another individual, or to stop physical

- harm to another individual; and
- c. Discontinued at the earliest possible time;
8. If as a result of a patient's aggressive, violent, or self-destructive behavior, harm to the patient or another individual is imminent or the patient or another individual is being physically harmed, a personnel member:
 - a. May initiate an emergency application of restraint or seclusion for the patient before obtaining an order for the restraint or seclusion, and
 - b. Obtains an order for the restraint or seclusion of the patient during the emergency application of the restraint or seclusion;
 9. Restraint or seclusion is:
 - a. Only ordered by a physician or a registered nurse practitioner, and
 - b. Not written as a standing order or on an as-needed basis;
 10. An order for restraint or seclusion includes:
 - a. The name of the individual ordering the restraint or seclusion;
 - b. The date and time that the restraint or seclusion was ordered;
 - c. The specific restraint or seclusion ordered;
 - d. If a drug is ordered as a chemical restraint, the drug's name, strength, dosage, and route of administration;
 - e. The specific criteria for release from restraint or seclusion without an additional order; and
 - f. The maximum duration authorized for the restraint or seclusion;
 11. An order for restraint or seclusion is limited to the duration of the emergency situation and does not exceed:
 - a. Four continuous hours for a patient who is 18 years of age or older,
 - b. Two continuous hours for a patient who is between the ages of nine and 17 years of age, or
 - c. One continuous hour for a patient who is younger than nine years of age;
 12. If restraint and seclusion are used on a patient simultaneously, the patient receives continuous:
 - a. Face-to-face monitoring by a medical staff member or personnel member, or
 - b. Video and audio monitoring by a medical staff member or personnel member who is in close proximity to the patient;
 13. If an order for restraint or seclusion of a patient is not provided by a medical practitioner

coordinating the patient's medical services, the medical practitioner is notified as soon as possible;

14. A medical staff member or personnel member does not participate in restraint or seclusion, monitor a patient during restraint or seclusion, or evaluate a patient after restraint or seclusion until the medical staff member or personnel member completes education and training that:
 - a. Includes:
 - i. Techniques to identify medical staff member, personnel member, and patient behaviors; events; and environmental factors that may trigger circumstances that require restraint or seclusion;
 - ii. The use of nonphysical intervention skills, such as de-escalation, mediation, conflict resolution, active listening, and verbal and observational methods;
 - iii. Techniques for identifying the least restrictive intervention based on an assessment of the patient's medical or behavioral health condition;
 - iv. The safe use of restraint and the safe use of seclusion, including training in how to recognize and respond to signs of physical and psychological distress in a patient who is restrained or secluded;
 - v. Clinical identification of specific behavioral changes that indicate that the restraint or seclusion is no longer necessary;
 - vi. Monitoring and assessing a patient while the patient is in restraint or seclusion according to policies and procedures; and
 - vii. Training exercises in which medical staff members and personnel members successfully demonstrate the techniques that the medical staff members and personnel members have learned for managing emergency situations; and
 - b. Is provided by individuals qualified according to policies and procedures;
15. When a patient is placed in restraint or seclusion:
 - a. The restraint or seclusion is conducted according to policies and procedures;
 - b. The restraint or seclusion is proportionate and appropriate to the severity of the patient's behavior and the patient's:
 - i. Chronological and developmental age;
 - ii. Size;

- iii. Gender;
 - iv. Physical condition;
 - v. Medical condition;
 - vi. Psychiatric condition; and
 - vii. Personal history, including any history of physical or sexual abuse;
 - c. The physician or registered nurse practitioner who ordered the restraint or seclusion is available for consultation throughout the duration of the restraint or seclusion;
 - d. A patient is monitored and assessed according to policies and procedures;
 - e. A physician or other health professional authorized by policies and procedures assesses the patient within one hour after the patient is placed in the restraint or seclusion and determines:
 - i. The patient's current behavior,
 - ii. The patient's reaction to the restraint or seclusion used,
 - iii. The patient's medical and behavioral condition, and
 - iv. Whether to continue or terminate the restraint or seclusion;
 - f. The patient is given the opportunity:
 - i. To eat during mealtime, and
 - ii. To use the toilet; and
 - g. The restraint or seclusion is discontinued at the earliest possible time, regardless of the length of time identified in the order;
16. If a patient is placed in seclusion, the room used for seclusion:
- a. Is approved for use as a seclusion room by the Department under R9-10-104;
 - b. Is not used as a patient's bedroom or a sleeping area;
 - c. Allows full view of the patient in all areas of the room;
 - d. Is free of hazards, such as unprotected light fixtures or electrical outlets;
 - e. Contains at least 60 square feet of floor space; and
 - f. Except as provided in subsection (A)(17), contains a non-adjustable bed that:
 - i. Consists of a mattress on a solid platform that is:
 - (1) Constructed of a durable, non-hazardous material; and
 - (2) Raised off of the floor;
 - ii. Does not have wire springs or a storage drawer; and
 - iii. Is securely anchored in place;

17. If a room used for seclusion does not contain a non-adjustable bed required in subsection (A)(16)(f):
 - a. A piece of equipment is available for use in the room used for seclusion that:
 - i. Is commercially manufactured to safely and humanely restrain a patient's body;
 - ii. Provides support to the trunk and head of a patient's body;
 - iii. Provides restraint to the trunk of a patient's body;
 - iv. Is able to restrict movement of a patient's arms, legs, trunk, and head;
 - v. Allows a patient's body to recline; and
 - vi. Does not inflict harm on a patient's body; and
 - b. Documentation of the manufacturer's specifications for the piece of equipment in subsection (A)(17)(a) is maintained;
18. A seclusion room may be used for services or activities other than seclusion if:
 - a. A sign stating the service or activity scheduled or being provided in the room is conspicuously posted outside the room;
 - b. No permanent equipment other than the bed required in subsection (A)(16)(f) is in the room;
 - c. Policies and procedures are established, documented, and implemented that:
 - i. Delineate which services or activities other than seclusion may be provided in the room,
 - ii. List what types of equipment or supplies may be placed in the room for the delineated services, and
 - iii. Provide for the prompt removal of equipment and supplies from the room before the room is used for seclusion; and
 - d. The sign required in subsection (A)(18)(a) and equipment and supplies in the room, other than the bed required in subsection (A)(16)(f), are removed before a patient is placed in seclusion in the room;
19. A medical staff member or personnel member documents the following information in a patient's medical record before the end of the shift in which the patient is placed in restraint or seclusion or, if the patient's restraint or seclusion does not end during the shift in which it began, during the shift in which the patient's restraint or seclusion ends:
 - a. The emergency situation that required the patient to be restrained or put in seclusion;

- b. The times the patient’s restraint or seclusion actually began and ended;
 - c. The time of the face-to-face assessment required in subsection (A)(12)(a);
 - d. The monitoring required in subsection (A)(12)(b) or (15)(d), as applicable;
 - e. The times the patient was given the opportunity to eat or use the toilet according to subsection (A)(15)(f); and
 - f. The names of the medical staff members and personnel members with direct patient contact while the patient was in the restraint or seclusion; and
20. If an emergency situation continues beyond the time limit of an order for restraint or seclusion, the order is renewed according to policies and procedures.

B. An administrator of a hospital that provides opioid treatment services to an outpatient shall comply with the requirements in R9-10-1020.

R9-10-226. Behavioral Health Observation/Stabilization Services

An administrator of a hospital that is authorized to provide behavioral health ~~observation/stabilizations~~ observation/stabilization services shall ensure that:

- 1. Behavioral health observation/stabilization services are provided according to the requirements in R9-10-1012, and
- 2. Restraint and seclusion are provided according to the requirements for restraint and seclusion in R9-10-225.

R9-10-233. Environmental Standards

An administrator shall ensure that:

- 1. An individual providing environmental services who has the potential to transmit infectious tuberculosis to patients, as determined by the infection control risk assessment criteria in R9-10-230(4)(c), provides evidence of freedom from infectious tuberculosis:
 - a. Using a screening method described in R9-10-113(1), on or before the date the individual begins providing environmental services at or on behalf of the hospital and at least once every 12 months thereafter; or
 - b. According to R9-10-113(2);
- 2. The hospital premises and equipment are:
 - a. Cleaned and disinfected according to policies and procedures or manufacturer's instructions to prevent, minimize, and control infection or illness; and
 - b. Free from a condition or situation that may cause a patient or other individual to suffer physical injury;
- 3. A pest control program that complies with A.A.C. R3-8-201(C)(4) is implemented and

documented;

4. The hospital maintains a tobacco smoke-free environment;
5. Biohazardous medical waste is identified, stored, and disposed of according to 18 A.A.C. 13, Article 14 and policies and procedures;
6. Equipment used to provide hospital services is:
 - a. Maintained in working order;
 - b. Tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in policies and procedures;
and
 - c. Used according to the manufacturer's recommendations; and
7. Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of the testing, calibration, or repair.

ARTICLE 3. BEHAVIORAL HEALTH INPATIENT FACILITIES

R9-10-302. Supplemental Application Requirements

In addition to the license application requirements in A.R.S. § 36-422 and R9-10-105, an applicant for ~~an~~ ~~initial~~ a license as a behavioral health inpatient facility shall include in a Department-provided format whether the applicant is requesting authorization to provide:

1. Inpatient services to individuals 18 years of age and older, including the licensed capacity requested;
2. ~~Court-ordered pre-petition~~ Pre-petition screening;
3. Court-ordered evaluation;
4. Court-ordered treatment;
5. Behavioral health observation/stabilization services, including the licensed occupancy requested for providing behavioral health observation/stabilization services to individuals:
 - a. Under 18 years of age, and
 - b. 18 years of age and older;
6. Child and adolescent residential treatment services, including the licensed capacity requested;
7. Detoxification services;
8. Seclusion;
9. Clinical laboratory services;
10. Radiology services; or
11. Diagnostic imaging services.

R9-10-303. Administration

- A. A governing authority shall:
1. Consist of one or more individuals responsible for the organization, operation, and administration of a behavioral health inpatient facility;
 2. Establish, in writing:
 - a. A behavioral health inpatient facility's scope of services, and
 - b. Qualifications for an administrator;
 3. Designate, in writing, an administrator who has the qualifications established in subsection (A)(2)(b);
 4. Adopt a quality management program according to R9-10-304;

5. Review and evaluate the effectiveness of the quality management program at least once every 12 months;
6. Designate, in writing, an acting administrator who has the qualifications established in subsection (A)(2)(b), if the administrator is:
 - a. Expected not to be present on the behavioral health inpatient facility's premises for more than 30 calendar days, or
 - b. Not present on the behavioral health inpatient facility's premises for more than 30 calendar days; and
7. Except as provided in subsection (A)(6), notify the Department according to A.R.S. § 36-425(I) when there is a change in the administrator and identify the name and qualifications of the new administrator.

B. An administrator:

1. Is directly accountable to the governing authority of a behavioral health inpatient facility for the daily operation of the behavioral health inpatient facility and for all services provided by or at the behavioral health inpatient facility;
2. Has the authority and responsibility to manage the behavioral health inpatient facility; and
3. Except as provided in subsection (A)(6), designates, in writing, an individual who is present on the behavioral health inpatient facility's premises and accountable for the behavioral health inpatient facility when the administrator is not present on the behavioral health inpatient facility's premises.

C. An administrator shall ensure that:

1. Policies and procedures are established, documented, and implemented to protect the health and safety of a patient that:
 - a. Cover job descriptions, duties, and qualifications, including required skills, knowledge, education, and experience for personnel members, employees, volunteers, and students;
 - b. Cover orientation and in-service education for personnel members, employees, volunteers, and students;
 - c. Include how a personnel member may submit a complaint relating to services provided to a patient;
 - d. Cover the requirements in A.R.S. Title 36, Chapter 4, Article 11;
 - e. Cover cardiopulmonary resuscitation training including:

- i. The method and content of cardiopulmonary resuscitation training,
 - ii. The qualifications for an individual to provide cardiopulmonary resuscitation training,
 - iii. The time-frame for renewal of cardiopulmonary resuscitation training, and
 - iv. The documentation that verifies that the individual has received cardiopulmonary resuscitation training;
 - f. Cover first aid training;
 - ~~g.~~ g. Cover the requirements in subsection (J), if applicable;
 - ~~g-h.~~ g-h. Include a method to identify a patient to ensure the patient receives physical health and behavioral health services as ordered;
 - ~~h-i.~~ h-i. Cover patient rights, including assisting a patient who does not speak English or who has a physical or other disability to become aware of patient rights;
 - ~~i-j.~~ i-j. Cover specific steps for:
 - i. A patient to file a complaint, and
 - ii. The behavioral health inpatient facility to respond to a patient's complaint;
 - ~~j-k.~~ j-k. Cover health care directives;
 - ~~k-l.~~ k-l. Cover medical records, including electronic medical records;
 - ~~l-m.~~ l-m. Cover quality management, including incident reports and supporting documentation;
 - ~~m-n.~~ m-n. Cover contracted services; and
 - ~~n-o.~~ n-o. Cover when an individual may visit a patient in the behavioral health inpatient facility;
2. Policies and procedures for behavioral health services and physical health services are established, documented, and implemented to protect the health and safety of a patient that:
- a. Cover patient screening, admission, assessment, treatment plan, transport, transfer, discharge planning, and discharge;
 - b. Cover the provision of behavioral health services and physical health services;
 - c. Include when general consent and informed consent are required;
 - d. Cover restraint and, if applicable, seclusion;

- e. Cover dispensing, administering, and disposing of medication, including provisions for inventory control and preventing diversion of controlled substances;
 - f. Cover prescribing a controlled substance to minimize substance abuse by a patient;
 - g. Cover infection control;
 - h. Cover telemedicine, if applicable;
 - i. Cover environmental services that affect patient care;
 - j. Cover patient outings;
 - k. Cover whether pets and animals are allowed on the premises, including procedures to ensure that any pets or animals allowed on the premises do not endanger the health or safety of patients or the public;
 - l. If the behavioral health inpatient facility is involved in research, cover the establishment or use of a Human Subject Review Committee;
 - m. Cover the process for receiving a fee from a patient and refunding a fee to a patient;
 - n. Cover the process for obtaining patient preferences for social, recreational, or rehabilitative activities and meals and snacks;
 - o. Cover the security of a patient's possessions that are allowed on the premises; and
 - p. Cover smoking and the use of tobacco products on the premises;
- 3. Policies and procedures are reviewed at least once every three years and updated as needed;
 - 4. Policies and procedures are available to personnel members, employees, volunteers and students; and
 - 5. Unless otherwise stated:
 - a. Documentation required by this Article is provided to the Department within two hours after a Department request; and
 - b. When documentation or information is required by this Chapter to be submitted on behalf of a behavioral health inpatient facility, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the behavioral health inpatient facility.

D. An administrator shall designate a:

- 1. Medical director who:

- a. Provides direction for physical health services provided by or at the behavioral health inpatient facility;
 - b. Is a physician or registered nurse practitioner; and
 - c. May be the same individual as the administrator, if the individual meets the qualifications in subsections (A)(2)(b) and (D)(1)(a) and (b);
 - 2. Clinical director who:
 - a. Provides direction for the behavioral health services provided by or at the behavioral health inpatient facility;
 - b. Is a behavioral health professional; and
 - c. May be the same individual as the administrator, if the individual meets the qualifications in subsections (A)(2)(b) and (D)(2)(a) and (b); and
 - 3. Registered nurse to provide direction for nursing services provided by or at the behavioral health inpatient facility.
- E.** An administrator shall provide written notification to the Department of a patient's:
- 1. Death, if the patient's death is required to be reported according to A.R.S. § 11-593, within one working day after the patient's death; and
 - 2. Self-injury, within two working days after the patient inflicts a self-injury that requires immediate intervention by an emergency medical services provider.
- F.** Except as specified in R9-10-318(A)(1), if abuse, neglect, or exploitation of a patient is alleged or suspected to have occurred before the patient was admitted or while the patient is not on the premises and not receiving services from a behavioral health inpatient facility's employee or personnel member, an administrator shall report the alleged or suspected abuse, neglect, or exploitation of the patient according to A.R.S. § 46-454.
- G.** If an administrator has a reasonable basis, according to A.R.S. § 46-454, to believe abuse, neglect, or exploitation has occurred on the premises or while a patient is receiving services from a behavioral health inpatient facility's employee or personnel member, the administrator shall:
- 1. If applicable, take immediate action to stop the suspected abuse, neglect, or exploitation;
 - 2. Report the suspected abuse, neglect, or exploitation of the patient according to A.R.S. § 46-454;
 - 3. Document:
 - a. The suspected abuse, neglect, or exploitation;
 - b. Any action taken according to subsection (G)(1); and
 - c. The report in subsection (G)(2);

4. Maintain the documentation in subsection (G)(3) for at least 12 months after the date of the report in subsection (G)(2);
5. Initiate an investigation of the suspected abuse, neglect, or exploitation and document the following information within five working days after the report required in subsection (G)(2):
 - a. The dates, times, and description of the suspected abuse, neglect, or exploitation;
 - b. A description of any injury to the patient related to the suspected abuse or neglect and any change to the patient's physical, cognitive, functional, or emotional condition;
 - c. The names of witnesses to the suspected abuse, neglect, or exploitation; and
 - d. The actions taken by the administrator to prevent the suspected abuse, neglect, or exploitation from occurring in the future; and
6. Maintain a copy of the documented information required in subsection (G)(5) and any other information obtained during the investigation for at least 12 months after the date the investigation was initiated.

H. An administrator shall establish and document the criteria for determining when a patient's absence is unauthorized, including the criteria for a patient who:

1. Was admitted under A.R.S. Title 36, Chapter 5, Articles 1, 2, or 3;
2. Is absent against medical advice; or
3. Is under the age of 18.

I. An administrator shall:

1. For a patient who is under a court's jurisdiction, within an hour after determining that the patient's absence is unauthorized according to the criteria in subsection (H), notify the appropriate court or a person designated by the appropriate court;
2. Document the notification in subsection (I)(1) and the written log required in subsection (I)(3);
3. Maintain a written log of unauthorized absences for at least 12 months after the date of a patient's absence that includes the:
 - a. Name of a patient absent without authorization;
 - b. If applicable, name of the person notified as required in subsection (I)(1); and
 - c. Date of the notification; and
4. Evaluate and take action related to unauthorized absences under the quality management program in R9-10-304.

- J.** If a behavioral health inpatient facility has a physician or registered nurse practitioner on-call to comply with R9-10-306(J)(1), an administrator shall ensure that:
1. The on-call schedule is documented;
 2. Personnel members are aware of:
 - a. The location at which the on-call schedule is available to personnel members of the behavioral health inpatient facility.
 - b. The process through which the on-call physician or registered nurse practitioner is contacted.
 - c. The circumstances that would require the on-call physician or registered nurse practitioner to come to the behavioral health inpatient facility, and
 - c. The process through which a request is made for the on-call physician or registered nurse practitioner to come to the behavioral health inpatient facility;
 3. A request for the on-call physician or registered nurse practitioner to come to the behavioral health inpatient facility is documented, including:
 - a. The time that a request for the on-call physician or registered nurse practitioner to come to the behavioral health inpatient facility is made.
 - b. The name of the individual making the request.
 - c. The reason for the request.
 - d. The name of the physician or registered nurse practitioner contacted and requested to come to the behavioral health inpatient facility, and
 - e. The time the on-call physician or registered nurse practitioner arrives at the behavioral health inpatient facility in response to a request;
 4. The documentation in subsections (J)(1) and (3) is maintained for at least 12 months after the last date on the documentation; and
 5. Documentation related to the request is included in the medical record of the applicable patient.

R9-10-306. Personnel

- A.** An administrator shall ensure that:
1. A personnel member is:
 - a. At least 21 years old, or
 - b. At least 18 years old and is licensed or certified under A.R.S. Title 32 and providing services within the personnel member's scope of practice;
 2. An employee is at least 18 years old;

3. A student is at least 18 years old; and
 4. A volunteer is at least 21 years old.
- B.** An administrator shall ensure that:
1. The qualifications, skills, and knowledge required for each type of personnel member:
 - a. Are based on:
 - i. The type of physical health services or behavioral health services expected to be provided by the personnel member according to the established job description, and
 - ii. The acuity of the patients receiving physical health services or behavioral health services from the personnel member according to the established job description; and
 - b. Include:
 - i. The specific skills and knowledge necessary for the personnel member to provide the expected physical health services and behavioral health services listed in the established job description,
 - ii. The type and duration of education that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected physical health services or behavioral health services listed in the established job description, and
 - iii. The type and duration of experience that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected physical health services or behavioral health services listed in the established job description;
 2. A personnel member's skills and knowledge are verified and documented:
 - a. Before the personnel member provides physical health services or behavioral health services, and
 - b. According to policies and procedures; and
 3. Sufficient personnel members are present on a behavioral health inpatient facility's premises with the qualifications, skills, and knowledge necessary to:
 - a. Provide the services in the behavioral health inpatient facility's scope of services,
 - b. Meet the needs of a patient, and
 - c. Ensure the health and safety of a patient.
- C.** An administrator shall comply with the requirements for behavioral health technicians and

behavioral health paraprofessionals in R9-10-115.

- D.** An administrator shall ensure that an individual who is licensed under A.R.S. Title 32, Chapter 33 as a baccalaureate social worker, master social worker, associate marriage and family therapist, associate counselor, or associate substance abuse counselor is under direct supervision, as defined in A.A.C. R4-6-101.
- E.** An administrator shall ensure that a personnel member or an employee, volunteer, or student who has or is expected to have direct interaction with a patient, provides evidence of freedom from infectious tuberculosis:
1. On or before the date the individual begins providing services at or on behalf of the behavioral health in-patient facility, and
 2. As specified in R9-10-113.
- F.** An administrator shall ensure that a personnel record is maintained for each personnel member, employee, volunteer, or student that includes:
1. The individual's name, date of birth, and contact telephone number;
 2. The individual's starting date of employment or volunteer service and, if applicable, the ending date; and
 3. Documentation of:
 - a. The individual's qualifications, including skills and knowledge applicable to the employee's job duties;
 - b. The individual's education and experience applicable to the employee's job duties;
 - c. The individual's completed orientation and in-service education as required by policies and procedures;
 - d. The individual's license or certification, if the individual is required to be licensed or certified in this Article or policies and procedures;
 - e. The individual's qualifications and on-going training for each type of restraint or seclusion used, as required in R9-10-316;
 - f. If the individual is a behavioral health technician, clinical oversight required in R9-10-115;
 - g. Cardiopulmonary resuscitation training, if required for the individual according to R9-10-303(C)(1)(e);
 - h. First aid training, if required for the individual according to this Article or policies and procedures; and
 - i. Evidence of freedom from infectious tuberculosis, if required for the individual

according to subsection (E).

G. An administrator shall ensure that personnel records are:

1. Maintained:
 - a. Throughout an individual's period of providing services in or for the behavioral health inpatient facility, and
 - b. For at least 24 months after the last date the individual provided services in or for the behavioral health inpatient facility; and
2. For a personnel member who has not provided physical health services or behavioral health services at or for the behavioral health inpatient facility during the previous 12 months, provided to the Department within 72 hours after the Department's request.

H. An administrator shall ensure that:

1. A plan to provide orientation specific to the duties of a personnel member, an employee, a volunteer, and a student is developed, documented, and implemented;
2. A personnel member completes orientation before providing behavioral health services or physical health services;
3. An individual's orientation is documented, to include:
 - a. The individual's name,
 - b. The date of the orientation, and
 - c. The subject or topics covered in the orientation;
4. A clinical director develops, documents, and implements a plan to provide in-service education specific to the duties of a personnel member; and
5. A personnel member's in-service education is documented, to include:
 - a. The personnel member's name,
 - b. The date of the training, and
 - c. The subject or topics covered in the training.

I. An administrator shall ensure that a behavioral health inpatient facility has a daily staffing schedule that:

1. Indicates the date, scheduled work hours, and name of each employee assigned to work, including on-call personnel members;
2. Includes documentation of the employees who work each calendar day and the hours worked by each employee; and
3. Is maintained for at least 12 months after the last date on the daily staffing schedule.

J. An administrator shall ensure that:

1. A physician or registered nurse practitioner is:
 - a. ~~present~~ Present on the behavioral health inpatient facility's premises; or
 - b. ~~on-call~~ On-call and:
 - i. Available through telemedicine, or
 - ii. On the premises within 30 minutes after a request to come to the behavioral health inpatient facility;
2. A registered nurse is present on the behavioral health inpatient facility's premises; ~~and~~
3. A registered nurse who provides direction for the nursing services provided at the behavioral health inpatient facility is present at the behavioral health inpatient facility at least 40 hours every week; and
4. The types and numbers of personnel members required according to the acuity plan in R9-10-315(A)(3) are present in each unit in the behavioral health inpatient facility.

R9-10-307. Admission; Assessment

Except as provided in R9-10-315(E) or (F), an administrator shall ensure that:

1. A patient is admitted based upon the patient's presenting behavioral health issue and treatment needs and the behavioral health inpatient facility's ability and authority to provide physical health services, behavioral health services, and ancillary services consistent with the patient's treatment needs;
2. A patient is admitted on the order of a medical practitioner or clinical director;
3. A medical practitioner or clinical director, authorized by policies and procedures to accept a patient for admission, is available;
4. Except in an emergency or as provided in subsections (6) and (7), general consent is obtained from a patient or, if applicable, the patient's representative before or at the time of admission;
5. The general consent obtained in subsection (4) or the lack of consent in an emergency is documented in the patient's medical record;
6. General consent is not required from a patient receiving a court-ordered evaluation or court-ordered treatment;
7. General consent is not required from a patient receiving treatment according to A.R.S. § 36-512;
8. A medical practitioner performs a medical history and physical examination on a patient within 30 calendar days before admission or within ~~72~~ 24 hours after admission and documents the medical history and physical examination in the patient's medical record

within ~~72~~ 24 hours after admission;

9. If a medical practitioner performs a medical history and physical examination on a patient before admission, the medical practitioner enters an interval note into the patient's medical record within seven calendar days after admission;
10. Except when a patient needs crisis services, a behavioral health assessment of a patient is completed to determine the acuity of the patient's behavioral health issue and to identify the behavioral health services needed by the patient before treatment for the patient is initiated and whenever the patient has a significant change in condition or experiences an event that affects treatment;
11. If a behavioral health assessment is conducted by a:
 - a. Behavioral health technician or registered nurse, within 24 hours a behavioral health professional, certified or licensed under A.R.S. Title 32 to provide the behavioral health services needed by the patient, reviews and signs the behavioral health assessment to ensure that the behavioral health assessment identifies the behavioral health services needed by and the acuity of the patient; or
 - b. Behavioral health paraprofessional, a behavioral health professional, certified or licensed under A.R.S. Title 32 to provide the behavioral health services needed by the patient, supervises the behavioral health paraprofessional during the completion of the behavioral health assessment and signs the behavioral health assessment to ensure that the behavioral health assessment identifies the behavioral health services needed by and the acuity of the patient;
12. When a patient is admitted, a registered nurse:
 - a. Conducts a nursing assessment of a patient's medical condition and history;
 - b. Determines whether the:
 - i. Patient requires immediate physical health services, and
 - ii. Patient's behavioral health issue may be related to the patient's medical condition and history;
 - c. Determines the acuity of the patient's medical condition;
 - ~~e.d.~~ Documents the patient's nursing assessment and the determinations required in subsection (12)(b) and (c) in the patient's medical record; and
 - ~~d.e.~~ Signs the patient's medical record;
13. A behavioral health assessment:
 - a. Documents the patient's:

- i. Presenting issue, including the acuity of the patient's presenting issue;
- ii. Substance abuse history;
- iii. Co-occurring disorder;
- iv. Legal history, including:
 - (1) Custody,
 - (2) Guardianship, and
 - (3) Pending litigation;
- v. Court-ordered evaluation;
- vi. Court-ordered treatment;
- vii. Criminal justice record;
- viii. Family history;
- ix. Behavioral health treatment history;
- x. Symptoms reported by the patient; and
- xi. Referrals needed by the patient, if any; and

b. Includes:

- i. Recommendations for further assessment or examination of the patient's needs;
- ii. Recommendations for staffing levels or personnel member qualifications related to the patient's treatment to ensure patient health and safety;
- ~~ii~~-iii. For a patient who:
 - (1) Is admitted to receive crisis services, the behavioral health services and physical health services that will be provided to the patient; or
 - (2) Does not need crisis services, the behavioral health services or physical health services that will be provided to the patient until the patient's treatment plan is completed; and
- ~~iii~~-iv. The signature and date signed of the personnel member conducting the behavioral health assessment;

14. A patient is referred to a medical practitioner if a determination is made that the patient requires immediate physical health services or the patient's behavioral health issue may be related to the patient's medical condition;

15. A request for participation in a patient's behavioral health assessment is made to the patient or the patient's representative;

16. An opportunity for participation in the patient's behavioral health assessment is provided to the patient or the patient's representative;
17. The request in subsection (15) and the opportunity in subsection (16) are documented in the patient's medical record;
18. For a patient who is admitted to receive crisis services, the patient's behavioral health assessment is documented in the patient's medical record within ~~24~~ eight hours after admission;
19. Except as provided in subsection (18), a patient's behavioral health assessment is documented in the patient's medical record within ~~48~~ 24 hours after completing the assessment; and
20. If the information listed in subsection (13) is obtained about a patient after the patient's behavioral health assessment is completed, an interval note, including the information, is documented in the patient's medical record within 48 hours after the information is obtained.

R9-10-308. Treatment Plan

- A. Except for a patient admitted to receive crisis services or as provided in R9-10-315(E) or (F), an administrator shall ensure that a treatment plan is developed and implemented for a patient that is:
 1. ~~Based~~ Is based on the behavioral health assessment and on-going changes to the behavioral health assessment of the patient;
 2. ~~Completed~~ Is completed:
 - a. By a behavioral health professional or by a behavioral health technician under the clinical oversight of a behavioral health professional, and
 - b. Before the patient receives treatment;
 3. ~~Documented~~ Is documented in the patient's medical record within ~~48~~ 24 hours after the patient first receives treatment;
 4. Includes:
 - a. The patient's presenting issue, including the acuity of the patient's presenting issue;
 - b. The behavioral health services and physical health services to be provided to the patient;
 - c. The signature of the patient or the patient's representative and date signed, or documentation of the refusal to sign;
 - d. The date when the patient's treatment plan will be reviewed;
 - e. If a discharge date has been determined, the treatment needed after discharge; and
 - f. The signature of the personnel member who developed the treatment plan and the

date signed;

5. If the treatment plan was completed by a behavioral health technician, is reviewed and signed by a behavioral health professional within 24 hours after the completion of the treatment plan to ensure that the treatment plan identifies the acuity of the patient and meets the patient's treatment needs; and
6. ~~Reviewed~~ Is reviewed and updated on an on-going basis:
 - a. According to the review date specified in the treatment plan,
 - b. When a treatment goal is accomplished or changes,
 - c. When additional information that affects the patient's behavioral health assessment is identified, and
 - d. When a patient has a significant change in condition or experiences an event that affects treatment.

B. An administrator shall ensure that:

1. A request for participation in developing a patient's treatment plan is made to the patient or the patient's representative;
2. An opportunity for participation in developing the patient's treatment plan is provided to the patient or the patient's representative; and
3. The request in subsection (B)(1) and the opportunity in subsection (B)(2) are documented in the patient's medical record.

C. If a patient who is admitted to receive crisis services remains admitted as a patient after the patient no longer needs crisis services, an administrator shall ensure that a treatment plan for the patient is:

1. Except for subsection (A)(3), completed according to the requirements in subsection (A); and
2. Documented in the patient's medical record within 24 hours after the patient no longer needs crisis services.

R9-10-314. Physical Health Services

A. An administrator shall ensure that:

1. Medical services are provided under the direction of a physician or registered nurse practitioner;
2. Nursing services are provided:
 - a. ~~under~~ Under the direction of a registered nurse,
 - b. According to an acuity plan developed for the behavioral health inpatient facility, and
 - c. To meet the needs of a patient based on the patient's acuity; and

3. If a behavioral health inpatient facility is authorized to provide:
 - a. Clinical laboratory services, as defined in R9-10-101, the behavioral health inpatient facility complies with the requirements for clinical laboratory services in R9-10-219; or
 - b. Radiology services or diagnostic imaging services, the behavioral health inpatient facility complies with the requirements in R9-10-220.
- B.** An administrator shall ensure that, if a patient requires immediate medical services to ensure the patient's health and safety that the behavioral health inpatient facility is not authorized or not able to provide, a personnel member arranges for the patient to be transported to a hospital, another health care institution, or a health care provider where the medical services can be provided.

R9-10-315. Behavioral Health Services

- A.** An administrator shall ensure that:
1. Behavioral health services listed in the behavioral health inpatient facility's scope of services are provided to meet the needs of a patient;
 2. When behavioral health services are:
 - a. Listed in the behavioral health inpatient facility's scope of services, the behavioral health services are provided on the behavioral health inpatient facility's premises; and
 - b. Provided in a setting or activity with more than one patient participating, before a patient participates, the diagnoses, treatment needs, developmental levels, social skills, verbal skills, and personal histories, including any history of physical abuse or sexual abuse, of the patients participating are reviewed to ensure that the:
 - i. Health and safety of each patient is protected, and
 - ii. Treatment needs of each patient participating in the setting or activity are being met;
 3. An acuity plan is developed, documented, and implemented for each unit in the behavioral health inpatient facility that:
 - a. Includes:
 - i. A method that establishes the types and numbers of personnel members that are required for each unit in the behavioral health inpatient facility to ensure patient health and safety, and
 - ii. A policy and procedure stating the steps the behavioral health inpatient

facility will take to obtain or assign the necessary personnel members to address patient acuity:

- b. Is used when making assignments for patient treatment; and
- c. Is reviewed and updated, as necessary, at least once every 12 months;

4. A patient is assigned to a unit in the behavioral health inpatient facility based, as applicable, on the patient's:

- a. Presenting issue,
- b. Substance abuse history,
- c. Behavioral health treatment history,
- d. Acuity, and
- e. Treatment needs; and

3-5. A patient does not share any space, participate in any activity or treatment, or verbally or physically interact with any other patient that, based on the other patient's documented diagnosis, treatment needs, developmental levels, social skills, verbal skills, and personal history, may present a threat to the patient's health and safety.

B. An administrator shall ensure that counseling is:

- 1. Offered as described in the behavioral health inpatient facility's scope of services,
- 2. Provided according to the frequency and number of hours identified in the patient's treatment plan, and
- 3. Provided by a behavioral health professional or a behavioral health technician.

C. An administrator shall ensure that each counseling session is documented in a patient's medical record to include:

- 1. The date of the counseling session;
- 2. The amount of time spent in the counseling session;
- 3. Whether the counseling was individual counseling, family counseling, or group counseling;
- 4. The treatment goals addressed in the counseling session; and
- 5. The signature of the personnel member who provided the counseling and the date signed.

D. An administrator of a behavioral health inpatient facility authorized to provide pre-petition screening shall ensure pre-petition screening is provided according to the pre-petition screening requirements in A.R.S. Title 36, Chapter 5.

E. An administrator of a behavioral health inpatient facility authorized to provide court-ordered evaluation shall ensure that court-ordered evaluation is provided according to the court-evaluation requirements in A.R.S. Title 36, Chapter 5.

- F.** An administrator is not required to comply with the following provisions in this Chapter for a patient receiving court-ordered evaluation:
1. Admission requirements in R9-10-307,
 2. Patient assessment requirements in R9-10-307,
 3. Treatment plan requirements in R9-10-308, and
 4. Discharge requirements in R9-10-309.
- G.** An administrator of a behavioral health inpatient facility authorized to provide court-ordered treatment shall ensure that court-ordered treatment is provided according to the court-ordered treatment requirements in A.R.S. Title 36, Chapter 5.

R9-10-316. Seclusion; Restraint

- A.** An administrator shall ensure that restraint is provided according to the requirements in subsection (C).
- B.** An administrator of a behavioral health inpatient facility authorized to provide seclusion shall ensure that:
1. Seclusion is provided according to the requirements in subsection (C);
 2. If a patient is placed in seclusion, the room used for seclusion:
 - a. Is approved for use as a seclusion room by the Department;
 - b. Is not used as a patient's bedroom or a sleeping area;
 - c. Allows full view of the patient in all areas of the room;
 - d. Is free of hazards, such as unprotected light fixtures or electrical outlets;
 - e. Contains at least 60 square feet of floor space; and
 - f. Except as provided in subsection (B)(3), contains a non-adjustable bed that:
 - i. Consists of a mattress on a solid platform that is:
 - (1) Constructed of a durable, non-hazardous material; and
 - (2) Raised off of the floor;
 - ii. Does not have wire springs or a storage drawer; and
 - iii. Is securely anchored in place;
 3. If a room used for seclusion does not contain a non-adjustable bed required in subsection (B)(2)(f):
 - a. A piece of equipment is available that:
 - i. Is commercially manufactured to safely and humanely restrain a patient's body;
 - ii. Provides support to the trunk and head of a patient's body;

- iii. Provides restraint to the trunk of a patient's body;
 - iv. Is able to restrict movement of a patient's arms, legs, body, and head;
 - v. Allows a patient's body to recline; and
 - vi. Does not inflict harm on a patient's body; and
 - b. Documentation of the manufacturer's specifications for the piece of equipment in subsection (B)(3)(a) is maintained; and
 - 4. A seclusion room may be used for services or activities other than seclusion if:
 - a. A sign stating the service or activity scheduled or being provided in the room is conspicuously posted outside the room;
 - b. No permanent equipment other than the bed required in subsection (B)(2)(f) is in the room;
 - c. Policies and procedures:
 - i. Delineate which services or activities other than seclusion may be provided in the room,
 - ii. List what types of equipment or supplies may be placed in the room for the delineated services, and
 - iii. Provide for the prompt removal of equipment and supplies from the room before the room is used for seclusion; and
 - d. The sign required in subsection (B)(4)(a) and equipment and supplies in the room, other than the bed required in subsection (B)(2)(f), are removed before ~~use~~ being used for seclusion.
- C. An administrator shall ensure that:
- 1. Policies and procedures for providing restraint or seclusion are established, documented, and implemented to protect the health and safety of a patient that:
 - a. Establish the process for patient assessment, including identification of a patient's medical conditions and criteria for the on-going monitoring of any identified medical condition;
 - b. Identify each type of restraint or seclusion used and include for each type of restraint or seclusion used:
 - i. The qualifications of a personnel member who can:
 - (1) Order the restraint or seclusion,
 - (2) Place a patient in the restraint or seclusion,
 - (3) Monitor a patient in the restraint or seclusion,

- (4) Evaluate a patient's physical and psychological well-being after being placed in the restraint or seclusion and when released from the restraint or seclusion, or
 - (5) Renew the order for restraint or seclusion;
 - ii. On-going training requirements for a personnel member who has direct patient contact while the patient is in a restraint or seclusion; and
 - iii. Criteria for monitoring and assessing a patient including:
 - (1) Frequencies of monitoring and assessment based on a patient's medical condition and risks associated with the specific restraint or seclusion;
 - (2) For the renewal of an order for restraint or seclusion, whether an assessment is required before the order is renewed and, if an assessment is required, who may conduct the assessment;
 - (3) Assessment content, which may include, depending on a patient's condition, the patient's vital signs, respiration, circulation, hydration needs, elimination needs, level of distress and agitation, mental status, cognitive functioning, neurological functioning, and skin integrity;
 - (4) If a mechanical restraint is used, how often the mechanical restraint is loosened; and
 - (5) A process for meeting a patient's nutritional needs and elimination needs;
 - c. Establish the criteria and procedures for renewing an order for restraint or seclusion;
 - d. Establish procedures for internal review of the use of restraint or seclusion; and
 - e. Establish medical record and personnel record documentation requirements for restraint and seclusion, if applicable;
- 2. An order for restraint or seclusion is:
 - a. Obtained from a physician or registered nurse practitioner, and
 - b. Not written as a standing order or on an as-needed basis;
- 3. Restraint or seclusion is:
 - a. Not used as a means of coercion, discipline, convenience, or retaliation;

- b. Only used when all of the following conditions are met:
 - i. Except as provided in subsection (C)(4), after obtaining an order for the restraint or seclusion;
 - ii. For the management of a patient's aggressive, violent, or self-destructive behavior;
 - iii. When less restrictive interventions have been determined to be ineffective; and
 - iv. To ensure the immediate physical safety of the patient, to prevent imminent harm to the patient or another individual, or to stop physical harm to another individual; and
- c. Discontinued at the earliest possible time;
- 4. If as a result of a patient's aggressive, violent, or self-destructive behavior, harm to the patient or another individual is imminent or the patient or another individual is being physically harmed, a personnel member:
 - a. May initiate an emergency application of restraint or seclusion for the patient before obtaining an order for the restraint or seclusion, and
 - b. Obtains an order for the restraint or seclusion of the patient during the emergency application of the restraint or seclusion;
- 5. An order for restraint or seclusion includes:
 - a. The name of the physician or registered nurse practitioner ordering the restraint or seclusion;
 - b. The date and time that the restraint or seclusion was ordered;
 - c. The specific restraint or seclusion ordered;
 - d. If a drug is ordered as a chemical restraint, the drug's name, strength, dosage, and route of administration;
 - e. The specific criteria for release from restraint or seclusion without an additional order; and
 - f. The maximum duration authorized for the restraint or seclusion;
- 6. An order for restraint or seclusion is limited to the duration of the emergency situation and does not exceed three continuous hours;
- 7. If an order for restraint or seclusion of a patient is not provided by the patient's attending physician, the patient's attending physician is notified as soon as possible;

8. A medical practitioner or personnel member does not participate in restraint or seclusion, assess or monitor a patient during restraint or seclusion, or evaluate a patient after restraint or seclusion, and a physician or registered nurse practitioner does not order restraint or seclusion, until the medical practitioner or personnel member, completes education and training that:
 - a. Includes:
 - i. Techniques to identify medical practitioner, personnel member, and patient behaviors, events, and environmental factors that may trigger circumstances that require restraint or seclusion;
 - ii. The use of nonphysical intervention skills, such as de-escalation, mediation, conflict resolution, active listening, and verbal and observational methods;
 - iii. Techniques for identifying the least restrictive intervention based on an assessment of the patient's medical or behavioral health condition;
 - iv. The safe use of restraint and the safe use of seclusion, including training in how to recognize and respond to signs of physical and psychological distress in a patient who is restrained or secluded;
 - v. Clinical identification of specific behavioral changes that indicate that the restraint or seclusion is no longer necessary;
 - vi. Monitoring and assessing a patient while the patient is in restraint or seclusion according to policies and procedures; and
 - vii. Except for the medical practitioner, training exercises in which the personnel member successfully demonstrates the techniques that the medical practitioner or personnel member has learned for managing emergency situations; and
 - b. Is provided by individuals qualified according to policies and procedures;
9. When a patient is placed in restraint or seclusion:
 - a. The restraint or seclusion is conducted according to policies and procedures;
 - b. The restraint or seclusion is proportionate and appropriate to the severity of the patient's behavior and the patient's:
 - i. Chronological and developmental age;
 - ii. Size;
 - iii. Gender;

- iv. Physical condition;
 - v. Medical condition;
 - vi. Psychiatric condition; and
 - vii. Personal history, including any history of physical or sexual abuse;
- c. The physician or registered nurse practitioner who ordered the restraint or seclusion is available for consultation throughout the duration of the restraint or seclusion;
 - d. The patient is monitored and assessed according to policies and procedures;
 - e. A physician or registered nurse assesses the patient within one hour after the patient is placed in the restraint or seclusion and determines:
 - i. The patient's current behavior,
 - ii. The patient's reaction to the restraint or seclusion used,
 - iii. The patient's medical and behavioral condition, and
 - iv. Whether to continue or terminate the restraint or seclusion;
 - f. The patient is given the opportunity:
 - i. To eat during mealtime, and
 - ii. To use the toilet; and
 - g. The restraint or seclusion is discontinued at the earliest possible time, regardless of the length of time identified in the order;
10. A medical practitioner or personnel member documents the following information in a patient's medical record before the end of the shift in which the patient is placed in restraint or seclusion or, if the patient's restraint or seclusion does not end during the shift in which it began, during the shift in which the patient's restraint or seclusion ends:
- a. The emergency situation that required the patient to be restrained or put in seclusion;
 - b. The times the patient's restraint or seclusion actually began and ended;
 - c. The time of the assessment required in subsection (C)(9)(e);
 - d. The monitoring required in subsection (C)(9)(d);
 - e. The names of the medical practitioners and personnel members with direct patient contact while the patient was in the restraint or seclusion;
 - f. The times the patient was given the opportunity to eat or use the toilet according to subsection (C)(9)(f); and
 - g. The patient evaluation required in subsection (C)(12);

11. If an emergency situation continues beyond the time limit of an order for restraint or seclusion, the order is renewed according to policies and procedures that include:
 - a. The specific criteria for release from restraint or seclusion without an additional order, and
 - b. The maximum duration authorized for the restraint or seclusion; and
12. A patient is evaluated after restraint or seclusion is no longer being used for the patient.

R9-10-321. Food Services

A. An administrator shall ensure that:

1. The behavioral health inpatient facility obtains a license or permit as a food establishment under 9 A.A.C. 8, Article 1;
2. A copy of the behavioral health inpatient facility's food establishment license or permit is maintained;
3. If a behavioral health inpatient facility contracts with a food establishment, as established in 9 A.A.C. 8, Article 1, to prepare and deliver food to the behavioral health inpatient facility:
 - a. A copy of the contracted food establishment's license or permit under 9 A.A.C. 8, Article 1 is maintained by the behavioral health inpatient facility; and
 - b. The behavioral health inpatient facility is able to store, refrigerate, and reheat food to meet the dietary needs of a patient;
4. A registered dietitian is employed full-time, part-time, or as a consultant; and
5. If a registered dietitian is not employed full-time, an individual is designated as a director of food services who consults with a registered dietitian as often as necessary to meet the nutritional needs of the patients.

B. A registered dietitian or director of food services shall ensure that:

1. A food menu:
 - a. Is prepared at least one week in advance,
 - b. Includes the foods to be served each day,
 - c. Is conspicuously posted at least one calendar day before the first meal on the food menu will be served,
 - d. Includes any food substitution no later than the morning of the day of meal service with a food substitution, and
 - e. Is maintained for at least 60 calendar days after the last day included in the food menu;

2. Meals and snacks provided by the behavioral health inpatient facility are served according to posted menus;
 3. Meals and snacks for each day are planned using:
 - a. The applicable guidelines in <http://www.health.gov/dietaryguidelines/2010.asp> <http://www.health.gov/dietaryguidelines/2015>, and
 - b. Preferences for meals and snacks obtained from patients;
 4. A patient is provided:
 - a. A diet that meets the patient's nutritional needs as specified in the patient's assessment or treatment plan;
 - b. Three meals a day with not more than 14 hours between the evening meal and breakfast except as provided in subsection (B)(4)(d);
 - c. The option to have a daily evening snack identified in subsection (B)(4)(d)(ii) or other snack; and
 - d. The option to extend the time span between the evening meal and breakfast from 14 hours to 16 hours if:
 - i. A patient group agrees; and
 - ii. The patient is offered an evening snack that includes meat, fish, eggs, cheese, or other protein, and a serving from either the fruit and vegetable food group or the bread and cereal food group;
 5. A patient requiring assistance to eat is provided with assistance that recognizes the patient's nutritional, physical, and social needs, including the use of adaptive eating equipment or utensils; and
 6. Water is available and accessible to patients.
- C. An administrator shall ensure that food is obtained, prepared, served, and stored as follows:
1. Food is free from spoilage, filth, or other contamination and is safe for human consumption;
 2. Food is protected from potential contamination;
 3. Food is prepared:
 - a. Using methods that conserve nutritional value, flavor, and appearance; and
 - b. In a form to meet the needs of a patient such as cut, chopped, ground, pureed, or thickened;
 4. Potentially hazardous food is maintained as follows:
 - a. Foods requiring refrigeration are maintained at 41° F or below; and

- b. Foods requiring cooking are cooked to heat all parts of the food to a temperature of at least 145° F for 15 seconds, except that:
 - i. Ground beef and ground meats are cooked to heat all parts of the food to at least 155° F;
 - ii. Poultry, poultry stuffing, stuffed meats, and stuffing that contains meat are cooked to heat all parts of the food to at least 165° F;
 - iii. Pork and any food containing pork are cooked to heat all parts of the food to at least 155° F;
 - iv. Raw shell eggs for immediate consumption are cooked to at least 145° F for 15 seconds and any food containing raw shell eggs is cooked to heat all parts of the food to at least 155° F;
 - v. Roast beef and beef steak are cooked to an internal temperature of at least 155° F; and
 - vi. Leftovers are reheated to a temperature of at least 165° F;
- 5. A refrigerator contains a thermometer, accurate to plus or minus 3° F, placed at the warmest part of the refrigerator;
- 6. Frozen foods are stored at a temperature of 0° F or below; and
- 7. Tableware, utensils, equipment, and food-contact surfaces are clean and in good repair.

R9-10-324. Physical Plant Standards

- A. An administrator shall ensure that the premises and equipment are sufficient to accommodate:
 - 1. The services stated in the behavioral health inpatient facility's scope of services, and
 - 2. An individual accepted as a patient by the behavioral health inpatient facility.
- B. An administrator shall ensure that:
 - 1. A behavioral health inpatient facility has a:
 - a. Waiting area with seating for patients and visitors;
 - b. Room that provides privacy for a patient to receive treatment or visitors; and
 - c. Common area and a dining area that:
 - i. Are not converted, partitioned, or otherwise used as a sleeping area; and
 - ii. Contain furniture and materials to accommodate the recreational and socialization needs of the patients and other individuals in the behavioral health inpatient facility;
 - 2. A bathroom is available for use by visitors during the behavioral health inpatient facility's hours of operation and:

- a. Provides privacy; and
 - b. Contains:
 - i. A working sink with running water,
 - ii. A working toilet that flushes and has a seat,
 - iii. Toilet tissue,
 - iv. Soap for hand washing,
 - v. Paper towels or a mechanical air hand dryer,
 - vi. Lighting, and
 - vii. A window that opens or another means of ventilation;
3. For every six patients, there is at least one working toilet that flushes and has a seat and one sink with running water;
4. For every eight patients, there is at least one working bathtub or shower with a slip-resistant surface;
5. A patient bathroom complies with the following:
- a. Provides privacy when in use;
 - b. Contains:
 - i. A shatterproof mirror, unless the patient's treatment plan requires otherwise;
 - ii. A window that opens or another means of ventilation; and
 - iii. Nonporous surfaces for shower enclosures and slip-resistant surfaces in tubs and showers;
 - c. Has plumbing, piping, ductwork, or other potentially hazardous elements concealed above a ceiling;
 - d. If the bathroom or shower area has a door, the door swings outward to allow for staff emergency access;
 - e. If grab bars for the toilet and tub or shower or other assistive devices are identified in the patient's treatment plan, has grab bars or other assistive devices to provide for patient safety;
 - f. If a grab bar is provided, has the space between the grab bar and the wall filled to prevent a cord being tied around the grab bar;
 - g. Does not contain a towel bar, a shower curtain rod, or a lever handle that is not a specifically designed anti-ligature lever handle;
 - h. Has tamper-resistant lighting fixtures, sprinkler heads, and electrical outlets; and

- i. For a bathroom with a sprinkler head where a patient is not supervised while the patient is in the bathroom, has a sprinkler head that is recessed or designed to minimize patient access;
- 6. If a patient bathroom door locks from the inside, an employee has a key and access to the bathroom;
- 7. Each patient is provided a bedroom for sleeping;
- 8. A patient bedroom complies with the following:
 - a. Is not used as a common area;
 - b. Is not used as a passageway to another bedroom or bathroom unless the bathroom is for the exclusive use of ~~the~~ a patient occupying the bedroom;
 - c. Contains a door that opens into a hallway, common area, or outdoors and, except as provided in subsection (E), another means of egress;
 - d. Is constructed and furnished to provide unimpeded access to the door;
 - e. Has window or door covers that provide patient privacy;
 - f. Has floor to ceiling walls:
 - g. Is a:
 - i. Private bedroom that contains at least 60 square feet of floor space, not including the closet; or
 - ii. Shared bedroom that:
 - (1) Is shared by no more than four patients;
 - (2) Contains, except as provided in subsection (B)(9), at least 60 square feet of floor space, not including a closet, for each patient occupying the bedroom; and
 - (3) Provides sufficient space between beds to ensure that a patient has unobstructed access to the bedroom door;
 - h. Contains for each patient occupying the bedroom:
 - i. A bed that is: at least 36 inches wide and at least 72 inches long, and consists of at least a frame and mattress and linens that is not a threat to health and safety; and
 - ii. Individual storage space for personal effects and clothing such as shelves, a dresser, or chest of drawers;

- i. Has clean linen for each bed including mattress pad, sheets large enough to tuck under the mattress, pillows, pillow cases, bedspread, waterproof mattress covers as needed, and blankets to ensure warmth and comfort for each patient;
 - j. Has sufficient lighting for a patient occupying the bedroom to read; and
 - k. If applicable, has a drawer pull that is recessed to eliminate the possibility of use as a tie-off point;
 - 9. If a behavioral health inpatient facility licensed before November 1, 2003 was approved for 50 square feet of floor space for each patient in a bedroom, ensure that the bedroom contains at least 50 square feet for each patient not including the closet;
 - 10. In a patient bathroom or a patient bedroom:
 - a. The ceiling is secured from access or at least 9 feet in height; and
 - b. A ventilation grille is:
 - i. Secured and has perforations that are too small to use as a tie-off point, or
 - ii. Of sufficient height to prevent patient access;
 - 11. For a door located in an area of the behavioral health inpatient facility that is accessible to patients:
 - a. A door closing device, if used on a patient bedroom door, is mounted on the public side of the door;
 - b. A door's hinges are designed to minimize points for hanging;
 - c. Except for a door lever handle that contains specifically designed anti-ligature hardware, a door lever handle points downward when in the latched or unlatched position; and
 - d. Hardware has tamper-resistant fasteners; and
 - 12. A window located in an area of the behavioral health inpatient facility that is accessible to patients is fabricated with laminated safety glass or protected by polycarbonate, laminate, or safety screens.
- C. An administrator of a licensed behavioral health inpatient facility may submit a request, in a Department-provided format, for additional time to comply with a physical plant requirement in subsection (B)(5)(c) through (B)(5)(i), (B)(10), (B)(11), or (B)(12) that includes:
- 1. The rule citation for the specific plant requirement,
 - 2. The current physical plant condition that does not comply with the physical plant requirement,

3. How the current physical plant condition will be changed to comply with the physical plant requirement,
 4. Estimated completion date of the identified physical plant change, and
 5. Specific actions taken to ensure the health and safety of a patient until the physical plant requirement is met.
- D.** When the Department receives a request for additional time to comply with a physical plant requirement in subsection (B)(5)(c) through (B)(5)(i), (B)(10), (B)(11), or (B)(12) submitted according to subsection (C), the Department may approve the request for up to 24 months after the effective date of these rules based on:
1. The behavioral health inpatient facility's scope of services,
 2. The expected patient acuity based on the behavioral health inpatient facility's scope of services,
 3. The specific physical plant requirement in the request, and
 4. The threat to patients' health and safety.
- E.** A bedroom in a behavioral health inpatient facility is not required to have a second means of egress if:
1. An administrator ensures that policies and procedures are established, documented, and implemented that provide for the safe evacuation of a patient in the bedroom based on the patient's physical and mental limitations and the location of the bedroom; or
 2. The building where the bedroom is located has a fire alarm system and a sprinkler system required in R9-10-322(A)(1).
- F.** If a swimming pool is located on the premises, an administrator shall ensure that:
1. The swimming pool is enclosed by a wall or fence that:
 - a. Is at least five feet in height as measured on the exterior of the wall or fence;
 - b. Has no vertical openings greater than four inches across;
 - c. Has no horizontal openings, except as described in subsection (F)(1)(e);
 - d. Is not chain-link;
 - e. Does not have a space between the ground and the bottom fence rail that exceeds four inches in height; and
 - f. Has a self-closing, self-latching gate that:
 - i. Opens away from the swimming pool,
 - ii. Has a latch located at least 54 inches from the ground, and
 - iii. Is locked when the swimming pool is not in use; and

2. A life preserver or shepherd's crook is available and accessible in the pool area.
- G.** An administrator shall ensure that a spa that is not enclosed by a wall or fence as described in subsection (F)(1) is covered and locked when not in use.

ARTICLE 4. NURSING CARE INSTITUTIONS

R9-10-401. Definitions

In addition to the definitions in A.R.S. § 36-401 and R9-10-101, the following definitions apply in this Article unless otherwise specified:

1. “Administrator” has the same meaning as in A.R.S. § 36-446.
2. “Care plan” means a documented description of physical health services and behavioral health services expected to be provided to a resident, based on the resident's comprehensive assessment, that includes measurable objectives and the methods for meeting the objectives.
3. “Direct care” means medical services, nursing services, or social services provided to a resident.
4. “Director of nursing” means an individual who is responsible for the nursing services provided in a nursing care institution.
5. ~~“Full-time” means 40 hours or more every consecutive seven calendar days.~~
- 6.5. “Highest practicable” means a resident’s optimal level of functioning and well-being based on the resident's current functional status and potential for improvement as determined by the resident's comprehensive assessment.
7. ~~“Interdisciplinary team” means a group of individuals consisting of a resident’s attending physician, a registered nurse responsible for the resident, and other individuals as determined in the resident’s comprehensive assessment.~~
- 8.6. “Intermittent” means not on a regular basis.
- 9.7. “Nursing care institution services” means medical services, nursing services, behavioral care, health-related services, ancillary services, social services, and environmental services provided to a resident.
- 10.8. “Resident group” means residents or residents’ family members who:
 - a. Plan and participate in resident activities, or
 - b. Meet to discuss nursing care institution issues and policies.
- 11.9. “Secured” means the use of a method, device, or structure that:
 - a. Prevents a resident from leaving an area of the nursing care institution's premises, or
 - b. Alerts a personnel member of a resident's departure from the nursing care institution.

- ~~12~~10. “Social services” means assistance provided to or activities provided for a resident to maintain or improve the resident’s physical, mental, and psychosocial capabilities.
- ~~13~~11. “Total health condition” means a resident's overall physical and psychosocial well-being as determined by the resident's comprehensive assessment.
- ~~14~~12. “Unnecessary drug” means a medication that is not required because:
- a. There is no documented indication for a resident’s use of the medication;
 - b. The medication is duplicative;
 - c. The medication is administered before determining whether the resident requires the medication; or
 - d. The resident has experienced an adverse reaction from the medication, indicating that the medication should be reduced or discontinued.
- ~~15~~13. “Ventilator” means a device designed to provide, to a resident who is physically unable to breathe or who is breathing insufficiently, the mechanism of breathing by mechanically moving breathable air into and out of the resident’s lungs.

R9-10-402. Supplemental Application Requirements

In addition to the license application requirements in A.R.S. § 36-422 and R9-10-105, an applicant for ~~an~~ ~~initial~~ a license as a nursing care institution shall include:

1. In a Department-provided format whether the applicant:
 - a. Has:
 - i. A secured area for a resident with Alzheimer’s disease or other dementia, or
 - ii. An area for a resident on a ventilator;
 - b. Is requesting authorization to provide to a resident:
 - i. Behavioral health services,
 - ii. Clinical laboratory services,
 - iii. Dialysis services, or
 - iv. Radiology services and diagnostic imaging services; and
 - c. Is requesting authorization to operate a nutrition and feeding assistant training program; and
2. If the governing authority is requesting authorization to operate a nutrition and feeding assistant training program, the information in R9-10-116(B)(1)(a), (B)(1)(c), and (B)(2).

R9-10-403. Administration

A. A governing authority shall:

1. Consist of one or more individuals responsible for the organization, operation, and

administration of a nursing care institution;

2. Establish, in writing, the nursing care institution's scope of services;
3. Designate, in writing, a nursing care institution administrator licensed according to A.R.S. Title 36, Chapter 4, Article 6;
4. Adopt a quality management program according to R9-10-404;
5. Review and evaluate the effectiveness of the quality management program at least once every 12 months;
6. Designate, in writing, an acting administrator licensed according to A.R.S. § Title 36, Chapter 4, Article 6, if the administrator is:
 - a. Expected not to be present on the nursing care institution's premises for more than 30 calendar days, or
 - b. Not present on the nursing care institution's premises for more than 30 calendar days; and
7. Except as permitted in subsection (A)(6), when there is a change of administrator, notify the Department according to A.R.S. § 36-425(I) and submit a copy of the new administrator's license under A.R.S. Title 36, Chapter 4, Article 6 to the Department.

B. An administrator:

1. Is directly accountable to the governing authority of a nursing care institution for the daily operation of the nursing care institution and all services provided by or at the nursing care institution;
2. Has the authority and responsibility to manage the nursing care institution;
3. Except as provided in subsection (A)(6), designates, in writing, an individual who is present on the nursing care institution's premises and accountable for the nursing care institution when the administrator is not present on the nursing care institution's premises;
4. Ensures the nursing care institution's compliance with A.R.S. § 36-411; and
5. If the nursing care institution provides feeding and nutrition assistant training, ensures the nursing care institution complies with the requirements for the operation of a feeding and nutrition assistant training program in R9-10-116.

C. An administrator shall ensure that:

1. Policies and procedures are established, documented, and implemented to protect the health and safety of a resident that:
 - a. Cover job descriptions, duties, and qualifications, including required skills, knowledge, education, and experience for personnel members, employees,

- volunteers, and students;
 - b. Cover orientation and in-service education for personnel members, employees, volunteers, and students;
 - c. Include how a personnel member may submit a complaint relating to resident care;
 - d. Cover the requirements in A.R.S. Title 36, Chapter 4, Article 11;
 - e. Cover cardiopulmonary resuscitation training including:
 - i. Which personnel members are required to obtain cardiopulmonary resuscitation training,
 - ii. The method and content of cardiopulmonary resuscitation training,
 - iii. The qualifications for an individual to provide cardiopulmonary resuscitation training,
 - iv. The time-frame for renewal of cardiopulmonary resuscitation training, and
 - v. The documentation that verifies an individual has received cardiopulmonary resuscitation training;
 - f. Cover first aid training;
 - g. Include a method to identify a resident to ensure the resident receives physical health services and behavioral health services as ordered;
 - h. Cover resident rights, including assisting a resident who does not speak English or who has a disability to become aware of resident rights;
 - i. Cover specific steps for:
 - i. A resident to file a complaint, and
 - ii. The nursing care institution to respond to a resident's complaint;
 - j. Cover health care directives;
 - k. Cover medical records, including electronic medical records;
 - l. Cover a quality management program, including incident reports and supporting documentation;
 - m. Cover contracted services;
 - n. Cover resident's personal accounts;
 - o. Cover petty cash funds;
 - p. Cover fees and refund policies;
 - q. Cover misappropriation of resident property; and
 - r. Cover when an individual may visit a resident in a nursing care institution; and
2. Policies and procedures for physical health services and behavioral health services are

established, documented, and implemented to protect the health and safety of a resident that:

- a. Cover resident screening, admission, transport, transfer, discharge planning, and discharge;
 - b. Cover the provision of physical health services and behavioral health services;
 - c. Include when general consent and informed consent are required;
 - d. Cover storing, dispensing, administering, and disposing of medication;
 - e. Cover infection control;
 - f. Cover how personnel members will respond to a resident's sudden, intense, or out-of-control behavior to prevent harm to the resident or another individual;
 - g. Cover telemedicine, if applicable; and
 - h. Cover environmental services that affect resident care;
3. Policies and procedures are reviewed at least once every three years and updated as needed;
 4. Policies and procedures are available to personnel members, employees, volunteers, and students; and
 5. Unless otherwise stated:
 - a. Documentation required by this Article is provided to the Department within two hours after a Department request; and
 - b. When documentation or information is required by this Chapter to be submitted on behalf of a nursing care institution, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the nursing care institution.
- D.** Except for health screening services, an administrator shall ensure that medical services, nursing services, health-related services, behavioral health services, or ancillary services provided by a nursing care institution are only provided to a resident.
- E.** If abuse, neglect, or exploitation of a resident is alleged or suspected to have occurred before the resident was admitted or while the resident is not on the premises and not receiving services from a nursing care institution's employee or personnel member, an administrator shall report the alleged or suspected abuse, neglect, or exploitation of the resident as follows:
1. For a resident 18 years of age or older, according to A.R.S. § 46-454; or
 2. For a resident under 18 years of age, according to A.R.S. § 13-3620;
- F.** If an administrator has a reasonable basis, according to A.R.S. § 13-3620 or 46-454, to believe that abuse, neglect, or exploitation has occurred on the premises or while a resident is receiving

services from a nursing care institution's employee or personnel member, an administrator shall:

1. If applicable, take immediate action to stop the suspected abuse, neglect, or exploitation;
2. Report the suspected abuse, neglect, or exploitation of the resident as follows:
 - a. For a resident 18 years of age or older, according to A.R.S. § 46-454; or
 - b. For a resident under 18 years of age, according to A.R.S. § 13-3620;
3. Document:
 - a. The suspected abuse, neglect, or exploitation;
 - b. Any action taken according to subsection (F)(1); and
 - c. The report in subsection (F)(2);
4. Maintain the documentation in subsection (F)(3) for at least 12 months after the date of the report in subsection (F)(2);
5. Initiate an investigation of the suspected abuse, neglect, or exploitation and document the following information within five working days after the report required in subsection (F)(2):
 - a. The dates, times, and description of the suspected abuse, neglect, or exploitation;
 - b. A description of any injury to the resident related to the suspected abuse or neglect and any change to the resident's physical, cognitive, functional, or emotional condition;
 - c. The names of witnesses to the suspected abuse, neglect, or exploitation; and
 - d. The actions taken by the administrator to prevent the suspected abuse, neglect, or exploitation from occurring in the future; and
6. Maintain a copy of the documented information required in subsection (F)(5) and any other information obtained during the investigation for at least 12 months after the date the investigation was initiated.

G. An administrator shall:

1. Allow a resident advocate to assist a resident, the resident's representative, or a resident group with a request or recommendation, and document in writing any complaint submitted to the nursing care institution;
2. Ensure that a monthly schedule of recreational activities for residents is developed, documented, and implemented; and
3. Ensure that the following are conspicuously posted on the premises:
 - a. The current nursing care institution license and quality rating issued by the Department;

- b. The name, address, and telephone number of:
 - i. The Department's Office of Long Term Care,
 - ii. The State Long-Term Care Ombudsman Program, and
 - iii. Adult Protective Services of the Department of Economic Security;
- c. A notice that a resident may file a complaint with the Department concerning the nursing care institution;
- d. The monthly schedule of recreational activities; and
- e. One of the following:
 - i. A copy of the current license survey report with information identifying residents redacted, any subsequent reports issued by the Department, and any plan of correction that is in effect; or
 - ii. A notice that the current license survey report with information identifying residents redacted, any subsequent reports issued by the Department, and any plan of correction that is in effect are available for review upon request.

H. An administrator shall provide written notification to the Department of a resident's:

- 1. Death, if the resident's death is required to be reported according to A.R.S. § 11-593, within one working day after the resident's death; and
- 2. Self-injury, within two working days after the resident inflicts a self-injury that requires immediate intervention by an emergency medical services provider.

I. If an administrator administers a resident's personal account at the request of the resident or the resident's representative, the administrator shall:

- 1. Comply with policies and procedures established according to subsection (C)(1)(n);
- 2. Designate a personnel member who is responsible for the personal accounts;
- 3. Maintain a complete and separate accounting of each personal account;
- 4. Obtain written authorization from the resident or the resident's representative for a personal account transaction;
- 5. Document an account transaction and provide a copy of the documentation to the resident or the resident's representative upon request and at least every three months;
- 6. Transfer all money from the resident's personal account in excess of \$50.00 to an interest-bearing account and credit the interest to the resident's personal account; and
- 7. Within 30 calendar days after the resident's death, transfer, or discharge, return all money in the resident's personal account and a final accounting to the resident, the resident's

representative, or the probate jurisdiction administering the resident's estate.

J. If a petty cash fund is established for use by residents, the administrator shall ensure that:

1. The policies and procedures established according to subsection (C)(1)(o) include:
 - a. A prescribed cash limit of the petty cash fund, and
 - b. The hours of the day a resident may access the petty cash fund; and
2. A resident's written acknowledgment is obtained for a petty cash transaction.

R9-10-408. Transfer; Discharge

A. An administrator shall ensure that:

1. A resident is transferred or discharged if:
 - a. The nursing care institution is not authorized or not able to meet the needs of the resident, or
 - b. The resident's behavior is a threat to the health or safety of the resident or other individuals at the nursing care institution; and
2. Documentation of a resident's transfer or discharge includes:
 - a. The date of the transfer or discharge;
 - b. The reason for the transfer or discharge;
 - c. A 30-day written notice except:
 - i. In an emergency, or
 - ii. If the resident no longer requires nursing care institution services as determined by a physician or the physician's designee;
 - d. A notation by a physician or the physician's designee if the transfer or discharge is due to any of the reasons listed in subsection (A)(1); and
 - e. If applicable, actions taken by a personnel member to protect the resident or other individuals if the resident's behavior is a threat to the health and safety of the resident or other individuals in the nursing care institution.

B. An administrator may transfer or discharge a resident for failure to pay for residency if:

1. The resident or resident's representative receives a 30-day written notice of transfer or discharge, and
2. The 30-day written notice includes an explanation of the resident's right to appeal the transfer or discharge.

C. Except for a transfer of a resident due to an emergency, an administrator shall ensure that:

1. A personnel member coordinates the transfer and the services provided to the resident;
2. According to policies and procedures;

- a. An evaluation of the resident is conducted before the transfer;
 - b. Information from the resident's medical record, including orders that are in effect at the time of the transfer, is provided to a receiving health care institution; and
 - c. A personnel member explains risks and benefits of the transfer to the resident or the resident's representative; and
3. Documentation in the resident's medical record includes:
- a. Communication with an individual at a receiving health care institution;
 - b. The date and time of the transfer;
 - c. The mode of transportation; and
 - d. If applicable, the name of the personnel member accompanying the resident during a transfer.

C.D. Except in an emergency, a director of nursing shall ensure that before a resident is discharged:

- 1. Written follow-up instructions are developed with the resident or the resident's representative that includes:
 - a. Information necessary to meet the resident's need for medical services and nursing services; and
 - b. The state long-term care ombudsman's name, address, and telephone number;
- 2. A copy of the written follow-up instructions is provided to the resident or the resident's representative; and
- 3. A discharge summary is developed by a personnel member and authenticated by the resident's attending physician or designee and includes:
 - a. The resident's medical condition at the time of transfer or discharge,
 - b. The resident's medical and psychosocial history,
 - c. The date of the transfer or discharge, and
 - d. The location of the resident after discharge.

R9-10-409. Transport; ~~Transfer~~

A. Except as provided in subsection (B), an administrator shall ensure that:

- 1. A personnel member coordinates the transport and the services provided to the resident;
- 2. According to policies and procedures:
 - a. An evaluation of the resident is conducted before and after the transport,
 - b. Information from the resident's medical record is provided to a receiving health care institution, and

- c. A personnel member explains risks and benefits of the transport to the resident or the resident's representative; and
 - 3. Documentation in the resident's medical record includes:
 - a. Communication with an individual at a receiving health care institution;
 - b. The date and time of the transport;
 - c. The mode of transportation; and
 - d. If applicable, the name of the personnel member accompanying the resident during a transport.
- B.** Subsection (A) does not apply to:
 - 1. Transportation to a location other than a licensed health care institution,
 - 2. Transportation provided for a resident by the resident or the resident's representative,
 - 3. Transportation provided by an outside entity that was arranged for a resident by the resident or the resident's representative, or
 - 4. A transport to another licensed health care institution in an emergency.
- C.** ~~Except for a transfer of a resident due to an emergency, an administrator shall ensure that:~~
 - ~~1. A personnel member coordinates the transfer and the services provided to the resident;~~
 - ~~2. According to policies and procedures:~~
 - ~~a. An evaluation of the resident is conducted before the transfer;~~
 - ~~b. Information from the resident's medical record, including orders that are in effect at the time of the transfer, is provided to a receiving health care institution; and~~
 - ~~e. A personnel member explains risks and benefits of the transfer to the resident or the resident's representative; and~~
 - ~~3. Documentation in the resident's medical record includes:~~
 - ~~a. Communication with an individual at a receiving health care institution;~~
 - ~~b. The date and time of the transfer;~~
 - ~~e. The mode of transportation; and~~
 - ~~d. If applicable, the name of the personnel member accompanying the resident during a transfer.~~

R9-10-412. Nursing Services

- A.** An administrator shall ensure that:
 - 1. Nursing services are provided 24 hours a day in a nursing care institution;
 - 2. A director of nursing is appointed who:
 - a. Is a registered nurse,

- b. Works full-time at the nursing care institution, and
- c. Is responsible for the direction of nursing services;
3. The director of nursing or an individual designated by the administrator participates in the quality management program; and
4. If the daily census of the nursing care institution is ~~less than~~ 60 or more, the director of nursing ~~may~~ does not provide direct care to residents on a regular basis.

B. A director of nursing shall ensure that:

1. A method is established and documented that identifies the types and numbers of nursing personnel that are necessary to provide nursing services to residents based on the residents' comprehensive assessments, orders for physical health services and behavioral health services, and care plans and the nursing care institution's scope of services;
2. Sufficient nursing personnel, as determined by the method in subsection (B)(1), are on the nursing care institution premises to meet the needs of a resident for nursing services;
3. At least one nurse is present on the nursing care institution's premises and responsible for providing direct care to not more than 64 residents;
4. Documentation of nursing personnel present on the nursing care institution's premises each day is maintained and includes:
 - a. The date,
 - b. The number of residents,
 - c. The name and license or certification title of each nursing personnel member who worked that day, and
 - d. The actual number of hours each nursing personnel member worked that day;
5. The documentation of nursing personnel required in subsection (B)(4) is maintained for at least 12 months after the date of the documentation;
6. As soon as possible but not more than 24 hours after one of the following events occur, a nurse notifies a resident's attending physician and, if applicable, the resident's representative, if the resident:
 - a. Is injured,
 - b. Is involved in an incident that may require medical services, or
 - c. Has a significant change in condition; and
7. An unnecessary drug is not administered to a resident.

R9-10-414. Comprehensive Assessment; Care Plan

A. A director of nursing shall ensure that:

1. A comprehensive assessment of a resident:
 - a. Is conducted or coordinated by a registered nurse in collaboration with an interdisciplinary team;
 - b. Is completed for the resident within 14 calendar days after the resident's admission to a nursing care institution;
 - c. Is updated:
 - i. No later than 12 months after the date of the resident's last comprehensive assessment, and
 - ii. When the resident experiences a significant change;
 - d. Includes the following information for the resident:
 - i. Identifying information;
 - ii. An evaluation of the resident's hearing, speech, and vision;
 - iii. An evaluation of the resident's ability to understand and recall information;
 - iv. An evaluation of the resident's mental status;
 - v. Whether the resident's mental status or behaviors:
 - (1) Put the resident at risk for physical illness or injury,
 - (2) Significantly interfere with the resident's care,
 - (3) Significantly interfere with the resident's ability to participate in activities or social interactions,
 - (4) Put other residents or personnel members at significant risk for physical injury,
 - (5) Significantly intrude on another resident's privacy, or
 - (6) Significantly disrupt care for another resident;
 - vi. Preferences for customary routine and activities;
 - vii. An evaluation of the resident's ability to perform activities of daily living;
 - viii. Need for a mobility device;
 - ix. An evaluation of the resident's ability to control the resident's bladder and bowels;
 - x. Any diagnosis that impacts nursing care institution services that the resident may require;
 - xi. Any medical conditions that impact the resident's functional status,

- quality of life, or need for nursing care institution services;
 - xii. An evaluation of the resident's ability to maintain adequate nutrition and hydration;
 - xiii. An evaluation of the resident's oral and dental status;
 - xiv. An evaluation of the condition of the resident's skin;
 - xv. Identification of any medication or treatment administered to the resident during a seven-day calendar period that includes the time the comprehensive assessment was conducted;
 - xvi. Identification of any treatment or medication ordered for the resident;
 - ~~xvii. Whether any restraints have been used for the resident during a seven-day calendar period that includes the time the comprehensive assessment was conducted;~~
 - ~~xviii.~~xvii. A description of the resident or resident's representative's participation in the comprehensive assessment;
 - ~~xix.~~xviii. The name and title of the interdisciplinary team members who participated in the resident's comprehensive assessment;
 - ~~xx.~~xix. Potential for rehabilitation; and
 - ~~xxi.~~xx. Potential for discharge; and
- e. Is signed and dated by:
- i. The registered nurse who conducts or coordinates the comprehensive assessment or review; and
 - ii. If a behavioral health professional is required to review according to subsection (A)(2), the behavioral health professional who reviewed the comprehensive assessment or review;
2. If any of the conditions in (A)(1)(d)(v) are answered in the affirmative during the comprehensive assessment or review, a behavioral health professional reviews a resident's comprehensive assessment or review and care plan to ensure that the resident's needs for behavioral health services are being met;
 3. A new comprehensive assessment is not required for a resident who is hospitalized and readmitted to a nursing care institution unless a physician, an individual designated by the physician, or a registered nurse determines the resident has a significant change in condition; and
 4. A resident's comprehensive assessment is reviewed by a registered nurse at least once every

three months after the date of the current comprehensive assessment and if there is a significant change in the resident's condition.

B. An administrator shall ensure that a care plan for a resident:

1. Is developed, documented, and implemented for the resident within seven calendar days after completing the resident's comprehensive assessment required in subsection (A)(1);
2. Is reviewed and revised based on any change to the resident's comprehensive assessment; and
3. Ensures that a resident is provided nursing care institution services that:
 - a. Address any medical condition or behavioral health issue identified in the resident's comprehensive assessment, and
 - b. Assist the resident in maintaining the resident's highest practicable well-being according to the resident's comprehensive assessment.

R9-10-415. Behavioral Health Services

Except for behavioral care, if a nursing care institution is authorized to provide behavioral health services, an administrator shall ensure that:

1. The behavioral health services are provided:
 - a. Under the direction of a behavioral health professional licensed or certified to provide the type of behavioral health services in the nursing care institution's scope of services; and
 - b. In compliance with the requirements:
 - i. For behavioral health paraprofessionals and behavioral health technicians, in R9-10-115; and
 - ii. For an assessment, in R9-10-1011(B); and
2. Except for a psychotropic drug ~~used as a chemical restraint~~ ordered by a medical practitioner for a resident's out-of-control behavior or administered according to an order from a court of competent jurisdiction, informed consent is obtained from a resident or the resident's representative for a psychotropic drug and documented in the resident's medical record before the psychotropic drug is administered to the resident.

R9-10-418. Radiology Services and Diagnostic Imaging Services

If radiology services or diagnostic imaging services are authorized to be provided on a nursing care institution's premises, an administrator shall ensure that:

1. Radiology services and diagnostic imaging services are provided in compliance with A.R.S. Title 30, Chapter 4 and ~~12 A.A.C. 1~~ 9 A.A.C. 7;
2. A copy of a certificate documenting compliance with subsection (1) is maintained by the

- nursing care institution;
3. When needed by a resident, radiology services and diagnostic imaging services delineated in the nursing care institution's scope of services are provided on the nursing care institution's premises;
 4. Radiology services and diagnostic imaging services are provided:
 - a. Under the direction of a physician; and
 - b. According to an order that includes:
 - i. The resident's name,
 - ii. The name of the ordering individual,
 - iii. The radiological or diagnostic imaging procedure ordered, and
 - iv. The reason for the procedure;
 5. A medical director, attending physician, or radiologist interprets the radiologic or diagnostic image;
 6. A radiologic or diagnostic imaging report is prepared that includes:
 - a. The resident's name;
 - b. The date of the procedure;
 - c. A medical director, attending physician, or radiologist's interpretation of the image;
 - d. The type and amount of radiopharmaceutical used, if applicable; and
 - e. The resident's adverse reaction to the radiopharmaceutical, if any; and
 7. A radiologic or diagnostic imaging report is included in the resident's medical record.

R9-10-425. Environmental Standards

- A.** An administrator shall ensure that:
1. A nursing care institution's premises and equipment are:
 - a. Cleaned and disinfected according to policies and procedures or manufacturer's instructions to prevent, minimize, and control illness and infection; and
 - b. Free from a condition or situation that may cause a resident or an individual to suffer physical injury;
 2. A pest control program that complies with A.A.C. R3-8-201(C)(4) is implemented and documented;
 3. Equipment used to provide direct care is:
 - a. Maintained in working order;
 - b. Tested and calibrated according to the manufacturer's recommendations or, if

- there are no manufacturer's recommendations, as specified in policies and procedures; and
- c. Used according to the manufacturer's recommendations;
4. Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of the testing, calibration, or repair;
 5. Garbage and refuse are:
 - a. In areas used for food storage, food preparation, or food service, stored in a covered container lined with a plastic bag;
 - b. In areas not used for food storage, food preparation, or food service, stored:
 - i. According to the requirements in subsection ~~(5)(a)~~ (A)(5)(a), or
 - ii. In a paper-lined or plastic-lined container that is cleaned and sanitized as often as necessary to ensure that the container is clean; and
 - c. Removed from the premises at least once a week;
 6. Heating and cooling systems maintain the nursing care institution at a temperature between 70° F and 84° F;
 7. Common areas:
 - a. Are lighted to assure the safety of residents, and
 - b. Have lighting sufficient to allow personnel members to monitor resident activity;
 8. The supply of hot and cold water is sufficient to meet the personal hygiene needs of residents and the cleaning and sanitation requirements in this Article;
 9. Linens are clean before use, without holes and stains, and not in need of repair;
 10. Oxygen containers are secured in an upright position;
 11. Poisonous or toxic materials stored by the nursing care institution are maintained in labeled containers in a locked area separate from food preparation and storage, dining areas, and medications and are inaccessible to residents;
 12. Combustible or flammable liquids stored by the nursing care institution are stored in the original labeled containers or safety containers in a locked area inaccessible to residents;
 13. If pets or animals are allowed in the nursing care institution, pets or animals are:
 - a. Controlled to prevent endangering the residents and to maintain sanitation;
 - b. Licensed consistent with local ordinances; and
 - c. For a dog or cat, vaccinated against rabies;
 14. If a water source that is not regulated under 18 A.A.C. 4 by the Arizona Department of Environmental Quality is used:

- a. The water source is tested at least once every 12 months for total coliform bacteria and fecal coliform or ~~E. coli~~ E. coli bacteria;
 - b. If necessary, corrective action is taken to ensure the water is safe to drink; and
 - c. Documentation of testing is retained for at least 12 months after the date of the test; and
- 15. If a non-municipal sewage system is used, the sewage system is in working order and is maintained according to all applicable state laws and rules.
- B.** An administrator shall ensure that:
 - 1. Smoking tobacco products is not permitted within a nursing care institution, and
 - 2. Smoking tobacco products may be permitted outside a nursing care institution if:
 - a. Signs designating smoking areas are conspicuously posted, and
 - b. Smoking is prohibited in areas where combustible materials are stored or in use.
- C.** If a swimming pool is located on the premises, an administrator shall ensure that:
 - 1. At least one personnel member with cardiopulmonary resuscitation training that meets the requirements in R9-10-403(C)(1)(e) is present in the pool area when a resident is in the pool area, and
 - 2. At least two personnel members are present in the pool area when two or more residents are in the pool area.

R9-10-427. Quality Rating

- A.** As required in A.R.S. § 36-425.02(A), the Department shall issue a quality rating to each licensed nursing care institution based on the results of a compliance ~~survey~~ inspection.
- B.** The following quality ratings are established:
 - 1. A quality rating of “A” for excellent is issued if the nursing care institution achieves a score of 90 to 100 points,
 - 2. A quality rating of “B” is issued if the nursing care institution achieves a score of 80 to 89 points,
 - 3. A quality rating of “C” is issued if the nursing care institution achieves a score of 70 to 79 points, and
 - 4. A quality rating of “D” is issued if the nursing care institution achieves a score of 69 or fewer points.
- C.** The quality rating is determined by the total number of points awarded based on the following criteria:
 - 1. Nursing Services:

- a. 15 points: The nursing care institution is implementing a system that ensures residents are provided nursing services to maintain the resident's highest practicable physical, mental, and psychosocial well-being according to the resident's comprehensive assessment and care plan.
 - b. 5 points: The nursing care institution ensures that each resident is free from medication errors that resulted in actual harm.
 - c. 5 points: The nursing care institution ensures the resident's representative is notified and the resident's attending physician is consulted if a resident has a significant change in condition or if the resident is in an incident that requires medical services.
2. Resident Rights:
- a. 10 points: The nursing care institution is implementing a system that ensures a resident's privacy needs are met.
 - b. 10 points: The nursing care institution ensures that a resident is free from physical and chemical restraints for purposes other than to treat the resident's medical condition.
 - c. 5 points: The nursing care institution ensures that a resident or the resident's representative is allowed to participate in the planning of, or decisions concerning treatment including the right to refuse treatment and to formulate a health care directive.
3. Administration:
- a. 10 points: The nursing care institution has no repeat deficiencies that resulted in actual harm or immediate jeopardy to residents that were cited during the last ~~survey or other survey~~ compliance inspection or a complaint investigation conducted between the last ~~survey~~ compliance inspection and the current ~~survey~~ compliance inspection.
 - b. 5 points: The nursing care institution is implementing a system to prevent abuse of a resident and misappropriation of resident property, investigate each allegation of abuse of a resident and misappropriation of resident's property, and report each allegation of abuse of a resident and misappropriation of resident's property to the Department and as required by A.R.S. § 46-454.
 - c. 5 points: The nursing care institution is implementing a quality management program that addresses nursing care institution services provided to residents, resident

complaints, and resident concerns, and documents actions taken for response, resolution, or correction of issues about nursing care institution services provided to residents, resident complaints, and resident concerns.

- d. 1 point: The nursing care institution is implementing a system to provide social services and a program of ongoing recreational activities to meet the resident's needs based on the resident's comprehensive assessment.
- e. 1 point: The nursing care institution is implementing a system to ensure that records documenting freedom from infectious pulmonary tuberculosis are maintained for each personnel member, volunteer, and resident.
- f. 2 points: The nursing care institution is implementing a system to ensure that a resident is free from unnecessary drugs.
- g. 1 point: The nursing care institution is implementing a system to ensure a personnel member attends in-service education according to policies and procedures.

4. Environment and Infection Control:

- a. 5 points: The nursing care institution environment is free from a condition or situation within the nursing care institution's control that may cause a resident injury.
- b. 1 point: The nursing care institution establishes and maintains a pest control program that complies with A.A.C. R3-8-201(C)(4).
- c. 1 point: The nursing care institution develops a written disaster plan that includes procedures for protecting the health and safety of residents.
- d. 1 point: The nursing care institution ensures orientation to the disaster plan for each personnel member is completed within the first scheduled week of employment.
- e. 1 point: The nursing care institution maintains a clean and sanitary environment.
- f. 5 points: The nursing care institution is implementing a system to prevent and control infection.
- g. 1 point: An employee cleans the employee's hands after each direct resident contact or when hand cleaning is indicated to prevent the spread of infection.

5. Food Services:

- a. 1 point: The nursing care institution complies with 9 A.A.C. 8, Article 1, for food preparation, storage and handling as evidenced by a current food establishment license.
- b. 3 points: The nursing care institution provides each resident with food that meets the

resident's needs as specified in the resident's comprehensive assessment and care plan.

- c. 2 points: The nursing care institution obtains input from each resident or the resident's representative and implements recommendations for meal planning and food choices consistent with the resident's dietary needs.
- d. 2 points: The nursing care institution provides assistance to a resident who needs help in eating so that the resident's nutritional, physical, and social needs are met.
- e. 1 point: The nursing care institution prepares menus at least one week in advance, conspicuously posts each menu, and adheres to each planned menu unless an uncontrollable situation such as food spoilage or non-delivery of a specified food requires substitution.
- f. 1 point: The nursing care institution provides food substitution of similar nutritive value for residents who refuse the food served or who request a substitution.

- D.** A nursing care institution's quality rating remains in effect until a ~~survey~~ subsequent compliance inspection or complaint investigation is conducted by the Department ~~for the next renewal period~~ except as provided in subsection (E).
- E.** If the Department issues a provisional license, the current quality rating is terminated. A provisional licensee may submit an application for a substantial compliance ~~survey~~ inspection. If the Department determines that, as a result of a substantial compliance ~~survey~~ inspection, the nursing care institution is in substantial compliance, the Department shall issue a new quality rating according to subsection (C).
- F.** The issuance of a quality rating does not preclude the Department from seeking a civil penalty as provided in A.R.S. § 36-431.01, or suspension or revocation of a license as provided in A.R.S. § 36-427.

ARTICLE 6. HOSPICES

R9-10-602. Supplemental Application Requirements

In addition to the license application requirements in A.R.S. § 36-422 and R9-10-105, an applicant for ~~an~~ ~~initial~~ a license as a hospice service agency or hospice inpatient facility shall include on the application:

1. For an application as a hospice service agency:
 - a. The hours of operation for the hospice's administrative office, and
 - b. The geographic region to be served by the hospice service agency; and
2. For an application as a hospice inpatient facility, the requested licensed capacity.

R9-10-607. Admission

- A. Before admitting an individual as a patient, an administrator shall obtain:
 1. The name of the individual's physician;
 2. Documentation that the individual has a diagnosis by a physician that indicates that the individual has a specific, progressive, normally irreversible disease that is likely to cause the individual's death in six months or less; and
 3. Documentation from the individual or the individual's representative acknowledging that:
 - a. Hospice services include palliative care and supportive ~~care~~ services and are not curative, and
 - b. The individual or individual's representative has received a list of services to be provided by the hospice.
- B. At the time of admission, a physician or registered nurse shall:
 1. Assess a patient's medical, social, nutritional, and psychological needs; and
 2. As applicable, obtain informed consent or general consent.
- C. Before or at the time of admission, a personnel member qualified according to policies and procedures shall assess the social and psychological needs of a patient's family, if applicable.

ARTICLE 7. BEHAVIORAL HEALTH RESIDENTIAL FACILITIES

R9-10-702. Supplemental Application and Documentation Submission Requirements

A. In addition to the license application requirements in A.R.S. § 36-422 and R9-10-105, an applicant for ~~an initial a~~ license as a behavioral health residential facility shall include on the application:

1. Whether the applicant is ~~requesting authorization~~ planning to provide:
 - a. Behavioral health services to individuals under 18 years of age, including the licensed capacity requested;
 - b. Behavioral health services to individuals 18 years of age and older, including the licensed capacity requested; or
 - c. Respite services;
2. Whether the applicant is requesting authorization to provide an outdoor behavioral health care program, including:
 - a. The requested licensed capacity for providing the outdoor behavioral health care program to individuals 12 to 17 years of age, and
 - b. The requested licensed capacity for providing the outdoor behavioral health care program to individuals 18 to 24 years of age;
3. Whether the applicant is requesting authorization to provide:
 - a. ~~Residential Behavioral health~~ services to individuals 18 years of age or older whose behavioral health issue limits the individuals' ability to function independently, or
 - b. Personal care services;
4. Whether the applicant is requesting authorization to provide recidivism reduction services as an adult residential care institution, including the requested licensed capacity for providing recidivism reduction services;
- 4.5. For a behavioral health residential facility requesting authorization to provide respite services, the requested number of individuals the behavioral health residential facility plans to admit for respite services who:
 - a. Are included in the requested licensed capacities in subsections (A)(1)(a) and (b).
 - b. Are under 18 years of age and who do not stay overnight in the behavioral health residential facility; and
 - c. Are 18 years of age and older and who do not stay overnight in the behavioral health residential facility; and

~~5-6.~~ For an outdoor behavioral health care program, a copy of the outdoor behavioral health care program's current accreditation report.

~~B. In addition to the renewal license application requirements in A.R.S. § 36-422 and R9-10-107, an administrator of an outdoor behavioral health care program shall submit with a renewal application, a copy of the outdoor behavioral health care program's current accreditation report.~~

B. A licensee of an outdoor behavioral health care program shall submit a copy of the outdoor behavioral health care program's current accreditation report to the Department with the relevant fees required in R9-10-106(C).

R9-10-703. Administration

A. A governing authority shall:

1. Consist of one or more individuals responsible for the organization, operation, and administration of a behavioral health residential facility;
2. Establish, in writing:
 - a. A behavioral health residential facility's scope of services, and
 - b. Qualifications for an administrator;
3. Designate, in writing, an administrator who has the qualifications established in subsection (A)(2)(b);
4. Adopt a quality management program according to R9-10-704;
5. Review and evaluate the effectiveness of the quality management program at least once every 12 months;
6. Designate, in writing, an acting administrator who has the qualifications established in subsection (A)(2)(b), if the administrator is:
 - a. Expected not to be present on the behavioral health residential facility's premises for more than 30 calendar days, or
 - b. Not present on the behavioral health residential facility's premises for more than 30 calendar days; and
7. Except as provided in subsection (A)(6), notify the Department according to A.R.S. § 36-425(I) when there is a change in the administrator and identify the name and qualifications of the new administrator.

B. An administrator:

1. Is directly accountable to the governing authority of a behavioral health residential facility for the daily operation of the behavioral health residential facility and all services provided by or at the behavioral health residential facility;

2. Has the authority and responsibility to manage the behavioral health residential facility; and
3. Except as provided in subsection (A)(6), designates, in writing, an individual who is present on the behavioral health residential facility's premises and accountable for the behavioral health residential facility when the administrator is not present on the behavioral health residential facility's premises.

C. An administrator shall ensure that:

1. Policies and procedures are established, documented, and implemented to protect the health and safety of a resident that:
 - a. Cover job descriptions, duties, and qualifications, including required skills, knowledge, education, and experience for personnel members, employees, volunteers, and students;
 - b. Cover orientation and in-service education for personnel members, employees, volunteers, and students;
 - c. Include how a personnel member may submit a complaint relating to services provided to a resident;
 - d. Cover the requirements in A.R.S. Title 36, Chapter 4, Article 11;
 - e. Cover cardiopulmonary resuscitation training including:
 - i. The method and content of cardiopulmonary resuscitation training, which includes a demonstration of the individual's ability to perform cardiopulmonary resuscitation;
 - ii. The qualifications for an individual to provide cardiopulmonary resuscitation training;
 - iii. The time-frame for renewal of cardiopulmonary resuscitation training; and
 - iv. The documentation that verifies that the individual has received cardiopulmonary resuscitation training;
 - f. Cover implementation of the requirements in A.R.S. §§ 36-411, 36-411.01, and 36-425.03, as applicable;
 - ~~f.g.~~ Cover first aid training;
 - ~~g-h.~~ Include a method to identify a resident to ensure the resident receives physical health services and behavioral health services as ordered;
 - ~~h-i.~~ Cover resident rights, including assisting a resident who does not speak English or who has a physical or other disability to become aware of resident rights;
 - ~~i-j.~~ Cover specific steps for:

- i. A resident to file a complaint, and
 - ii. The behavioral health residential facility to respond to a resident complaint;
 - ~~j-k~~. Cover health care directives;
 - ~~k-l~~. Cover medical records, including electronic medical records;
 - ~~l-m~~. Cover a quality management program, including incident reports and supporting documentation;
 - ~~m-n~~. Cover contracted services; and
 - ~~n-o~~. Cover when an individual may visit a resident in a behavioral health residential facility;
2. Policies and procedures for behavioral health services and physical health services are established, documented, and implemented to protect the health and safety of a resident that:
- a. Cover resident screening, admission, assessment, treatment plan, transport, transfer, discharge planning, and discharge;
 - b. Cover the provision of behavioral health services and physical health services;
 - c. Include when general consent and informed consent are required;
 - d. Cover emergency safety responses;
 - e. Cover a resident's personal funds account;
 - f. Cover dispensing medication, administering medication, assistance in the self-administration of medication, and disposing of medication, including provisions for inventory control and preventing diversion of controlled substances;
 - g. Cover prescribing a controlled substance to minimize substance abuse by a resident;
 - h. Cover respite services, including, as applicable, respite services for individuals who are admitted:
 - i. To receive respite services for up to 30 calendar days as a resident of the behavioral health residential facility, and
 - ii. For respite services and do not stay overnight in the behavioral health residential facility;
 - i. Cover services provided by an outdoor behavioral health care program, if applicable;
 - j. Cover infection control;
 - k. Cover resident ~~time-out~~ time-out;
 - l. Cover resident outings;

- m. Cover environmental services that affect resident care;
 - n. Cover whether pets and other animals are allowed on the premises, including procedures to ensure that any pets or other animals allowed on the premises do not endanger the health or safety of residents or the public;
 - o. If animals are used as part of a therapeutic program, cover:
 - i. Inoculation/vaccination requirements, and
 - ii. Methods to minimize risks to a resident's health and safety;
 - p. Cover the process for receiving a fee from a resident and refunding a fee to a resident;
 - q. Cover the process for obtaining resident preferences for social, recreational, or rehabilitative activities and meals and snacks;
 - r. Cover the security of a resident's possessions that are allowed on the premises;
 - s. Cover smoking and the use of tobacco products on the premises; and
 - t. Cover how the behavioral health residential facility will respond to a resident's sudden, intense, or out-of-control behavior to prevent harm to the resident or another individual;
3. Policies and procedures are reviewed at least once every three years and updated as needed;
 4. Policies and procedures are available to personnel members, employees, volunteers, and students; and
 5. Unless otherwise stated:
 - a. Documentation required by this Article is provided to the Department within two hours after a Department request; and
 - b. When documentation or information is required by this Chapter to be submitted on behalf of a behavioral health residential facility, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the behavioral health residential facility.
- D.** If an applicant requests or a behavioral health residential facility has a licensed capacity of 10 or more residents, an administrator shall designate a clinical director who:
1. Provides direction for the behavioral health services provided by or at the behavioral health residential facility;
 2. Is a behavioral health professional; and
 3. May be the same individual as the administrator, if the individual meets the qualifications in subsections (A)(2)(b) and (D)(1) and (2).

- E.** Except for respite services, an administrator shall ensure that medical services, nursing services, health-related services, or ancillary services provided by a behavioral health residential facility are only provided to a resident who is expected to be present in the behavioral health residential facility for more than 24 hours.
- F.** An administrator shall provide written notification to the Department of a resident's:
1. Death, if the resident's death is required to be reported according to A.R.S. § 11-593, within one working day after the resident's death; and
 2. Self-injury, within two working days after the resident inflicts a self-injury or has an accident that requires immediate intervention by an emergency medical services provider.
- G.** If abuse, neglect, or exploitation of a resident is alleged or suspected to have occurred before the resident was admitted or while the resident is not on the premises and not receiving services from a behavioral health residential facility's employee or personnel member, an administrator shall report the alleged or suspected abuse, neglect, or exploitation of the resident as follows:
1. For a resident 18 years of age or older, according to A.R.S. § 46-454; or
 2. For a resident under 18 years of age, according to A.R.S. § 13-3620.
- H.** If an administrator has a reasonable basis, according to A.R.S. §§ § 13-3620 or 46-454, to believe abuse, neglect, or exploitation has occurred on the premises or while a resident is receiving services from a behavioral health residential facility's employee or personnel member, the administrator shall:
1. If applicable, take immediate action to stop the suspected abuse, neglect, or exploitation;
 2. Report the suspected abuse, neglect, or exploitation of the resident:
 - a. For a resident 18 years of age or older, according to A.R.S. § 46-454; or
 - b. For a resident under 18 years of age, according to A.R.S. § 13-3620;
 3. Document:
 - a. The suspected abuse, neglect, or exploitation;
 - b. Any action taken according to subsection (H)(1); and
 - c. The report in subsection (H)(2);
 4. Maintain the documentation in subsection (H)(3) for at least 12 months after the date of the report in subsection (H)(2);
 5. Initiate an investigation of the suspected abuse, neglect, or exploitation and document the following information within five working days after the report required in (H)(2):
 - a. The dates, times, and description of the suspected abuse, neglect, or exploitation;
 - b. A description of any injury to the resident related to the suspected abuse or neglect

and any change to the resident's physical, cognitive, functional, or emotional condition;

- c. The names of witnesses to the suspected abuse, neglect, or exploitation; and
- d. The actions taken by the administrator to prevent the suspected abuse, neglect, or exploitation from occurring in the future; and

6. Maintain a copy of the documented information required in subsection (H)(5) and any other information obtained during the investigation for at least 12 months after the date the investigation was initiated.

I. An administrator shall:

- 1. Establish and document requirements regarding residents, personnel members, employees, and other individuals entering and exiting the premises;
- 2. Establish and document guidelines for meeting the needs of an individual residing at a behavioral health residential facility with a resident, such as a child accompanying a parent in treatment, if applicable;
- 3. If children under the age of 12, who are not admitted to a behavioral health residential facility, are residing at the behavioral health residential facility and being cared for by employees or personnel members, ensure that:
 - a. An employee or personnel member caring for children has current cardiopulmonary resuscitation and first aid training specific to the ages of children being cared for; and
 - b. The staff-to-children ratios in A.A.C. R9-5-404(A) are maintained, based on the age of the youngest child in the group;
- 4. Establish and document the process for responding to a resident's need for immediate and unscheduled behavioral health services or physical health services;
- 5. Establish and document the criteria for determining when a resident's absence is unauthorized, including criteria for a resident who:
 - a. Was admitted under A.R.S. Title 36, Chapter 5, Articles ~~1, 2, or 3~~ 3, 4, or 5;
 - b. Is absent against medical advice; or
 - c. Is under the age of 18;
- 6. If a resident's absence is unauthorized as determined according to the criteria in subsection (I)(5), within an hour after determining that the resident's absence is unauthorized, notify:
 - a. For a resident who is under 18 years of age, the resident's parent or legal guardian; and

- b. For a resident who is under a court's jurisdiction, the appropriate court;
- 7. Maintain a written log of unauthorized absences for at least 12 months after the date of a resident's absence that includes the:
 - a. Name of a resident absent without authorization,
 - b. Name of the individual to whom the report required in subsection (I)(6) was submitted, and
 - c. Date of the report; and
- ~~8. Document the notification in subsection (I)(6) and the written log required in subsection (I)(7); and~~
- ~~9.~~8. Evaluate and take action related to unauthorized absences under the quality management program in R9-10-704.

J. An administrator shall ensure that a personnel member who is able to read, write, understand, and communicate in English is on the premises of the behavioral health residential facility.

~~J.~~K. An administrator shall ensure that the following information or documents are conspicuously posted on the premises and are available upon request to a personnel member, employee, resident, or a resident's representative:

- 1. The behavioral health residential facility's current license,
- 2. The location at which inspection reports required in R9-10-720(C) are available for review or can be made available for review, and
- 3. The calendar days and times when a resident may accept visitors or make telephone calls.

~~K.~~L. An administrator shall ensure that:

- 1. Labor performed by a resident for the behavioral health residential facility is consistent with A.R.S. § 36-510;
- 2. A resident who is a child is only released to the child's custodial parent, guardian, or custodian or as authorized in writing by the child's custodial parent, guardian, or custodian;
- 3. The administrator obtains documentation of the identity of the parent, guardian, custodian, or family member authorized to act on behalf of a resident who is a child; and
- 4. A resident, who is an incapacitated person according to A.R.S. § 14-5101 or who is gravely disabled, is assisted in obtaining a resident's representative to act on the resident's behalf.

~~L.~~M. If an administrator determines that a resident is incapable of handling the resident's financial affairs, the administrator shall:

- 1. Notify the resident's representative or contact a public fiduciary or a trust officer to take

responsibility of the resident's financial affairs, and

2. Maintain documentation of the notification required in subsection ~~(E)(1)(a)~~ (M)(1) in the resident's medical record for at least 12 months after the date of the notification.

M.N. If an administrator manages a resident's money through a personal funds account, the administrator shall ensure that:

1. Policies and procedure are established, developed, and implemented for:
 - a. Using resident's funds in a personal funds account,
 - b. Protecting resident's funds in a personal funds account,
 - c. Investigating a complaint about the use of resident's funds in a personal funds account and ensuring that the complaint is investigated by an individual who does not manage the personal funds account,
 - d. Processing each deposit into and withdrawal from a personal funds account, and
 - e. Maintaining a record for each deposit into and withdrawal from a personal funds account; and
2. The personal funds account is only initiated after receiving a written request that:
 - a. Is provided:
 - i. Voluntarily by the resident,
 - ii. By the resident's representative, or
 - iii. By a court of competent jurisdiction;
 - b. May be withdrawn at any time; and
 - c. Is maintained in the resident's record.

R9-10-706. Personnel

A. An administrator shall ensure that:

1. A personnel member is:
 - a. At least 21 years old, or
 - b. Licensed or certified under A.R.S. Title 32 and providing services within the personnel member's scope of practice;
2. An employee is at least 18 years old;
3. A student is at least 18 years old; and
4. A volunteer is at least 21 years old.

B. An administrator shall ensure that:

1. The qualifications, skills, and knowledge required for each type of personnel member:
 - a. Are based on:

- i. The type of behavioral health services or physical health services expected to be provided by the personnel member according to the established job description, and
 - ii. The acuity of the residents receiving behavioral health services or physical health services from the personnel member according to the established job description; and
 - b. Include:
 - i. The specific skills and knowledge necessary for the personnel member to provide the expected behavioral health services or physical health services listed in the established job description,
 - ii. The type and duration of education that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected behavioral health services or physical health services listed in the established job description, and
 - iii. The type and duration of experience that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected behavioral health services or physical health services listed in the established job description;
- 2. A personnel member's skills and knowledge are verified and documented:
 - a. Before the personnel member provides physical health services or behavioral health services, and
 - b. According to policies and procedures; and
- 3. Sufficient personnel members are present on a behavioral health residential facility's premises with the qualifications, experience, skills, and knowledge necessary to:
 - a. Provide the services in the behavioral health residential facility's scope of services,
 - b. Meet the needs of a resident, and
 - c. Ensure the health and safety of a resident.
- C.** An administrator shall comply with the requirements for behavioral health technicians and behavioral health paraprofessionals in R9-10-115.
- D.** An administrator shall ensure that an individual who is licensed under A.R.S. Title 32, Chapter 33 as a baccalaureate social worker, master social worker, associate marriage and family therapist, associate counselor, or associate substance abuse counselor is under direct supervision, as defined in A.A.C. R4-6-101.

- E.** An administrator shall ensure that:
1. A plan to provide orientation, specific to the duties of a personnel member, an employee, a volunteer, or a student, is developed, documented, and implemented;
 2. A personnel member completes orientation before providing behavioral health services or physical health services;
 3. An individual's orientation is documented, to include:
 - a. The individual's name,
 - b. The date of the orientation, and
 - c. The subject or topics covered in the orientation;
 4. A written plan is developed and implemented to provide in-service education specific to the duties of a personnel member; and
 5. A personnel member's in-service education is documented, to include:
 - a. The personnel member's name,
 - b. The date of the training, and
 - c. The subject or topics covered in the training.
- F.** An administrator shall ensure that a personnel member, or an employee, a volunteer, or a student who has or is expected to have more than eight hours of direct interaction per week with residents, provides evidence of freedom from infectious tuberculosis:
1. On or before the date the individual begins providing services at or on behalf of the behavioral health residential facility, and
 2. As specified in R9-10-113.
- G.** An administrator shall ensure that a personnel record is maintained for each personnel member, employee, volunteer, or student that includes:
1. The individual's name, date of birth, and contact telephone number;
 2. The individual's starting date of employment or volunteer service and, if applicable, the ending date; and
 3. Documentation of:
 - a. The individual's qualifications, including skills and knowledge applicable to the individual's job duties;
 - b. The individual's education and experience applicable to the individual's job duties;
 - c. The individual's completed orientation and in-service education as required by policies and procedures;
 - d. The individual's license or certification, if the individual is required to be licensed or

certified in this Article or policies and procedures;

- e. ~~If the behavioral health residential facility is authorized to provide services to children, the~~ The individual's compliance with the fingerprinting requirements in A.R.S. § §§ 36-411, 36-411.01, and 36-425.03, as applicable;
- f. If the individual is a behavioral health technician, clinical oversight required in R9-10-115;
- g. Cardiopulmonary resuscitation training, if required for the individual according to R9-10-703(C)(1)(e);
- h. First aid training, if required for the individual according to this Article or policies and procedures; and
- i. Evidence of freedom from infectious tuberculosis, if required for the individual according to subsection (F).

H. An administrator shall ensure that personnel records are:

- 1. Maintained:
 - a. Throughout an individual's period of providing services in or for the behavioral health residential facility, and
 - b. For at least 24 months after the last date the individual provided services in or for the behavioral health residential facility; and
- 2. For a personnel member who has not provided physical health services or behavioral health services at or for the behavioral health residential facility during the previous 12 months, provided to the Department within 72 hours after the Department's request.

I. An administrator shall ensure that a personnel member who is recidivism reduction staff at an adult residential care institution:

- 1. Submits an application for a fingerprint clearance card according to A.R.S. § 36-411; and
- 2. If the personnel member is denied a fingerprint clearance card, is evaluated to determine whether the personnel member:
 - a. Has successfully completed treatment for recidivism reduction as shown by:
 - i. Documentation of completion of treatment for recidivism reduction;
 - ii. If applicable, continued negative results on random drug screening tests;
 - iii. If applicable, continued participation in a self-help group, such as Alcoholics Anonymous or Narcotics Anonymous, or a support group related to the personnel member's behavioral health issue; and
 - iv. No arrests or convictions of the personnel member related to the reason

for denial of the fingerprint clearance card within the previous two years;
and

- b. Is not likely to be a threat to the health or safety of staff or residents through:
 - i. Review of the reasons for denial of a fingerprint clearance card;
 - ii. Assessment of the situations or circumstances that may have contributed to the reasons for denial of a fingerprint clearance card;
 - iii. Review of the steps taken by the personnel member to address the situations or circumstances that may have contributed to the reasons for denial of a fingerprint clearance card;
 - iv. Observation of the personnel member's interactions with residents while under direct visual supervision, as defined in A.R.S. § 36-411, by personnel members having a valid fingerprint clearance card; and
 - v. Institution of any other methods, according to policies and procedures, specific to the:
 - (1) Behavioral health residential facility;
 - (2) Issues of the residents that place them at risk for a future threat of prosecution, diversion, or incarceration; and
 - (3) Recidivism reduction services that are expected to be provided by the personnel member.

H.J. An administrator shall ensure that the following personnel members have first-aid and cardiopulmonary resuscitation training specific to the populations served by the behavioral health residential facility:

1. At least one personnel member who is present at the behavioral health residential facility during hours of operation of the behavioral health residential facility, and
2. Each personnel member participating in an outing.

H.K. An administrator shall ensure that:

1. At least one personnel member is present and awake at the behavioral health residential facility when a resident is on the premises;
2. In addition to the personnel member in subsection ~~(J)(1)~~ **(K)(1)**, at least one personnel member is on-call and available to come to the behavioral health residential facility if needed;
3. There is a daily staffing schedule that:
 - a. Indicates the date, scheduled work hours, and name of each employee assigned to

- work, including on-call personnel members;
 - b. Includes documentation of the employees who work each calendar day and the hours worked by each employee; and
 - c. Is maintained for at least 12 months after the last date on the documentation;
4. A behavioral health professional is present at the behavioral health residential facility or on-call;
 5. A registered nurse is present at the behavioral health residential facility or on-call; and
 6. If a resident requires services that the behavioral health residential facility is not authorized or not able to provide, a personnel member arranges for the resident to be transported to a hospital or another health care institution where the services can be provided.

R9-10-707. Admission; Assessment

A. An administrator shall ensure that:

1. A resident is admitted based upon:
 - a. ~~the~~ The resident's presenting primary condition for which the resident is admitted to the behavioral health residential facility being a behavioral health issue, and
 - b. The resident's behavioral health issue and treatment needs and are within the behavioral health residential facility's scope of services;
2. A behavioral health professional, authorized by policies and procedures to ~~accept~~ admit a resident ~~for admission~~, is available;
3. General consent is obtained from:
 - a. An adult resident or the resident's representative before or at the time of admission, or
 - b. A resident's representative, if the resident is not an adult;
4. The general consent obtained in subsection (A)(3) is documented in the resident's medical record;
5. Except as provided in subsection (E)(1)(a), a medical practitioner performs a medical history and physical examination or a registered nurse performs a nursing assessment on a resident within 30 calendar days before admission or within ~~seven calendar days~~ 72 hours after admission and documents the medical history and physical examination or nursing assessment in the resident's medical record within ~~seven calendar days~~ 72 hours after admission;
6. If a medical practitioner performs a medical history and physical examination or a nurse performs a nursing assessment on a resident before admission, the medical practitioner

enters an interval note or the nurse enters a progress note in the resident's medical record within seven calendar days after admission;

7. If a behavioral health assessment is conducted by a:
 - a. Behavioral health technician or registered nurse, within 24 hours a behavioral health professional, certified or licensed to provide the behavioral health services needed by the resident, reviews and signs the behavioral health assessment to ensure that the behavioral health assessment identifies the behavioral health services needed by the resident; or
 - b. Behavioral health paraprofessional, a behavioral health professional, certified or licensed to provide the behavioral health services needed by the resident, supervises the behavioral health paraprofessional during the completion of the assessment and signs the assessment to ensure that the assessment identifies the behavioral health services needed by the resident;
8. Except as provided in subsection (A)(9), a behavioral health assessment for a resident is completed before treatment for the resident is initiated;
9. If a behavioral health assessment that complies with the requirements in this Section is received from a behavioral health provider other than the behavioral health residential facility or if the behavioral health residential facility has a medical record for the resident that contains a behavioral health assessment that was completed within 12 months before the date of the resident's current admission:
 - a. The resident's assessment information is reviewed before treatment for the resident is initiated and updated if additional information that affects the resident's assessment is identified, and
 - b. The review and update of the resident's assessment information is documented in the resident's medical record within 48 hours after the review is completed;
10. A behavioral health assessment:
 - a. Documents a resident's:
 - i. Presenting issue;
 - ii. Substance abuse history;
 - iii. Co-occurring disorder;
 - iv. Legal history, including:
 - (1) Custody,
 - (2) Guardianship, and

(3) Pending litigation;

- v. Criminal justice record;
- vi. Family history;
- vii. Behavioral health treatment history;
- viii. Symptoms reported by the resident; and
- ix. Referrals needed by the resident, if any;

b. Includes:

- i. Recommendations for further assessment or examination of the resident's needs,
- ii. The physical health services or ancillary services that will be provided to the resident until the resident's treatment plan is completed, and
- iii. The signature and date signed of the personnel member conducting the behavioral health assessment; and

c. Is documented in resident's medical record;

11. A resident is referred to a medical practitioner if a determination is made that the resident requires immediate physical health services or the resident's behavioral health issue may be related to the resident's medical condition; and

12. Except as provided in subsection (E)(1)(d), a resident provides evidence of freedom from infectious tuberculosis:

- a. Before or within seven calendar days after the resident's admission, and
- b. As specified in R9-10-113.

B. An administrator shall ensure that:

- 1. A request for participation in a resident's behavioral health assessment is made to the resident or the resident's representative,
- 2. An opportunity for participation in the resident's behavioral health assessment is provided to the resident or the resident's representative, and
- 3. The request in subsection (B)(1) and the opportunity in subsection (B)(2) are documented in the resident's medical record.

C. An administrator shall ensure that a resident's behavioral health assessment information is documented in the medical record within 48 hours after completing the behavioral health assessment.

D. If information in subsection (A)(10) is obtained about a resident after the resident's behavioral health assessment is completed, an administrator shall ensure that an interval note, including the

information, is documented in the resident's medical record within ~~48~~ 24 hours after the information is obtained.

E. If a behavioral health residential facility is authorized to provide respite services, an administrator shall ensure that:

1. Upon admission of a resident for respite services:
 - a. Except as provided in subsection (F), a medical history and physical examination of the resident:
 - i. Is performed; or
 - ii. ~~Dated~~ If dated within the previous 12 months, is available in the resident's medical record from a previous admission to the behavioral health residential facility;
 - b. A treatment plan that meets the requirements in R9-10-708:
 - i. Is developed; or
 - ii. ~~Dated~~ If dated within the previous 12 months, is available in the resident's medical record from a previous admission to the behavioral health residential facility;
 - c. If a treatment plan, dated within the previous 12 months, is available, the treatment plan is reviewed, updated, and documented in the resident's medical record; and
 - d. ~~If the resident is not expected to be present in the behavioral health residential facility for more than seven days, the~~ The resident is not required to comply with the requirements in subsection (A)(12) if the resident is not expected to be present in the behavioral health residential facility:
 - i. For more than seven consecutive days, or
 - ii. For 10 days or more days in a 90-consecutive-day period;
2. The common area required in R9-10-722(B)(1)(b) provides at least 25 square feet for each resident, including residents who do not stay overnight; and
3. In addition to the requirements in R9-10-722(B)(3), toilets and hand-washing sinks are available to residents, including residents who do not stay overnight, as follows:
 - a. There is at least one working toilet that flushes and has a seat and one sink with running water for every 10 residents,
 - b. There are at least two working toilets that flush and have seats and two sinks with running water if there are 11 to 25 residents, and
 - c. There is at least one additional working toilet that flushes and has a seat and one

additional sink with running water for each additional 20 residents.

- F. A medical history and physical examination is not required for a child who is admitted or expected to be admitted to a residential behavioral health facility for less than 10 days in a 90-consecutive-day period.

R9-10-708. Treatment Plan

- A. An administrator shall ensure that a treatment plan is developed and implemented for each resident that:
1. Is based on the medical history and physical examination or nursing assessment required in R9-10-707(A)(5) or ~~(E)(1)~~ (E)(1)(a) and the behavioral health assessment required in R9-10-707(A)(8) or (9) and on-going changes to the behavioral health assessment of the resident;
 2. Is completed:
 - a. By a behavioral health professional or a behavioral health technician under the clinical oversight of a behavioral health professional, and
 - b. Before the resident receives physical health services or behavioral health services or within 48 hours after the assessment is completed;
 3. Is documented in the resident's medical record within 48 hours after the resident first receives physical health services or behavioral health services;
 4. Includes:
 - a. The resident's presenting issue;
 - b. The physical health services or behavioral health services to be provided to the resident;
 - c. The signature of the resident or the resident's representative; and date signed, or documentation of the refusal to sign;
 - d. The date when the resident's treatment plan will be reviewed;
 - e. If a discharge date has been determined, the treatment needed after discharge; and
 - f. The signature of the personnel member who developed the treatment plan and the date signed;
 5. If the treatment plan was completed by a behavioral health technician, is reviewed and signed by a behavioral health professional within 24 hours after the completion of the treatment plan to ensure that the treatment plan is complete and accurate and meets the resident's treatment needs; and

6. Is reviewed and updated on an on-going basis:
 - a. According to the review date specified in the treatment plan,
 - b. When a treatment goal is accomplished or changed,
 - c. When additional information that affects the resident's behavioral health assessment is identified, and
 - d. When a resident has a significant change in condition or experiences an event that affects treatment.

B. An administrator shall ensure that:

1. A request for participation in developing a resident's treatment plan is made to the resident or the resident's representative,
2. An opportunity for participation in developing the resident's treatment plan is provided to the resident or the resident's representative, and
3. The request in subsection (B)(1) and the opportunity in subsection (B)(2) are documented in the resident's medical record.

R9-10-711. Resident Rights

A. An administrator shall ensure that:

1. The requirements in subsection (B) and the resident rights in subsection (E) are conspicuously posted on the premises;
2. At the time of admission, a resident or the resident's representative receives a written copy of the requirements in subsection (B) and the resident rights in subsection (E); and
3. Policies and procedures include:
 - a. How and when a resident or the resident's representative is informed of the resident rights in subsection (E), and
 - b. Where resident rights are posted as required in subsection (A)(1).

B. An administrator shall ensure that:

1. A resident is treated with dignity, respect, and consideration;
2. A resident is not subjected to:
 - a. Abuse;
 - b. Neglect;
 - c. Exploitation;
 - d. Coercion;
 - e. Manipulation;
 - f. Sexual abuse;

- g. Sexual assault;
 - h. Seclusion;
 - i. Restraint;
 - j. Retaliation for submitting a complaint to the Department or another entity;
 - k. Misappropriation of personal and private property by the behavioral health residential facility's personnel members, employees, volunteers, or students;
 - l. Discharge or transfer, or threat of discharge or transfer, for reasons unrelated to the resident's treatment needs, except as established in a fee agreement signed by the resident or the resident's representative; or
 - m. Treatment that involves the denial of:
 - i. Food,
 - ii. The opportunity to sleep, or
 - iii. The opportunity to use the toilet;
3. Except as provided in subsection (C) or (D), and unless restricted by the resident's representative, a resident is allowed to:
- a. Associate with individuals of the resident's choice, receive visitors, and make telephone calls during the hours established by the behavioral health residential facility;
 - b. Have privacy in correspondence, communication, visitation, financial affairs, and personal hygiene; and
 - c. Unless restricted by a court order, send and receive uncensored and unopened mail; and
4. A resident or the resident's representative:
- a. Except in an emergency, either consents to or refuses treatment;
 - b. May refuse or withdraw consent for treatment before treatment is initiated, unless the treatment is:
 - i. ~~is ordered~~ Ordered by a court according to A.R.S. Title 36, Chapter 5 or A.R.S. § 8-341.01;
 - ii. ~~is necessary~~ Necessary to save the resident's life or physical health; or
 - iii. ~~is provided~~ Provided according to A.R.S. § 36-512;
 - c. Except in an emergency, is informed of proposed treatment alternatives, associated risks, and possible complications;
 - d. Is informed of the following:

- i. The behavioral health residential facility’s policy on health care directives, and
 - ii. The resident complaint process; and
 - e. Except as otherwise permitted by law, provides written consent to the release of information in the resident’s:
 - i. Medical record, or
 - ii. Financial records.
- C.** For a behavioral health residential facility with licensed capacity of less than 10 residents, if a behavioral health professional determines that a resident’s treatment requires the behavioral health residential facility to restrict the resident’s ability to participate in the activities in subsection (B)(3), the behavioral health professional shall:
 - 1. Document a specific treatment purpose in the resident’s medical record that justifies restricting the resident from the activity,
 - 2. Inform the resident or resident’s representative of the reason why the activity is being restricted, and
 - 3. Inform the resident or resident’s representative of the resident’s right to file a complaint and the procedure for filing a complaint.
- D.** For a behavioral health residential facility with a licensed capacity of 10 or more residents, if a clinical director determines that a resident’s treatment requires the behavioral health residential facility to restrict the resident’s ability to participate in the activities in subsection (B)(3), the clinical director shall comply with the requirements in subsections (C)(1) through (3).
- E.** A resident has the following rights:
 - 1. Not to be discriminated against based on race, national origin, religion, gender, sexual orientation, age, disability, marital status, or diagnosis;
 - 2. To receive treatment that:
 - a. Supports and respects the resident’s individuality, choices, strengths, and abilities;
 - b. Supports the resident’s personal liberty and only restricts the resident’s personal liberty according to a court order, by the resident’s or the resident’s representative’s general consent, or as permitted in this Chapter; and
 - c. Is provided in the least restrictive environment that meets the resident’s treatment needs;
 - 3. To receive privacy in treatment and care for personal needs, including the right not to be

fingerprinted, photographed, or recorded without consent, except:

- a. A resident may be photographed when admitted to a behavioral health residential facility for identification and administrative purposes;
 - b. For a resident receiving treatment according to A.R.S. Title 36, Chapter 37; or
 - c. For video recordings used for security purposes that are maintained only on a temporary basis;
4. Not to be prevented or impeded from exercising the resident's civil rights unless the resident has been adjudicated incompetent or a court of competent jurisdiction has found that the resident is not able to exercise a specific right or category of rights;
 5. To review, upon written request, the resident's own medical record according to A.R.S. §§ 12-2293, 12-2294, and 12-2294.01;
 6. To be provided locked storage space for the resident's belongings while the resident receives treatment;
 7. To have opportunities for social contact and daily social, recreational, or rehabilitative activities;
 8. To be informed of the requirements necessary for the resident's discharge or transfer to a less restrictive physical environment;
 9. To receive a referral to another health care institution if the behavioral health residential facility is not authorized or not able to provide physical health services or behavioral health services needed by the resident;
 10. To participate or have the resident's representative participate in the development of a treatment plan or decisions concerning treatment;
 11. To participate or refuse to participate in research or experimental treatment; and
 12. To receive assistance from a family member, the resident's representative, or other individual in understanding, protecting, or exercising the resident's rights.

R9-10-712. Medical Records

A. An administrator shall ensure that:

1. A medical record is established and maintained for each resident according to A.R.S. Title 12, Chapter 13, Article 7.1;
2. An entry in a resident's medical record is:
 - a. Recorded only by a personnel member authorized by policies and procedures to make the entry;
 - b. Dated, legible, and authenticated; and

- c. Not changed to make the initial entry illegible;
 - 3. An order is:
 - a. Dated when the order is entered in the resident's medical record and includes the time of the order;
 - b. Authenticated by a medical practitioner or behavioral health professional according to policies and procedures; and
 - c. If the order is a verbal order, authenticated by the medical practitioner or behavioral health professional issuing the order;
 - 4. If a rubber-stamp signature or an electronic signature is used to authenticate an order, the individual whose signature the rubber-stamp signature or electronic signature represents is accountable for the use of the rubber-stamp signature or electronic signature;
 - 5. A resident's medical record is available to an individual:
 - a. Authorized according to policies and procedures to access the resident's medical record;
 - b. If the individual is not authorized according to policies and procedures, with the written consent of the resident or the resident's representative; or
 - c. As permitted by law;
 - 6. Policies and procedures include the maximum time-frame to retrieve a resident's medical record at the request of a medical practitioner, behavioral health professional, or authorized personnel member; and
 - 7. A resident's medical record is protected from loss, damage, or unauthorized use.
- B.** If a behavioral health residential facility maintains residents' medical records electronically, an administrator shall ensure that:
- 1. Safeguards exist to prevent unauthorized access, and
 - 2. The date and time of an entry in a resident's medical record is recorded by the computer's internal clock.
- C.** An administrator shall ensure that a resident's medical record contains:
- 1. Resident information that includes:
 - a. The resident's name;
 - b. The resident's address;
 - c. The resident's date of birth; and
 - d. Any known allergies, including medication allergies;
 - 2. The name of the admitting medical practitioner or behavioral health professional;

3. An admitting diagnosis or presenting behavioral health issues;
4. The date of admission and, if applicable, date of discharge;
5. If applicable, the name and contact information of the resident's representative and:
 - a. If the resident is 18 years of age or older or an emancipated minor, the document signed by the resident consenting for the resident's representative to act on the resident's behalf; or
 - b. If the resident's representative:
 - i. Has a health care power of attorney established under A.R.S. § 36-3221 or a mental health care power of attorney executed under A.R.S. § 36-3282, a copy of the health care power of attorney or mental health care power of attorney; or
 - ii. Is a legal guardian, a copy of the court order establishing guardianship;
6. If applicable, documented general consent and informed consent for treatment by the resident or the resident's representative;
7. Documentation of medical history and results of a physical examination;
8. A copy of resident's health care directive, if applicable;
9. Orders;
10. Assessment;
11. Treatment plans;
12. Interval notes;
13. Progress notes;
14. Documentation of behavioral health services and physical health services provided to the resident;
15. If applicable, documentation of the use of an emergency safety response;
16. If applicable, documentation of ~~time-out~~ time-out required in R9-10-714(6);
17. Except as allowed in R9-10-707(E)(1)(d), documentation of freedom from infectious tuberculosis required in R9-10-707(A)(12);
18. The disposition of the resident after discharge;
19. The discharge plan;
20. The discharge summary, if applicable;
21. If applicable:
 - a. Laboratory reports,
 - b. Radiologic reports,

- c. Diagnostic reports, and
 - d. Consultation reports; and
22. Documentation of medication administered to the resident that includes:
- a. The date and time of administration;
 - b. The name, strength, dosage, and route of administration;
 - c. For a medication administered for pain, when administered initially or on a PRN basis:
 - i. An assessment of the resident's pain before administering the medication, and
 - ii. The effect of the medication administered;
 - d. For a psychotropic medication, when administered initially or on a PRN basis:
 - i. An assessment of the resident's behavior before administering the psychotropic medication, and
 - ii. The effect of the psychotropic medication administered;
 - e. The identification, signature, and professional designation of the individual administering or providing assistance in the self-administration of the medication; and
 - f. Any adverse reaction a resident has to the medication.

R9-10-713. Transportation; Resident Outings

- A. An administrator of a behavioral health residential facility that uses a vehicle owned or leased by the behavioral health residential facility to provide transportation to a resident shall ensure that:
- 1. The vehicle:
 - a. Is safe and in good repair,
 - b. Contains a first aid kit,
 - c. Contains drinking water sufficient to meet the needs of each resident present in the vehicle, and
 - d. Contains a working heating and air conditioning system;
 - 2. Documentation of current vehicle insurance and a record of maintenance performed or a repair of the vehicle ~~is~~ are maintained;
 - 3. A driver of the vehicle:
 - a. Is 21 years of age or older;
 - b. Has a valid driver license;
 - c. Operates the vehicle in a manner that does not endanger a resident in the vehicle;

- d. Does not leave in the vehicle an unattended:
 - i. Child,
 - ii. Resident who may be a threat to the health or safety of the resident or another individual, or
 - iii. Resident who is incapable of independent exit from the vehicle; and
- e. Ensures the safe and hazard-free loading and unloading of residents; and
- 4. Transportation safety is maintained as follows:
 - a. Each individual in the vehicle is sitting in a seat and wearing a working seat belt while the vehicle is in motion, and
 - b. Each seat in the vehicle is securely fastened to the vehicle and provides sufficient space for a resident's body.

B. An administrator shall ensure that:

- 1. An outing is consistent with the age, developmental level, physical ability, medical condition, and treatment needs of each resident participating in the outing;
- 2. At least two personnel members are present on an outing;
- 3. In addition to the personnel members required in subsection (B)(2), a sufficient number of personnel members are present to ensure each resident's health and safety on the outing;
- 4. Documentation is developed before an outing that includes:
 - a. The name of each resident participating in the outing;
 - b. A description of the outing;
 - c. The date of the outing;
 - d. The anticipated departure and return times;
 - e. The name, address, and, if available, telephone number of the outing destination; and
 - f. If applicable, the license plate number of each vehicle used to transport a resident;
- 5. The documentation described in subsection (B)(4) is updated to include the actual departure and return times and is maintained for at least 12 months after the date of the outing; and
- 6. Emergency information for each resident participating in the outing is maintained by a personnel member participating in the outing or in the vehicle used to provide transportation for the outing and includes:

- a. The resident's name;
- b. Medication information, including the name, dosage, route of administration, and directions for each medication needed by the resident during the anticipated duration of the outing;
- c. The resident's allergies; and
- d. The name and telephone number of a designated individual; to notify in case of an emergency, who is present on the behavioral health residential facility's premises.

R9-10-714. Resident ~~Time-Out~~ Time-Out

An administrator shall ensure that a ~~time-out~~ time-out:

1. Is provided to a resident who voluntarily decides to go in a ~~time-out~~ time-out;
2. Takes place in an area that is unlocked, lighted, quiet, and private;
3. Is time-limited and does not exceed the amount of time as determined by the resident;
4. Does not result in a resident missing a meal if the resident is in ~~time-out~~ time-out at mealtime;
5. Includes monitoring of the resident by a personnel member at least once every 15 minutes to ensure the resident's health and safety and to discuss with the resident if the resident is ready to leave ~~time-out~~ time-out; and
6. Is documented in the resident's medical record, to include:
 - a. The date of the ~~time-out~~ time-out,
 - b. The reason for the ~~time-out~~ time-out,
 - c. The duration of the ~~time-out~~ time-out, and
 - d. The action planned and taken by the administrator to prevent the use of ~~time-out~~ time-out in the future.

R9-10-715. Physical Health Services

An administrator of a behavioral health residential facility that ~~provides~~ is authorized to provide personal care services shall ensure that:

1. Personnel members who provide personal care services have documentation of completion of a caregiver training program that complies with A.A.C. R4-33-702(A)(5);
2. Residents receive personal care services according to the requirements in ~~R9-10-814(A), (C), (D), and (E)~~ R9-10-814(A), (D), (E), and (F); and
3. A resident who has a stage 3 or stage 4 pressure sore is not admitted to the behavioral

health residential facility.

R9-10-716. Behavioral Health Services

A. An administrator shall ensure that:

1. If a behavioral health residential facility is licensed to provide behavioral health services to individuals whose behavioral health issue limits the individuals' ability to function independently, a resident admitted to the behavioral health residential facility with limited ability to function independently, ~~in addition to~~ receives:
 - a. ~~behavioral~~ Behavioral health services and ~~personnel~~ personal care services as indicated in the resident's treatment plan, and
 - b. ~~receives continuous~~ Continuous protective oversight;
2. A resident admitted to the behavioral health residential facility who needs behavioral health services to maintain or enhance the resident's ability to function independently, ~~in addition to receiving~~:
 - a. Receives behavioral health services, and, if indicated in the resident's treatment plan, personal care services; and
 - b. is ~~is~~ provided an opportunity to participate in activities designed to maintain or enhance the resident's ability to function independently while:
 - i. ~~earing for~~ The resident receives services to maintain the resident's health, safety, or personal hygiene; or
 - ii. ~~performing homemaking~~ Homemaking functions are performed for the resident;
3. Behavioral health services are provided to meet the needs of a resident and are consistent with a behavioral health residential facility's scope of services;
4. Behavioral health services:
 - a. ~~Listed~~ listed in the behavioral health residential facility's scope of services are provided on the premises; ~~and~~
 - b. ~~5. When provided in a setting or activity with more than one resident participating, before~~ Before a resident participates in behavioral health services provided in a setting or activity with more than one resident participating, the diagnoses, treatment needs, developmental levels, social skills, verbal skills, and personal histories, including any history of physical or sexual abuse, of the residents participating are reviewed to ensure that the:
 - i. a. Health and safety of each resident is protected, and

~~ii.b.~~ Treatment needs of each resident participating are being met; and

~~5-6.~~ A resident does not:

- a. Use or have access to any materials, furnishings, or equipment or participate in any activity or treatment that may present a threat to the resident's health or safety based on the resident's documented diagnosis, treatment needs, developmental levels, social skills, verbal skills, or personal history; or
- b. Share any space, participate in any activity or treatment, or verbally or physically interact with any other resident that may present a threat to the resident's health or safety, based on the other resident's documented diagnosis, treatment needs, developmental levels, social skills, verbal skills, and personal history.

B. An administrator shall ensure that counseling is:

1. Offered as described in the behavioral health residential facility's scope of services,
2. Provided according to the frequency and number of hours identified in the resident's treatment plan, and
3. Provided by a behavioral health professional or a behavioral health technician.

C. An administrator shall ensure that:

1. A personnel member providing counseling that addresses a specific type of behavioral health issue has the skills and knowledge necessary to provide the counseling that addresses the specific type of behavioral health issue; and
2. Each counseling session is documented in a resident's medical record to include:
 - a. The date of the counseling session;
 - b. The amount of time spent in the counseling session;
 - c. Whether the counseling was individual counseling, family counseling, or group counseling;
 - d. The treatment goals addressed in the counseling session; and
 - e. The signature of the personnel member who provided the counseling and the date signed.

D. An administrator of a behavioral health residential facility authorized to provide behavioral health residential services to individuals under 18 years of age:

1. May continue to provide behavioral health services to a resident who is 18 years of age or older:
 - a. If the resident:
 - i. Was admitted to the behavioral health residential facility before the

- resident's 18th birthday;
 - ii. Is not 21 years of age or older; and
 - iii. Is:
 - (1) Attending classes or completing coursework to obtain a high school or a high school equivalency diploma, or
 - (2) Participating in a job training program; or
 - b. Through the last calendar day of the month of the resident's 18th birthday; and
2. Shall ensure that:
- a. A resident does not receive the following from other residents at the behavioral health residential facility:
 - i. Threats,
 - ii. Ridicule,
 - iii. Verbal harassment,
 - iv. Punishment, or
 - v. Abuse;
 - b. The interior of the behavioral health residential facility has furnishings and decorations appropriate to the ages of the residents receiving services at the behavioral health residential facility;
 - c. A resident older than three years of age does not sleep in a crib;
 - d. Clean and non-hazardous toys, educational materials, and physical activity equipment are available and accessible to residents on the premises in a quantity sufficient to meet each resident's needs and are appropriate to each resident's age, developmental level, and treatment needs; and
 - e. A resident's educational needs are met, including providing or arranging for transportation:
 - i. By establishing and providing an educational component, approved in writing by the Arizona Department of Education; or
 - ii. As arranged and documented by the administrator through the local school district.
- E.** An administrator shall ensure that:
- 1. An emergency safety response is:
 - a. Only used:
 - i. By a personnel member trained to use an emergency safety response,

- ii. For the management of a resident's violent or self-destructive behavior, and
 - iii. When less restrictive interventions have been determined to be ineffective; and
 - b. Discontinued at the earliest possible time, but no longer than five minutes after the emergency safety response is initiated;
- 2. Within 24 hours after an emergency safety response is used for a resident, the following information is entered into the resident medical record:
 - a. The date and time the emergency safety response was used;
 - b. The name of each personnel member who used an emergency safety response;
 - c. The specific emergency safety response used;
 - d. The personnel member or resident behavior, event, or environmental factor that caused the need for the emergency safety response; and
 - e. Any injury that resulted from the use of the emergency safety response;
- 3. Within 10 working days after an emergency safety response is used for a resident, the administrator or clinical director reviews the information in subsection (E)(2); and
- 4. After the review required in subsection (E)(3), the following information is entered, according to policies and procedures, into the resident's medical record:
 - a. Actions taken or planned actions to prevent the need for the use of an emergency safety response for the resident,
 - b. A determination of whether the resident is appropriately placed at the behavioral health residential facility, and
 - c. Whether the resident's treatment plan was reviewed or needs to be reviewed and amended to ensure that the resident's treatment plan is meeting the resident's treatment needs.

F. An administrator shall ensure that:

- 1. A personnel member whose job description includes the ability to use an emergency safety response:
 - a. Completes training in crisis intervention that includes:
 - i. Techniques to identify personnel member and resident behaviors, events, and environmental factors that may trigger the need for the use of an emergency safety response;
 - ii. The use of nonphysical intervention skills, such as de-escalation,

- mediation, conflict resolution, active listening, and verbal and observational methods; and
- iii. The safe use of an emergency safety response including the ability to recognize and respond to signs of physical distress in a client who is receiving an emergency safety response; and
- b. Completes training required in subsection (F)(1)(a):
 - i. Before providing behavioral health services, and
 - ii. At least once every 12 months after the date the personnel member completed the initial training;
- 2. Documentation of the completed training in subsection (F)(1)(a) includes:
 - a. The name and credentials of the individual providing the training,
 - b. Date of the training, and
 - c. Verification of a personnel member's ability to use the training; and
- 3. The materials used to provide the completed training in crisis intervention, including handbooks, electronic presentations, and skills verification worksheets, are maintained for at least 12 months after each personnel member who received training using the materials no longer provides services at the behavioral health residential facility.

R9-10-717. Outdoor Behavioral Health Care Programs

- A. An administrator of a behavioral health residential facility ~~providing~~ authorized to provide an outdoor behavioral health care program shall ensure that:
 - 1. Behavioral health services are provided to a resident participating in the outdoor behavioral health care program consistent with the age, developmental level, physical ability, medical condition, and treatment needs of the resident;
 - 2. Continuous protective oversight is provided to a resident;
 - 3. Transportation is provided to a resident from the behavioral health residential facility's administrative office for the outdoor behavioral health care program to the location where the outdoor behavioral health care program is provided and from the location where the outdoor behavioral health care program is provided to the behavioral health residential facility's administrative office for the outdoor behavioral health care program; and
 - 4. Communication is available between the outdoor behavioral health care program personnel and:
 - a. A behavioral health professional,
 - b. A registered nurse,

- c. An emergency medical response team, and
- d. The behavioral health residential facility's administrative office for the outdoor behavioral health care program.

B. An administrator of a behavioral health residential facility ~~providing~~ authorized to provide an outdoor behavioral health care program shall ensure that:

- 1. Food is prepared:
 - a. Using methods that conserve nutritional value, flavor, and appearance; and
 - b. In a form to meet the needs of a resident such as cut, chopped, ground, pureed, or thickened;
- 2. A food menu is prepared based on the number of calendar days scheduled for the behavioral health care program;
- 3. Meals and snacks provided by the behavioral health care program are served according to menus;
- 4. Meals and snacks for each day are planned using the applicable guidelines in <http://www.health.gov/dietaryguidelines/2010.asp> <http://www.health.gov/dietaryguidelines/2015>;
- 5. A resident is provided:
 - a. A diet that meets the resident's nutritional needs as specified in the resident's assessment or treatment plan;
 - b. Three meals a day with not more than 14 hours between the evening meal and breakfast, except as provided in subsection (B)(5)(d);
 - c. The option to have a daily evening snack or other snack; and
 - d. The option to extend the time span between the evening meal and breakfast from 14 hours to 16 hours if the resident agrees;
- 6. Water is available and accessible to residents unless otherwise stated in a resident's treatment plan;
- 7. Food is free from spoilage, filth, or other contamination and is safe for human consumption;
- 8. Food is protected from potential contamination; and
- 9. Food being maintained in coolers containing ice is not in direct contact with ice or water if water may enter the food because of the nature of the food's packaging, wrapping, or container or the positioning of the food in the ice or water.

C. An administrator of a behavioral health residential facility ~~providing~~ authorized to provide an

outdoor behavioral health care program shall ensure that:

1. The location and, if applicable, equipment used by the outdoor behavioral health care program are sufficient to accommodate the activities, treatment, and ancillary services required by the residents participating in the behavioral health care program;
2. The location and equipment are maintained in a condition that allows the location and equipment to be used for the original purpose of the location and equipment;
3. Garbage and refuse are:
 - a. Stored in plastic bags in covered containers, and
 - b. Removed from the location used by the outdoor behavioral health care program at least once a week;
4. Common areas:
 - a. Are lighted when in use to assure the safety of residents, and
 - b. Have sufficient lighting to allow personnel members to monitor resident activity;
5. The supply of hot and cold water is sufficient to meet the personal hygiene needs of residents and the cleaning and sanitation requirements in this Article;
6. Soiled clothing is stored in closed containers away from food storage, medications, and eating areas;
7. Poisonous or toxic materials are maintained in labeled containers, secured, and separate from food preparation and storage, eating areas, and medications and inaccessible to residents;
8. Combustible or flammable liquids and hazardous materials are stored in the original labeled containers or safety containers, secured, and inaccessible to residents;
9. If a water source that is not regulated under 18 A.A.C. 4 by the Arizona Department of Environmental Quality is used:
 - a. The water source is tested at least once every 12 months for total coliform bacteria and fecal coliform or *E. coli* bacteria;
 - b. If necessary, corrective action is taken to ensure the water is safe to drink; and
 - c. Documentation of testing is retained for at least 12 months after the date of the test; and
10. Smoking or the use of tobacco products may be permitted away from the residents.

R9-10-717.01. Recidivism Reduction Services

An administrator of a behavioral health residential facility that is an adult residential care institution and is authorized to provide recidivism reduction services shall ensure that:

1. A personnel member who is recidivism reduction staff at the adult residential care institution does not provide:
 - a. Behavioral health services other than recidivism reduction services; or
 - b. Recidivism reduction services to a resident who has not been referred by a physician, behavioral health professional, or court of competent jurisdiction to receive recidivism reduction services;
2. The adult residential care institution accepts an individual as a resident only if the individual:
 - a. Is at least 18 years of age; and
 - b. Has documentation of a referral to receive recidivism reduction services that:
 - i. Was made by a physician, behavioral health professional, or court of competent jurisdiction; and
 - ii. Complies with the requirements in A.R.S. § 36-411.01(D);
3. The referral is included in the resident's medical record; and
4. The recidivism reduction services provided to a resident are:
 - a. Consistent with the age, developmental level, physical ability, medical condition, and treatment needs of the resident; and
 - b. Provided by recidivism reduction staff whose experience is compatible with the experience of the resident.

R9-10-718. Medication Services

- A. An administrator shall ensure that policies and procedures for medication services:
 1. Include:
 - a. A process for providing information to a resident about medication prescribed for the resident including:
 - i. The prescribed medication's anticipated results,
 - ii. The prescribed medication's potential adverse reactions,
 - iii. The prescribed medication's potential side effects, and
 - iv. Potential adverse reactions that could result from not taking the medication as prescribed;
 - b. Procedures for preventing, responding to, and reporting any of the following:
 - i. A medication error,
 - ii. An adverse reaction to a medication, or
 - iii. A medication overdose;

- c. Procedures to ensure that a resident's medication regimen is reviewed by a medical practitioner to ensure the medication regimen meets the resident's needs;
 - d. Procedures for documenting, as applicable, medication administration and assistance in the self-administration of medication;
 - e. A process for monitoring a resident who self-administers medication;
 - f. Procedures for assisting a resident in obtaining medication; and
 - g. If applicable, procedures for providing medication administration or assistance in the self-administration of medication off the premises; and
- 2. Specify a process for review through the quality management program of:
 - a. A medication administration error, and
 - b. An adverse reaction to a medication.

B. If a behavioral health residential facility provides medication administration, an administrator shall ensure that:

- 1. Policies and procedures for medication administration:
 - a. Are reviewed and approved by a medical practitioner;
 - b. Specify the individuals who may:
 - i. Order medication, and
 - ii. Administer medication;
 - c. Ensure that medication is administered to a resident only as ~~prescribed~~ ordered; and
 - d. Cover the documentation of a resident's refusal to take prescribed medication in the resident's medical record;
- 2. Verbal orders for medication services are taken by a nurse, unless otherwise provided by law; and
- 3. A medication administered to a resident:
 - a. Is administered in compliance with an order, and
 - b. Is documented in the resident's medical record.

C. If a behavioral health residential facility provides assistance in the self-administration of medication, an administrator shall ensure that:

- 1. A resident's medication is stored by the behavioral health residential facility;
- 2. The following assistance is provided to a resident:
 - a. A reminder when it is time to take the medication;
 - b. Opening the medication container for the resident;

- c. Observing the resident while the resident removes the medication from the container;
 - d. Verifying that the medication is taken as ~~ordered~~ prescribed by the resident's medical practitioner by confirming that:
 - i. The resident taking the medication is the individual stated on the medication container label,
 - ii. The resident is taking the dosage of the medication stated on the medication container label or according to an order from a medical practitioner dated later than the date on the medication container label, and
 - iii. The resident is taking the medication at the time stated on the medication container label or according to an order from a medical practitioner dated later than the date on the medication container label; or
 - e. Observing the resident while the resident takes the medication;
3. Policies and procedures for assistance in the self-administration of medication are reviewed and approved by a medical practitioner or registered nurse;
4. Training for a personnel member, other than a medical practitioner or registered nurse, in assistance in the self-administration of medication:
- a. Is provided by a medical practitioner or registered nurse or an individual trained by a medical practitioner or registered nurse; and
 - b. Includes:
 - i. A demonstration of the personnel member's skills and knowledge necessary to provide assistance in the self-administration of medication,
 - ii. Identification of medication errors and medical emergencies related to medication that require emergency medical intervention, and
 - iii. The process for notifying the appropriate entities when an emergency medical intervention is needed;
5. A personnel member, other than a medical practitioner or registered nurse, completes the training in subsection (C)(4) before the personnel member provides assistance in the self-administration of medication; and
6. Assistance in the self-administration of medication provided to a resident:
- a. Is in compliance with an order, and
 - b. Is documented in the resident's medical record.

- D.** An administrator shall ensure that:
1. A current drug reference guide is available for use by personnel members;
 2. A current toxicology reference guide is available for use by personnel members; and
 3. If pharmaceutical services are provided on the premises:
 - a. A committee, composed of at least one physician, one pharmacist, and other personnel members as determined by policies and procedures, is established to:
 - i. Develop a drug formulary,
 - ii. Update the drug formulary at least once every 12 months,
 - iii. Develop medication usage and medication substitution policies and procedures, and
 - iv. Specify which medications and medication classifications are required to be stopped automatically after a specific time period unless the ordering medical practitioner specifically orders otherwise;
 - b. The pharmaceutical services are provided under the direction of a pharmacist;
 - c. The pharmaceutical services comply with A.R.S. Title 36, Chapter 27; A.R.S. Title 32, Chapter 18; and 4 A.A.C. 23; and
 - d. A copy of the pharmacy license is provided to the Department upon request.
- E.** When medication is stored at a behavioral health residential facility, an administrator shall ensure that:
1. Medication is stored in a separate locked room, closet, cabinet, or self-contained unit used only for medication storage;
 2. Medication is stored according to the instructions on the medication container; and
 3. Policies and procedures are established, documented, and implemented for:
 - a. Receiving, storing, inventorying, tracking, dispensing, and discarding medication, including expired medication;
 - b. Discarding or returning prepackaged and sample medication to the manufacturer if the manufacturer requests the discard or return of the medication;
 - c. A medication recall and notification of residents who received recalled medication; and
 - d. Storing, inventorying, and dispensing controlled substances.
- F.** An administrator shall ensure that a personnel member immediately reports a medication error or a resident's adverse reaction to a medication to the medical practitioner who ordered or prescribed the medication and, if applicable, the behavioral health residential facility's clinical

director.

R9-10-719. Food Services

A. Except for an outdoor behavioral health care program provided by a behavioral health residential facility, an administrator shall ensure that:

1. For a behavioral health residential facility that has a licensed capacity of more than 10 residents:
 - a. The behavioral health residential facility obtains a license or permit as a food establishment under 9 A.A.C. 8, Article 1; and
 - b. A copy of the behavioral health residential facility's food establishment license or permit is maintained;
2. If a behavioral health residential facility contracts with a food establishment, as established in 9 A.A.C. 8, Article 1, to prepare and deliver food to the behavioral health residential facility, a copy of the food establishment's license or permit under 9 A.A.C. 8, Article 1 is maintained by the behavioral health residential facility;
3. Food is stored, refrigerated, and reheated to meet the dietary needs of a resident;
4. A registered dietitian is employed full-time, part-time, or as a consultant; and
5. If a registered dietitian is not employed full-time, an individual is designated as a director of food services who consults with a registered dietitian as often as necessary to meet the nutritional needs of the residents.

B. Except for an outdoor behavioral health care program provided by a behavioral health residential facility, a registered dietitian or director of food services shall ensure that:

1. Food is prepared:
 - a. Using methods that conserve nutritional value, flavor, and appearance; and
 - b. In a form to meet the needs of a resident, such as cut, chopped, ground, pureed, or thickened;
2. A food menu:
 - a. Is prepared at least one week in advance,
 - b. Includes the foods to be served each day,
 - c. Is conspicuously posted at least one calendar day before the first meal on the food menu will be served,
 - d. Includes any food substitution no later than the morning of the day of meal service with a food substitution, and
 - e. Is maintained for at least 60 calendar days after the last day included in the food

menu;

3. Meals and snacks provided by the behavioral health residential facility are served according to posted menus;
4. Meals and snacks for each day are planned using the applicable guidelines in <http://www.health.gov/dietaryguidelines/2010.asp> <http://www.health.gov/dietaryguidelines/2015>;
5. A resident is provided:
 - a. A diet that meets the resident's nutritional needs as specified in the resident's assessment or treatment plan;
 - b. Three meals a day with not more than 14 hours between the evening meal and breakfast, except as provided in subsection (B)(5)(d);
 - c. The option to have a daily evening snack identified in subsection (B)(5)(d)(ii) or other snack; and
 - d. The option to extend the time span between the evening meal and breakfast from 14 hours to 16 hours if:
 - i. The resident agrees; and
 - ii. The resident is offered an evening snack that includes meat, fish, eggs, cheese, or other protein, and a serving from either the fruit and vegetable food group or the bread and cereal food group;
6. A resident requiring assistance to eat is provided with assistance that recognizes the resident's nutritional, physical, and social needs, including the use of adaptive eating equipment or utensils; and
7. Water is available and accessible to residents unless otherwise stated in a resident's treatment plan.

C. Except for an outdoor behavioral health care program provided by a behavioral health residential facility, an administrator shall ensure that food is obtained, prepared, served, and stored as follows:

1. Food is free from spoilage, filth, or other contamination and is safe for human consumption;
2. Food is protected from potential contamination;
3. Potentially hazardous food is maintained as follows:
 - a. Foods requiring refrigeration are maintained at 41° F or below; and
 - b. Foods requiring cooking are cooked to heat all parts of the food to a temperature

of at least 145° F for 15 seconds, except that:

- i. Ground beef and ground meats are cooked to heat all parts of the food to at least 155° F;
 - ii. Poultry, poultry stuffing, stuffed meats, and stuffing that contains meat are cooked to heat all parts of the food to at least 165° F;
 - iii. Pork and any food containing pork are cooked to heat all parts of the food to at least 155° F;
 - iv. Raw shell eggs for immediate consumption are cooked to at least 145° F for 15 seconds and any food containing raw shell eggs is cooked to heat all parts of the food to at least 155 °F;
 - v. Roast beef and beef steak are cooked to an internal temperature of at least 155° F; and
 - vi. Leftovers are reheated to a temperature of at least 165° F;
4. A refrigerator contains a thermometer, accurate to plus or minus 3° F, placed at the warmest part of the refrigerator;
 5. Frozen foods are stored at a temperature of 0° F or below; and
 6. Tableware, utensils, equipment, and food-contact surfaces are clean and in good repair.

R9-10-720. Emergency and Safety Standards

- A.** Except for an outdoor behavioral health care program provided by a behavioral health residential facility, an administrator shall ensure that a behavioral health residential facility has:
1. A fire alarm system installed according to the National Fire Protection Association 72: National Fire Alarm and Signaling Code, incorporated by reference in A.A.C. R9-1-412, and a sprinkler system installed according to the National Fire Protection Association 13: Standard for the Installation of Sprinkler Systems, incorporated by reference in A.A.C. R9-1-412, that are in working order; or
 2. An alternative method to ensure resident's safety that is documented and approved by the local jurisdiction.
- B.** Except for an outdoor behavioral health care program provided by a behavioral health residential facility, an administrator shall ensure that:
1. A disaster plan is developed, documented, maintained in a location accessible to personnel members and other employees, and, if necessary, implemented that includes:
 - a. When, how, and where residents will be relocated;
 - b. How each resident's medical record will be available to individuals providing

- services to the resident during a disaster;
 - c. A plan to ensure each resident's medication will be available to administer to the resident during a disaster; and
 - d. A plan for obtaining food and water for individuals present in the behavioral health residential facility, under the care and supervision of personnel members, or in the behavioral health residential facility's relocation site during a disaster;
2. The disaster plan required in subsection (B)(1) is reviewed at least once every 12 months;
 3. Documentation of a disaster plan review required in subsection (B)(2) is created, is maintained for at least 12 months after the date of the disaster plan review, and includes:
 - a. The date and time of the disaster plan review;
 - b. The name of each personnel member, employee, or volunteer participating in the disaster plan review;
 - c. A critique of the disaster plan review; and
 - d. If applicable, recommendations for improvement;
 4. A disaster drill for employees is conducted on each shift at least once every three months and documented;
 5. An evacuation drill for employees and residents on the premises is conducted at least once every six months on each shift;
 6. Documentation of each evacuation drill is created, is maintained for 12 months after the date of the evacuation drill, and includes:
 - a. The date and time of the evacuation drill;
 - b. The amount of time taken for all employees and residents to evacuate the behavioral health residential facility;
 - c. Names of employees participating in the evacuation drill;
 - d. An identification of residents needing assistance for evacuation;
 - e. Any problems encountered in conducting the evacuation drill; and
 - f. Recommendations for improvement, if applicable; and
 7. An evacuation path is conspicuously posted on each hallway of each floor of the behavioral health residential facility.
- C. An administrator shall:
1. Obtain a fire inspection conducted according to the time-frame established by the local fire department or the State Fire Marshal,
 2. Make any repairs or corrections stated on the fire inspection report, and

3. Maintain documentation of a current fire inspection.

R9-10-722. Physical Plant Standards

- A.** Except for a behavioral health outdoor program, an administrator shall ensure that the premises and equipment are sufficient to accommodate:
1. The services in the behavioral health residential facility's scope of services, and
 2. An individual ~~accepted~~ admitted as a resident by the behavioral health residential facility.
- B.** An administrator shall ensure that:
1. A behavioral health residential facility has a:
 - a. Room that provides privacy for a resident to receive treatment or visitors; and
 - b. Common area and a dining area that contain furniture and materials to accommodate the recreational and socialization needs of the residents and other individuals in the behavioral health residential facility;
 2. At least one bathroom is accessible from a common area that:
 - a. May be used by residents and visitors;
 - b. Provides privacy when in use; and
 - c. Contains the following:
 - i. At least one working sink with running water,
 - ii. At least one working toilet that flushes and has a seat,
 - iii. Toilet tissue for each toilet,
 - iv. Soap in a dispenser accessible from each sink,
 - v. Paper towels in a dispenser or a mechanical air hand dryer,
 - vi. Lighting, and
 - vii. A window that opens or another means of ventilation;
 3. For every six residents who stay overnight at the behavioral health residential facility, there is at least one working toilet that flushes and has a seat, and one sink with running water;
 4. For every eight residents who stay overnight at the behavioral health residential facility, there is at least one working bathtub or shower;
 5. A resident bathroom provides privacy when in use and contains:
 - a. A shatter-proof mirror, unless the resident's treatment plan allows for otherwise;
 - b. A window that opens or another means of ventilation; and
 - c. Nonporous surfaces for shower enclosures and slip-resistant surfaces in tubs and showers;

6. If a resident bathroom door locks from the inside, an employee has a key and access to the bathroom;
 7. Each resident is provided a sleeping area that is in a bedroom; and
 8. A resident bedroom complies with the following:
 - a. Is not used as a common area;
 - b. Is not used as a passageway to another bedroom or bathroom unless the bathroom is for the exclusive use of an individual occupying the bedroom;
 - c. Contains a door that opens into a hallway, common area, or outdoors;
 - d. Is constructed and furnished to provide unimpeded access to the door;
 - e. Has window or door covers that provide resident privacy;
 - f. Has floor to ceiling walls;
 - g. Is a:
 - i. Private bedroom that contains at least 60 square feet of floor space, not including the closet; or
 - ii. Shared bedroom that:
 - (1) Is shared by no more than eight residents;
 - (2) Except as provided in subsection (C), contains at least 60 square feet of floor space, not including a closet, for each individual occupying the shared bedroom; and
 - (3) Provides at least three feet of floor space between beds or bunk beds;
 - h. Contains for each resident occupying the bedroom:
 - i. A bed that is at least 36 inches wide and at least 72 inches long, and consists of at least a frame and mattress and linens; and
 - ii. Individual storage space for personal effects and clothing such as shelves, a dresser, or chest of drawers;
 - i. Has clean linen for each bed including mattress pad, sheets large enough to tuck under the mattress, pillows, pillow cases, bedspread, waterproof mattress covers as needed, and blankets to ensure warmth and comfort for each resident;
 - j. Has sufficient lighting for a resident occupying the bedroom to read; and
 - k. Has a clothing rod or hook in the bedroom designed to minimize the opportunity for a resident to cause self-injury.
- C. A behavioral health residential facility that was licensed as a Level 4 transitional agency before

October 1, 2013 may continue to use a shared bedroom that provides at least 40 square feet of floor space, not including a closet, for each individual occupying the shared bedroom. If there is a modification to the shared bedroom, the behavioral health residential facility shall comply with the requirement in subsection (B)(8)(g).

D. If a swimming pool is located on the premises, an administrator shall ensure that:

1. The swimming pool is equipped with the following:
 - a. An operational water circulation system that clarifies and disinfects the swimming pool water continuously and that includes at least:
 - i. A removable strainer,
 - ii. Two swimming pool inlets located on opposite sides of the swimming pool, and
 - iii. A drain located at the swimming pool's lowest point and covered by a grating that cannot be removed without using tools; and
 - b. An operational vacuum cleaning system;
2. The swimming pool is enclosed by a wall or fence that:
 - a. Is at least five feet in height as measured on the exterior of the wall or fence;
 - b. Has no vertical openings greater than four inches across;
 - c. Has no horizontal openings, except as described in subsection (D)(2)(e);
 - d. Is not chain-link;
 - e. Does not have a space between the ground and the bottom fence rail that exceeds four inches in height; and
 - f. Has a self-closing, self-latching gate that:
 - i. Opens away from the swimming pool,
 - ii. Has a latch located at least 54 inches from the ground, and
 - iii. Is locked when the swimming pool is not in use; and
3. A life preserver or shepherd's crook is available and accessible in the pool area.

E. An administrator shall ensure that a spa that is not enclosed by a wall or fence as described in subsection (D)(2) is covered and locked when not in use.

ARTICLE 8. ASSISTED LIVING FACILITIES

R9-10-801. Definitions

In addition to the definitions in A.R.S. § 36-401 and R9-10-101, the following definitions apply in this Article, unless the context otherwise requires:

1. “Accept” or “acceptance” means:
 - a. An individual begins living in and receiving assisted living services from an assisted living facility; or
 - b. An individual begins receiving adult day health care services or respite care services from an assisted living facility.
2. “Assistant caregiver” means an employee or volunteer who helps a manager or caregiver provide supervisory care services, personal care services, or directed care services to a resident, and does not include a family member of the resident.
3. “Assisted living services” means supervisory care services, personal care services, directed care services, behavioral ~~care~~, ~~health services~~, or ancillary services provided to a resident by or on behalf of an assisted living facility.
4. “Caregiver” means an individual who provides supervisory care services, personal care services, or directed care services to a resident, and does not include a family member of the resident.
5. “Manager” means an individual designated by a governing authority to act on behalf of the governing authority in the onsite management of the assisted living facility.
6. “Medication organizer” means a container that is designed to hold doses of medication and is divided according to date or time increments.
7. “Primary care provider” means a physician, a physician’s assistant, or registered nurse practitioner who directs a resident’s medical services.
8. “Residency agreement” means a document signed by a resident or the resident’s representative and a manager, detailing the terms of residency.
9. “Service plan” means a written description of a resident’s need for supervisory care services, personal care services, directed care services, ancillary services, or behavioral health services and the specific assisted living services to be provided to the resident.
10. “Termination of residency” or “terminate residency” means a resident is no longer living in and receiving assisted living services from an assisted living facility.

R9-10-802. Supplemental Application Requirements

In addition to the license application requirements in A.R.S. § 36-422 and R9-10-105, an applicant for ~~an~~ ~~initial~~ a license as an assisted living facility shall include in a Department-provided format:

1. Which of the following levels of assisted living services the applicant is requesting authorization to provide:
 - a. Supervisory care services,
 - b. Personal care services, or
 - c. Directed care services; and
2. Whether the applicant is requesting authorization to provide:
 - a. Adult day health care services, or
 - b. Behavioral health services other than behavioral care.

R9-10-803. Administration

- A.** A governing authority shall:
1. Consist of one or more individuals responsible for the organization, operation, and administration of an assisted living facility;
 2. Establish, in writing, an assisted living facility's scope of services;
 3. Designate, in writing, a manager who:
 - a. Is 21 years of age or older; and
 - b. Except for the manager of an adult foster care home, has either a:
 - i. Certificate as an assisted living facility manager issued under A.R.S. § 36-446.04(C), or
 - ii. A temporary certificate as an assisted living facility manager issued under A.R.S. § 36-446.06;
 4. Adopt a quality management program that complies with R9-10-804;
 5. Review and evaluate the effectiveness of the quality management program at least once every 12 months;
 6. Designate, in writing, an acting manager who has the qualifications established in subsection (A)(3), if the manager is:
 - a. Expected not to be present on the assisted living facility's premises for more than 30 calendar days, or
 - b. Not present on the assisted living facility's premises for more than 30 calendar days;
 7. Except as provided in subsection (A)(6), notify the Department according to A.R.S. § 36-425(I) when there is a change in the manager and identify the name and qualifications

of the new manager;

8. Ensure that a manager or caregiver who is able to read, write, understand, and communicate in English is on an assisted living facility's premises; and
9. Ensure compliance with A.R.S. § 36-411.

B. A manager:

1. Is directly accountable to the governing authority of an assisted living facility for the daily operation of the assisted living facility and all services provided by or at the assisted living facility;
2. Has the authority and responsibility to manage the assisted living facility; and
3. Except as provided in subsection (A)(6), designates, in writing, a caregiver who is:
 - a. At least 21 years of age, and
 - b. Present on the assisted living facility's premises and accountable for the assisted living facility when the manager is not present on the assisted living facility premises.

C. A manager shall ensure that policies and procedures are:

1. Established, documented, and implemented to protect the health and safety of a resident that:
 - a. Cover job descriptions, duties, and qualifications, including required skills and knowledge, education, and experience for employees and volunteers;
 - b. Cover orientation and in-service education for employees and volunteers;
 - c. Include how an employee may submit a complaint related to resident care;
 - d. Cover the requirements in A.R.S. Title 36, Chapter 4, Article 11;
 - e. Except as provided in subsection (M), cover cardiopulmonary resuscitation training for applicable employees and volunteers, including:
 - i. The method and content of cardiopulmonary resuscitation training, which includes a demonstration of the employee's or volunteer's ability to perform cardiopulmonary resuscitation;
 - ii. The qualifications for an individual to provide cardiopulmonary resuscitation training;
 - iii. The time-frame for renewal of cardiopulmonary resuscitation training; and
 - iv. The documentation that verifies that the employee or volunteer has received cardiopulmonary resuscitation training;
 - f. Cover first aid training;

- g. Cover how a caregiver will respond to a resident's sudden, intense, or out-of-control behavior to prevent harm to the resident or another individual;
- h. Cover staffing and recordkeeping;
- i. Cover resident acceptance; and resident rights; ~~and termination of residency~~;
- j. Cover termination of residency, including:
 - i. Termination initiated by the manager of an assisted living facility, and
 - ii. Termination initiated by a resident or the resident's representative;
- ~~j-k~~. Cover the provision of assisted living services, including:
 - i. Coordinating the provision of assisted living services,
 - ii. Making vaccination for influenza and pneumonia available to residents according to A.R.S. § 36-406(1)(d), and
 - iii. Obtaining resident preferences for food and the provision of assisted living services;
- ~~k-l~~. Cover the provision of respite services or adult day health services, if applicable;
- m. Cover methods by which the assisted living facility is aware of the general or specific whereabouts of a resident, based on the level of assisted living services provided to the resident and the assisted living services the assisted living facility is authorized to provide;
- ~~n~~. Cover resident medical records, including electronic medical records;
- ~~m-o~~. Cover personal funds accounts, if applicable;
- ~~n-p~~. Cover specific steps for:
 - i. A resident to file a complaint, and
 - ii. The assisted living facility to respond to a resident's complaint;
- ~~o-q~~. Cover health care directives;
- ~~p-r~~. Cover assistance in the self-administration of medication, and medication administration;
- ~~q-s~~. Cover food services;
- ~~r-t~~. Cover contracted services;
- ~~s-u~~. Cover equipment inspection and maintenance, if applicable;
- ~~t-v~~. Cover infection control; and
- ~~u-w~~. Cover a quality management program, including incident report and supporting documentation;

2. Available to employees and volunteers of the assisted living facility; and

3. Reviewed at least once every three years and updated as needed.
- D.** A manager shall ensure that the following are conspicuously posted:
1. A list of resident rights;
 2. The assisted living facility's license;
 3. Current phone numbers of:
 - a. The unit in the Department responsible for licensing and monitoring the assisted living facility,
 - b. Adult Protective Services in the Department of Economic Security,
 - c. The State Long-Term Care Ombudsman, and
 - d. The Arizona Center for Disability Law; and
 4. The location at which a copy of the most recent Department inspection report and any plan of correction resulting from the Department inspection may be viewed.
- E.** A manager shall ensure that, unless otherwise stated:
1. Documentation required by this Article is provided to the Department within two hours after a Department request; and
 2. When documentation or information is required by this Chapter to be submitted on behalf of an assisted living facility, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the assisted living facility.
- F.** If a requirement in this Article states that a manager shall ensure an action or condition or sign a document:
1. A governing authority or licensee may ensure the action or condition or sign the document and retain the responsibility to ensure compliance with the requirement in this Article;
 2. The manager may delegate ensuring the action or condition or signing the document to another individual, but the manager retains the responsibility to ensure compliance with the requirement in the Article; and
 3. If the manager delegates ensuring an action or condition or signing a document, the delegation is documented and the documentation includes the name of the individual to whom the action, condition, or signing is delegated and the effective date of the delegation.
- G.** A manager shall:
1. Not act as a resident's representative and not allow an employee or a family member of an employee to act as a resident's representative for a resident who is not a family member of the employee;

2. If the assisted living facility administers personal funds accounts for residents and is authorized in writing by a resident or the resident's representative to administer a personal funds account for the resident:
 - a. Ensure that the resident's personal funds account does not exceed \$2,000;
 - b. Maintain a separate record for each resident's personal funds account, including receipts and expenditures;
 - c. Maintain the resident's personal funds account separate from any account of the assisted living facility; and
 - d. Provide a copy of the record of the resident's personal funds account to the resident or the resident's representative at least once every three months;
 3. Notify the resident's representative, family member, public fiduciary, or trust officer if the manager determines that a resident is incapable of handling financial affairs; and
 4. Except when a resident's need for assisted living services changes, as documented in the resident's service plan, ensure that a resident receives at least 30 calendar days written notice before any increase in a fee or charge.
- H.** A manager shall permit the Department to interview an employee, a volunteer, or a resident as part of a compliance survey or a complaint investigation.
- I.** If abuse, neglect, or exploitation of a resident is alleged or suspected to have occurred before the resident was accepted or while the resident is not on the premises and not receiving services from an assisted living facility's manager, caregiver, or assistant caregiver, the manager shall report the alleged or suspected abuse, neglect, or exploitation of the resident according to A.R.S. § 46-454.
- J.** If a manager has a reasonable basis, according to A.R.S. § 46-454, to believe abuse, neglect or exploitation has occurred on the premises or while a resident is receiving services from an assisted living facility's manager, caregiver, or assistant caregiver, the manager shall:
1. If applicable, take immediate action to stop the suspected abuse, neglect, or exploitation;
 2. Report the suspected abuse, neglect, or exploitation of the resident according to A.R.S. § 46-454;
 3. Document:
 - a. The suspected abuse, neglect, or exploitation;
 - b. Any action taken according to subsection (J)(1); and
 - c. The report in subsection (J)(2);
 4. Maintain the documentation in subsection (J)(3) for at least 12 months after the date of the report in subsection(J)(2);

5. Initiate an investigation of the suspected abuse, neglect, or exploitation and document the following information within five working days after the report required in subsection (J)(2):
 - a. The dates, times, and description of the suspected abuse, neglect, or exploitation;
 - b. A description of any injury to the resident related to the suspected abuse or neglect and any change to the resident's physical, cognitive, functional, or emotional condition;
 - c. The names of witnesses to the suspected abuse, neglect, or exploitation; and
 - d. The actions taken by the manager to prevent the suspected abuse, neglect, or exploitation from occurring in the future; and
 6. Maintain a copy of the documented information required in subsection (J)(5) for at least 12 months after the date the investigation was initiated.
- K.** A manager shall provide written notification to the Department of a resident's:
1. Death, if the resident's death is required to be reported according to A.R.S. § 11-593, within one working day after the resident's death; and
 2. Self-injury, within two working days after the resident inflicts a self-injury that requires immediate intervention by an emergency services provider.
- L.** If a resident is receiving services from a home health agency or hospice service agency, a manager shall ensure that:
1. The resident's medical record contains:
 - a. The name, address, and contact individual, including contact information, of the home health agency or hospice service agency;
 - b. Any information provided by the home health agency or hospice service agency; and
 - c. A copy of resident follow-up instructions provided to the resident by the home health agency or hospice service agency; and
 2. Any care instructions for a resident provided to the assisted living facility by the home health agency or hospice service agency are:
 - a. Within the assisted living facility's scope of services,
 - b. Communicated to a caregiver, and
 - c. Documented in the resident's service plan.
- M.** A manager of an assisted living home may establish, in policies and procedures, requirements that a caregiver obtains and provides documentation of cardiopulmonary resuscitation training

specific to adults, which includes a demonstration of the caregiver's ability to perform cardiopulmonary resuscitation, from one of the following organizations:

1. American Red Cross,
2. American Heart Association, or
3. National Safety Council.

R9-10-806. Personnel

A. A manager shall ensure that:

1. A caregiver:
 - a. Is 18 years of age or older; and
 - b. Provides documentation of:
 - i. Completion of a caregiver training program approved by the Department or the Board of Examiners for Nursing Care Institution Administrators and Assisted Living Facility Managers;
 - ii. For supervisory care services, employment as a manager or caregiver of a supervisory care home before November 1, 1998;
 - iii. For supervisory care services or personal care services, employment as a manager or caregiver of a supportive residential living center before November 1, 1998; or
 - iv. For supervisory care services, personal care services, or directed services, one of the following:
 - (1) A nursing care institution administrator's license issued by the Board of Examiners;
 - (2) A nurse's license issued to the individual under A.R.S. Title 32, Chapter 15;
 - (3) Documentation of employment as a manager or caregiver of an unclassified residential care institution before November 1, 1998; or
 - (4) Documentation of sponsorship of or employment as a caregiver in an adult foster care home before November 1, 1998;
2. An assistant caregiver:
 - a. Is 16 years of age or older, and
 - b. Interacts with residents under the supervision of a manager or caregiver;
3. The qualifications, skills, and knowledge required for a caregiver or assistant caregiver:

- a. Are based on:
 - i. The type of assisted living services, behavioral health services, or behavioral care expected to be provided by the caregiver or assistant caregiver according to the established job description; and
 - ii. The acuity of the residents receiving assisted living services, behavioral health services, or behavioral care from the caregiver or assistant caregiver according to the established job description; and
 - b. Include:
 - i. The specific skills and knowledge necessary for the caregiver or assistant caregiver to provide the expected assisted living services, behavioral health services, or behavioral care listed in the established job description;
 - ii. The type and duration of education that may allow the caregiver or assistant caregiver to have acquired the specific skills and knowledge for the caregiver or assistant caregiver to provide the expected assisted living services, behavioral health services, or behavioral care listed in the established job description; and
 - iii. The type and duration of experience that may allow the caregiver or assistant caregiver to have acquired the specific skills and knowledge for the caregiver or assistant caregiver to provide the expected assisted living services, behavioral health services or behavioral care listed in the established job description;
4. A caregiver's or assistant caregiver's skills and knowledge are verified and documented:
 - a. Before the caregiver or assistant caregiver provides physical health services or behavioral health services, and
 - b. According to policies and procedures;
 5. An assisted living facility has a manager, caregivers, and assistant caregivers with the qualifications, experience, skills, and knowledge necessary to:
 - a. Provide the assisted living services, behavioral health services, behavioral care, and ancillary services in the assisted living facility's scope of services;
 - b. Meet the needs of a resident; and
 - c. Ensure the health and safety of a resident;
 6. At least one manager or caregiver is present and awake at an assisted living center when a

resident is on the premises;

7. Documentation is maintained for at least 12 months after the last date on the documentation of the caregivers and assistant caregivers working each day, including the hours worked by each;

~~7.8.~~ A manager, a caregiver, and an assistant caregiver, or an employee or a volunteer who has or is expected to have more than eight hours per week of direct interaction with residents, provides evidence of freedom from infectious tuberculosis:

a. On or before the date the individual begins providing services at or on behalf of the assisted living facility, and

b. As specified in R9-10-113;

~~8.9.~~ Before providing assisted living services to a resident, a caregiver or an assistant caregiver receives orientation that is specific to the duties to be performed by the caregiver or assistant caregiver; and

~~9.10.~~ Before providing assisted living services to a resident, a manager or caregiver provides current documentation of first aid training and cardiopulmonary resuscitation training certification specific to adults.

B. A manager of an assisted living home shall ensure that:

1. An individual residing in an assisted living home, who is not a resident, a manager, a caregiver, or an assistant caregiver:

a. Either:

i. Complies with the fingerprinting requirements in A.R.S. § 36-411, or

ii. Interacts with residents only under the supervision of an individual who has a valid fingerprint clearance card; and

b. If the individual is 12 years of age or older, provides evidence of freedom from infectious tuberculosis as specified in R9-10-113;

2. Documentation of compliance with the requirements in subsection (B)(1)(a) and evidence of freedom from infectious tuberculosis, if required under subsection (B)(1)(b), is maintained for an individual residing in the assisted living home who is not a resident, a manager, a caregiver, or an assistant caregiver;

3. As part of the policies and procedures required in R9-10-803(C)(1)(h), a plan is established, documented, and implemented to ensure that the manager or a caregiver is available as back-up to provide assisted living services to a resident if the manager or a caregiver assigned to work is not available or not able to provide the required assisted

living services; and

- ~~3.4.~~ At least the manager or a caregiver is present at an assisted living home when a resident is present in the assisted living home and:
- a. Except for nighttime hours, the manager or caregiver is awake; and
 - b. If the manager or caregiver is not awake during nighttime hours:
 - i. The manager or caregiver can hear and respond to a resident needing assistance; and
 - ii. If the assisted living home is authorized to provide directed care services, policies and procedures are developed, documented, and implemented to establish a process for checking on a resident receiving directed care services during nighttime hours to ensure the resident's health and safety.
- C. A manager shall ensure that a personnel record for each employee or volunteer:
1. Includes:
 - a. The individual's name, date of birth, and contact telephone number;
 - b. The individual's starting date of employment or volunteer service and, if applicable, the ending date; and
 - c. Documentation of:
 - i. The individual's qualifications, including skills and knowledge applicable to the individual's job duties;
 - ii. The individual's education and experience applicable to the individual's job duties;
 - iii. The individual's completed orientation and in-service education required by policies and procedures;
 - iv. The individual's license or certification, if the individual is required to be licensed or certified in this Article or in policies and procedures;
 - v. If the individual is a behavioral health technician, clinical oversight required in R9-10-115;
 - vi. Evidence of freedom from infectious tuberculosis, if required for the individual according to subsection ~~(A)(7)~~ (A)(8);
 - vii. Cardiopulmonary resuscitation training, if required for the individual in this Article or policies and procedures;
 - viii. First aid training, if required for the individual in this Article or policies and procedures; and

- ix. Documentation of compliance with the requirements in A.R.S. § 36-411(A) and (C);
- 2. Is maintained:
 - a. Throughout the individual's period of providing services in or for the assisted living facility, and
 - b. For at least 24 months after the last date the individual provided services in or for the assisted living facility; and
- 3. For a manager, a caregiver, or an assistant caregiver who has not provided physical health services or behavioral health services at or for the assisted living facility during the previous 12 months, is provided to the Department within 72 hours after the Department's request.

R9-10-807. Residency and Residency Agreements

- A.** Except as provided in R9-10-808(B)(2), a manager shall ensure that a resident provides evidence of freedom from infectious tuberculosis:
 - 1. Before or within seven calendar days after the resident's date of occupancy, and
 - 2. As specified in R9-10-113.
- B.** A manager shall ensure that before or at the time of acceptance of an individual, the individual submits documentation that is dated within 90 calendar days before the individual is accepted by an assisted living facility and:
 - 1. If an individual is requesting or is expected to receive supervisory care services, personal care services, or directed care services:
 - a. Includes whether the individual requires:
 - i. Continuous medical services,
 - ii. Continuous or intermittent nursing services, or
 - iii. Restraints; and
 - b. Is dated and signed by a:
 - i. Physician,
 - ii. Registered nurse practitioner,
 - iii. Registered nurse, or
 - iv. Physician assistant; and
 - 2. If an individual is requesting or is expected to receive behavioral health services, other than behavioral care, in addition to supervisory care services, personal care services, or directed care services from an assisted living facility:

- a. Includes whether the individual requires continuous behavioral health services, and
 - b. Is signed and dated by a behavioral health professional.
- C. A manager shall not accept or retain an individual if:
 - 1. The individual requires continuous:
 - a. Medical services;
 - b. Nursing services, unless the assisted living facility complies with A.R.S. § 36-401(C); or
 - c. Behavioral health services;
 - 2. The primary condition for which the individual needs assisted living services is a behavioral health issue;
 - ~~2.3.~~ The assisted living services needed by the individual are not within the assisted living facility's scope of services and a home health agency or hospice service agency is not involved in the care of the individual;
 - ~~3.4.~~ The assisted living facility does not have the ability to provide the assisted living services needed by the individual; or
 - ~~4.5.~~ The individual requires restraints, including the use of bedrails.
- D. Before or at the time of an individual's acceptance by an assisted living facility, a manager shall ensure that there is a documented residency agreement with the assisted living facility that includes:
 - 1. The individual's name;
 - 2. Terms of occupancy, including:
 - a. Date of occupancy or expected date of occupancy,
 - b. Resident responsibilities, and
 - c. Responsibilities of the assisted living facility;
 - 3. A list of the services to be provided by the assisted living facility to the resident;
 - 4. A list of the services available from the assisted living facility at an additional fee or charge;
 - 5. For an assisted living home, whether the manager or a caregiver is awake during nighttime hours;
 - 6. The policy for refunding fees, charges, or deposits;
 - 7. The policy and procedure for a resident to terminate residency, including terminating residency because services were not provided to the resident according to the resident's service plan;

8. The policy and procedure for an assisted living facility to terminate residency;
 9. The complaint process; and
 10. The manager's signature and date signed.
- E.** Before or within five working days after a resident's acceptance by an assisted living facility, a manager shall obtain on the documented agreement, required in subsection (D), the signature of one of the following individuals:
1. The resident,
 2. The resident's representative,
 3. The resident's legal guardian, or
 4. Another individual who has been designated by the individual under A.R.S. § 36-3221 to make health care decisions on the individual's behalf.
- F.** A manager shall:
1. Before or at the time of an individual's acceptance by an assisted living facility, provide to the resident or resident's representative a copy of:
 - a. The residency agreement in subsection (D),
 - b. Resident's rights, and
 - c. The policy and procedure on health care directives; and
 2. Maintain the original of the residency agreement in subsection (D) in the resident's medical record.
- G.** A manager may terminate residency of a resident as follows:
1. Without notice, if the resident exhibits behavior that is an immediate threat to the health and safety of the resident or other individuals in an assisted living facility;
 2. With a ~~14-calendar-day~~ 14-calendar-day written notice of termination of residency:
 - a. For nonpayment of fees, charges, or deposit; or
 - b. Under any of the conditions in subsection (C); or
 3. With a ~~30-calendar-day~~ 30-calendar-day written notice of termination of residency, for any other reason.
- H.** A manager shall ensure that a the written notice of termination of residency in subsection (G) includes:
1. The date of notice;
 2. The reason for termination;
 3. The policy for refunding fees, charges, or deposits;
 4. The deposition of a resident's fees, charges, and deposits; and

5. Contact information for the State Long-Term Care Ombudsman.

I. A manager shall provide the following to a resident when the manager provides a the written notice of termination of residency in subsection (G):

1. A copy of the resident's current service plan, and
2. Documentation of the resident's freedom from infectious tuberculosis.

J. If an assisted living facility issues a written notice of termination of residency as provided in subsection (G) to a resident or the resident's representative because the resident needs services the assisted living facility is either not licensed to provide or is licensed to provide but not able to provide, a manager shall ensure that the written notice of termination of residency includes a description of the specific services that the resident needs that the assisted living facility is either not licensed to provide or is licensed to provide but not able to provide.

R9-10-808. Service Plans

A. Except as required in subsection (B), a manager shall ensure that a resident has a written service plan that:

1. Is completed no later than 14 calendar days after the resident's date of acceptance;
2. Is developed with assistance and review from:
 - a. The resident or resident's representative,
 - b. The manager, and
 - c. Any individual requested by the resident or the resident's representative;
3. Includes the following:
 - a. A description of the resident's medical or health problems, including physical, behavioral, cognitive, or functional conditions or impairments;
 - b. The level of service the resident is expected to receive;
 - c. The amount, type, and frequency of assisted living services being provided to the resident, including medication administration or assistance in the self-administration of medication;
 - d. For a resident who requires intermittent nursing services or medication administration, review by a nurse or medical practitioner;
 - e. For a resident who requires behavioral care:
 - i. Any of the following that is necessary to provide assistance with the resident's psychosocial interactions to manage the resident's behavior:
 - (1) The psychosocial interactions or behaviors for which the resident requires assistance,

- (2) Psychotropic medications ordered for the resident,
 - (3) Planned strategies and actions for changing the resident's psychosocial interactions or behaviors, and
 - (4) Goals for changes in the resident's psychosocial interactions or behaviors; and
 - ii. Review by a medical practitioner or behavioral health professional; and
 - f. For a resident who will be storing medication in the resident's bedroom or residential unit, how the medication will be stored and controlled;
4. Is reviewed and updated based on changes in the requirements in subsections (A)(3)(a) through (f):
 - a. No later than 14 calendar days after a significant change in the resident's physical, cognitive, or functional condition; and
 - b. As follows:
 - i. At least once every 12 months for a resident receiving supervisory care services,
 - ii. At least once every six months for a resident receiving personal care services, and
 - iii. At least once every three months for a resident receiving directed care services; and
5. When initially developed and when updated, is signed and dated by:
 - a. The resident or resident's representative;
 - b. The manager;
 - c. If a review is required in subsection (A)(3)(d), the nurse or medical practitioner who reviewed the service plan; and
 - d. If a review is required in subsection (A)(3)(e)(ii), the medical practitioner or behavioral health professional who reviewed the service plan.
- B.** For a resident receiving respite care services, a manager shall ensure that:
- 1. A written service plan is:
 - a. Based on a determination of the resident's current needs and:
 - i. Is completed no later than three working days after the resident's date of acceptance; or
 - ii. If the resident has a service plan in the resident's medical record that was developed within the previous 12 months, is reviewed and updated based

- E.** A manager shall ensure that:
1. Daily social, recreational, or rehabilitative activities are planned according to residents' preferences, needs, and abilities;
 2. A calendar of planned activities is:
 - a. Prepared at least one week in advance of the date the activity is provided,
 - b. Posted in a location that is easily seen by residents,
 - c. Updated as necessary to reflect substitutions in the activities provided, and
 - d. Maintained for at least 12 months after the last scheduled activity;
 3. Equipment and supplies are available and accessible to accommodate a resident who chooses to participate in a planned activity; and
 4. Daily Multiple media sources, such as daily newspapers, current magazines, internet sources, and a variety of reading materials, are available and accessible to a resident to maintain the resident's continued awareness of current news, social events, and other noteworthy information.
- F.** If a resident is not receiving assistance with the resident's psychosocial interactions under the direction of a behavioral health professional or any other behavioral health services at an assisted living facility, the resident is not considered to be receiving behavioral care or behavioral health services from the assisted living facility if the resident:
1. Is prescribed a psychotropic medication, or
 2. Is receiving directed care services and has a primary diagnosis of:
 - a. Dementia,
 - b. Alzheimer's disease-related dementia, or
 - c. Traumatic brain injury.

R9-10-810. Resident Rights

- A.** A manager shall ensure that, at the time of admission acceptance, a resident or the resident's representative receives a written copy of the requirements in subsection (B) and the resident rights in subsection (C).
- B.** A manager shall ensure that:
1. A resident is treated with dignity, respect, and consideration;
 2. A resident is not subjected to:
 - a. Abuse;
 - b. Neglect;
 - c. Exploitation;

- d. Coercion;
 - e. Manipulation;
 - f. Sexual abuse;
 - g. Sexual assault;
 - h. Seclusion;
 - i. Restraint;
 - j. Retaliation for submitting a complaint to the Department or another entity; or
 - k. Misappropriation of personal and private property by the assisted living facility's manager, caregivers, assistant caregivers, employees, or volunteers; and
3. A resident or the resident's representative:
- a. Is informed of the following:
 - i. The policy on health care directives, and
 - ii. The resident complaint process;
 - b. Consents to photographs of the resident before the resident is photographed, except that a resident may be photographed when ~~admitted to~~ accepted as a resident by an assisted living facility for identification and administrative purposes;
 - c. Except as otherwise permitted by law, provides written consent before the release of information in the resident's:
 - i. Medical record, or
 - ii. Financial records;
 - d. May:
 - i. Request or consent to relocation within the assisted living facility; and
 - ii. Except when relocation is necessary based on a change in the resident's condition as documented in the resident's service plan, refuse relocation within the assisted living facility;
 - e. Has access to the resident's records during normal business hours or at a time agreed upon by the resident or resident's representative and the manager; and
 - f. Is informed of:
 - i. The rates and charges for services before the services are initiated;
 - ii. A change in rates or charges at least 30 calendar days before the change is implemented, unless the change in rates or charges results from a change in services; and

- iii. A change in services at least 30 calendar days before the change is implemented, unless the resident's service plan changes.

C. A resident has the following rights:

1. Not to be discriminated against based on race, national origin, religion, gender, sexual orientation, age, disability, marital status, or diagnosis;
2. To receive assisted living services that support and respect the resident's individuality, choices, strengths, and abilities;
3. To receive privacy in:
 - a. Care for personal needs;
 - b. Correspondence, communications, and visitation; and
 - c. Financial and personal affairs;
4. To maintain, use, and display personal items unless the personal items constitute a hazard;
5. To choose to participate or refuse to participate in social, recreational, rehabilitative, religious, political, or community activities;
6. To review, upon written request, the resident's own medical record;
7. To receive a referral to another health care institution if the assisted living facility is not authorized or not able to provide physical health services or behavioral health services needed by the patient;
8. To choose to access services from a health care provider, health care institution, or pharmacy other than the assisted living facility where the resident is residing and receiving services or a health care provider, health care institution, or pharmacy recommended by the assisted living facility;
9. To participate or have the resident's representative participate in the development of, or decisions concerning, the resident's service plan; and
10. To receive assistance from a family member, the resident's representative, or other individual in understanding, protecting, or exercising the resident's rights.

R9-10-814. Personal Care Services

- A. A manager of an assisted living facility authorized to provide personal care services shall not accept or retain a resident who:
1. Is unable to direct self-care;
 2. Except as specified in subsection (B), is confined to a bed or chair because of an inability to ambulate even with assistance; or

3. Except as specified in subsection (C), has a stage 3 or stage 4 pressure sore, as determined by a registered nurse or medical practitioner.
- B.** A manager of an assisted living facility authorized to provide personal care services may accept or retain a resident who is confined to a bed or chair because of an inability to ambulate even with assistance if:
1. The condition is a result of a short-term illness or injury; or
 2. The following requirements are met at the onset of the condition or when the resident is accepted by the assisted living facility:
 - a. The resident or resident's representative requests that the resident be accepted by or remain in the assisted living facility;
 - b. The resident's primary care provider or other medical practitioner:
 - i. Examines the resident at the onset of the condition, or within 30 calendar days before acceptance, and at least once every six months throughout the duration of the resident's condition;
 - ii. Reviews the assisted living facility's scope of services; and
 - iii. Signs and dates a determination stating that the resident's needs can be met by the assisted living facility within the assisted living facility's scope of services and, for retention of a resident, are being met by the assisted living facility; and
 - c. The resident's service plan includes the resident's increased need for personal care services.
- C.** A manager of an assisted living facility authorized to provide personal care services may accept or retain a resident who has a stage 3 or stage 4 pressure sore, as determined by a registered nurse or medical practitioner, if the requirements in subsection (B)(2) are met.
- D.** A manager of an assisted living facility authorized to provide personal care services may accept or retain a resident who:
1. Is receiving nursing services from a home health agency or a hospice service agency; or
 2. Requires intermittent nursing services if:
 - a. The resident's condition for which nursing services are required is a result of a short-term illness or injury, and
 - b. The requirements of subsection (B)(2) are met.

- E. A manager shall ensure that a bell, intercom, or other mechanical means to alert employees to a resident's needs or emergencies is available and accessible in a bedroom or residential unit being used by a resident receiving personal care services.
- F. In addition to the requirements in R9-10-808(A)(3), a manager shall ensure that the service plan for a resident receiving personal care services includes:
 1. Skin maintenance to prevent and treat bruises, injuries, pressure sores, and infections;
 2. Offering sufficient fluids to maintain hydration;
 3. Incontinence care that ensures that a resident maintains the highest practicable level of independence when toileting; and
 4. If applicable, the determination in subsection ~~(B)(2)(b)~~ (B)(2)(b)(iii).
- G. A manager shall ensure that an employee does not provide non-prescription medication to a resident receiving personal care services unless the resident has an order from the resident's primary care provider or another medical practitioner for the non-prescription medication.

R9-10-815. Directed Care Services

- A. A manager shall ensure that a resident's representative is designated for a resident who is unable to direct self-care.
- B. A manager of an assisted living facility authorized to provide directed care services shall not accept or retain a resident who, except as provided in R9-10-814(B)(2):
 1. Is confined to a bed or chair because of an inability to ambulate even with assistance; or
 2. Has a stage 3 or stage 4 pressure sore, as determined by a registered nurse or medical practitioner.
- C. In addition to the requirements in R9-10-808(A)(3), a manager shall ensure that the service plan for a resident receiving directed care services includes:
 1. The requirements in R9-10-814(F)(1) through (3);
 2. If applicable, the determination in ~~R9-10-814(B)(2)(b)~~ R9-10-814(B)(2)(b)(iii);
 3. Cognitive stimulation and activities to maximize functioning;
 4. Strategies to ensure a resident's personal safety;
 5. Encouragement to eat meals and snacks;
 6. Documentation:
 - a. Of the resident's weight, or
 - b. From a medical practitioner stating that weighing the resident is contraindicated; and

7. Coordination of communications with the resident's representative, family members, and, if applicable, other individuals identified in the resident's service plan.
- D.** A manager shall ensure that an employee does not provide non-prescription medication to a resident receiving directed care services unless the resident has an order from a medical practitioner for the non-prescription medication.
- E.** A manager shall ensure that:
1. A bell, intercom, or other mechanical means to alert employees to a resident's needs or emergencies is available in a bedroom being used by a resident receiving directed care services; or
 2. An assisted living facility has implemented another means to alert a caregiver or assistant caregiver to a resident's needs or emergencies.
- F.** A manager of an assisted living facility authorized to provide directed care services shall ensure that:
1. Policies and procedures are established, documented, and implemented that ensure the safety of a resident who may wander;
 2. There is a means of exiting the facility for a resident who does not have a key, special knowledge for egress, or the ability to expend increased physical effort that meets one of the following:
 - a. Provides access to an outside area that:
 - i. Allows the resident to be at least 30 feet away from the facility, and
 - ii. Controls or alerts employees of the egress of a resident from the facility;
 - b. Provides access to an outside area:
 - i. From which a resident may exit to a location at least 30 feet away from the facility, and
 - ii. Controls or alerts employees of the egress of a resident from the facility;or
 - c. Uses a mechanism that meets the Special Egress-Control Devices provisions in the Uniform Building Code incorporated by reference in A.A.C. R9-1-412; and
 3. A caregiver or an assistant caregiver complies with the requirements for incidents in R9-10-804 when a resident who is unable to direct self-care wanders into an area not designated by the governing authority for use by the resident.

R9-10-817. Food Services

- A.** A manager shall ensure that:

1. A food menu:
 - a. Is prepared at least one week in advance,
 - b. Includes the foods to be served each day,
 - c. Is conspicuously posted at least one calendar day before the first meal on the food menu is served,
 - d. Includes any food substitution no later than the morning of the day of meal service with a food substitution, and
 - e. Is maintained for at least 60 calendar days after the last day included in the food menu;
 2. Meals and snacks provided by the assisted living facility are served according to posted menus;
 3. If the assisted living facility contracts with a food establishment, as established in 9 A.A.C. 8, Article 1, to prepare and deliver food to the assisted living facility, a copy of the food establishment's license or permit under 9 A.A.C. 8, Article 1 is maintained by the assisted living facility;
 4. The assisted living facility is able to store, refrigerate, and reheat food to meet the dietary needs of a resident;
 5. Meals and snacks for each day are planned using the applicable guidelines in <http://www.health.gov/dietaryguidelines/2010.asp> <http://www.health.gov/dietaryguidelines/2015>;
 6. A resident is provided a diet that meets the resident's nutritional needs as specified in the resident's service plan;
 7. Water is available and accessible to residents at all times, unless otherwise stated in a medical practitioner's order; and
 8. A resident requiring assistance to eat is provided with assistance that recognizes the resident's nutritional, physical, and social needs, including the provision of adaptive eating equipment or utensils, such as a plate guard, rocking fork, or assistive hand device, if not provided by the resident.
- B.** If the assisted living facility offers therapeutic diets, a manager shall ensure that:
1. A current therapeutic diet manual is available for use by employees, and
 2. The therapeutic diet is provided to a resident according to a written order from the resident's primary care provider or another medical practitioner.
- C.** A manager shall ensure that food is obtained, prepared, served, and stored as follows:

1. Food is free from spoilage, filth, or other contamination and is safe for human consumption;
2. Food is protected from potential contamination;
3. Food is prepared:
 - a. Using methods that conserve nutritional value, flavor, and appearance; and
 - b. In a form to meet the needs of a resident, such as cut, chopped, ground, pureed, or thickened;
4. Potentially hazardous food is maintained as follows:
 - a. Foods requiring refrigeration are maintained at 41° F or below; and
 - b. Foods requiring cooking are cooked to heat all parts of the food to a temperature of at least 145° F for 15 seconds, except that:
 - i. Ground beef and ground meats are cooked to heat all parts of the food to at least 155° F;
 - ii. Poultry, poultry stuffing, stuffed meats, and stuffing that contains meat are cooked to heat all parts of the food to at least 165° F;
 - iii. Pork and any food containing pork are cooked to heat all parts of the food to at least 155° F;
 - iv. Raw shell eggs for immediate consumption are cooked to at least 145° F for 15 seconds and any food containing raw shell eggs is cooked to heat all parts of the food to at least 155 °F;
 - v. Roast beef and beef steak are cooked to an internal temperature of at least 155° F; and
 - vi. Leftovers are reheated to a temperature of at least 165° F;
5. A refrigerator used by an assisted living facility to store food or medication contains a thermometer, accurate to plus or minus 3° F, placed at the warmest part of the refrigerator;
6. Frozen foods are stored at a temperature of 0° F or below; and
7. Tableware, utensils, equipment, and food-contact surfaces are clean and in good repair.

D. A manager of an assisted living center shall ensure that:

1. The assisted living center has a license or permit as a food establishment under 9 A.A.C. 8, Article 1; and
2. A copy of the assisted living center's food establishment license or permit is maintained.

R9-10-818. Emergency and Safety Standards

A. A manager shall ensure that:

1. A disaster plan is developed, documented, maintained in a location accessible to caregivers and assistant caregivers, and, if necessary, implemented that includes:
 - a. When, how, and where residents will be relocated;
 - b. How a resident's medical record will be available to individuals providing services to the resident during a disaster;
 - c. A plan to ensure each resident's medication will be available to administer to the resident during a disaster; and
 - d. A plan for obtaining food and water for individuals present in the assisted living facility or the assisted living facility's relocation site during a disaster;
2. The disaster plan required in subsection (A)(1) is reviewed at least once every 12 months;
3. Documentation of the disaster plan review required in subsection (A)(2) includes:
 - a. The date and time of the disaster plan review;
 - b. The name of each employee or volunteer participating in the disaster plan review;
 - c. A critique of the disaster plan review; and
 - d. If applicable, recommendations for improvement;
4. A disaster drill for employees is conducted on each shift at least once every three months and documented;
5. An evacuation drill for employees and residents:
 - a. Is conducted at least once every six months; and
 - b. Includes all individuals on the premises except for:
 - i. A resident whose medical record contains documentation that evacuation from the assisted living facility would cause harm to the resident, and
 - ii. Sufficient caregivers to ensure the health and safety of residents not evacuated according to subsection (A)(5)(b)(i);
6. Documentation of each evacuation drill is created, is maintained for at least 12 months after the date of the evacuation drill, and includes:
 - a. The date and time of the evacuation drill;
 - b. The amount of time taken for employees and residents to evacuate the assisted living facility;
 - c. If applicable:
 - i. An identification of residents needing assistance for evacuation, and
 - ii. An identification of residents who were not evacuated;

- d. Any problems encountered in conducting the evacuation drill; and
 - e. Recommendations for improvement, if applicable; and
7. An evacuation path is conspicuously posted in each hallway of each floor of the assisted living facility.
- B.** A manager shall ensure that:
- 1. A resident receives orientation to the exits from the assisted living facility and the route to be used when evacuating the assisted living facility within 24 hours after the resident's acceptance by the assisted living facility, and
 - 2. The resident's orientation is documented.
- C.** A manager shall ensure that a first-aid kit is maintained in the assisted living facility in a location accessible to caregivers and assistant caregivers.
- D.** When a resident has an accident, emergency, or injury that results in the resident needing medical services, a manager shall ensure that a caregiver or an assistant caregiver:
- 1. Immediately notifies the resident's emergency contact and primary care provider; and
 - 2. Documents the following:
 - a. The date and time of the accident, emergency, or injury;
 - b. A description of the accident, emergency, or injury;
 - c. The names of individuals who observed the accident, emergency, or injury;
 - d. The actions taken by the caregiver or assistant caregiver;
 - e. The individuals notified by the caregiver or assistant caregiver; and
 - f. Any action taken to prevent the accident, emergency, or injury from occurring in the future.
- E.** A manager of an assisted living center shall ensure that:
- 1. Unless the assisted living center has documentation of having received an exception from the Department before October 1, 2013, in the areas of the assisted living center providing personal care services or directed care services:
 - a. A fire alarm system is installed according to the National Fire Protection Association 72: National Fire Alarm and Signaling Code, incorporated by reference in A.A.C. R9-1-412, and is in working order; and
 - b. A sprinkler system is installed according to the National Fire Protection Association 13: Standard for the Installation of Sprinkler Systems, incorporated by reference in A.A.C. R9-1-412, and is in working order;
 - 2. For the areas of the assisted living center providing only supervisory care services:

- a. A fire alarm system and a sprinkler system meeting the requirements in subsection (E)(1) are installed and in working order, or
 - b. The assisted living center complies with the requirements in subsection (F);
 - 3. A fire inspection is conducted by a local fire department or the State Fire Marshal before ~~initial~~ licensing and according to the time-frame established by the local fire department or the State Fire Marshal;
 - 4. Any repairs or corrections stated on the fire inspection report are made; and
 - 5. Documentation of a current fire inspection is maintained.
- F.** A manager of an assisted living home shall ensure that:
 - 1. A fire extinguisher that is labeled as rated at least 2A-10-BC by the Underwriters Laboratories is mounted and maintained in the assisted living home;
 - 2. A disposable fire extinguisher is replaced when its indicator reaches the red zone;
 - 3. A rechargeable fire extinguisher:
 - a. Is serviced at least once every 12 months, and
 - b. Has a tag attached to the fire extinguisher that specifies the date of the last servicing and the identification of the person who serviced the fire extinguisher;
 - 4. Except as provided in subsection (G):
 - a. A smoke detector is:
 - i. Installed in each bedroom, hallway that adjoins a bedroom, storage room, laundry room, attached garage, and room or hallway adjacent to the kitchen, and other places recommended by the manufacturer;
 - ii. Either battery operated or, if hard-wired into the electrical system of the assisted living home, has a back-up battery;
 - iii. In working order; and
 - iv. Tested at least once a month; and
 - b. Documentation of the test required in subsection (F)(4)(a)(iv) is maintained for at least 12 months after the date of the test;
 - 5. An appliance, light, or other device with a frayed or spliced electrical cord is not used at the assisted living home; and
 - 6. An electrical cord, including an extension cord, is not run under a rug or carpeting, over a nail, or from one room to another at the assisted living home.
- G.** A manager of an assisted living home may use a fire alarm system and a sprinkler system to ensure the safety of residents if the fire alarm system and sprinkler system:

1. Are installed and in working order, and
2. Meet the requirements in subsection (E)(1).

R9-10-820. Physical Plant Standards

A. A manager shall ensure that an assisted living center complies with the applicable physical plant health and safety codes and standards, incorporated by reference in A.A.C. R9-1-412, that:

1. Are applicable to the level of services planned to be provided or being provided; and
2. Were in effect on the date the assisted living facility submitted architectural plans and specifications to the Department for approval, according to R9-10-104.

B. A manager shall ensure that:

1. The premises and equipment are sufficient to accommodate:
 - a. The services stated in the assisted living facility's scope of services, and
 - b. An individual accepted as a resident by the assisted living facility;
2. A common area for use by residents is provided that has sufficient space and furniture to accommodate the recreational and socialization needs of residents;
3. A dining area has sufficient space and tables and chairs to accommodate the needs of the residents;
4. At least one bathroom is accessible from a common area and:
 - a. May be used by residents and visitors;
 - b. Provides privacy when in use; and
 - c. Contains the following:
 - i. At least one working sink with running water,
 - ii. At least one working toilet that flushes and has a seat,
 - iii. Toilet tissue for each toilet,
 - iv. Soap in a dispenser accessible from each sink,
 - v. Paper towels in a dispenser or a mechanical air hand dryer,
 - vi. Lighting, and
 - vii. A window that opens or another means of ventilation;
5. An outside activity space is provided and available that:
 - a. Is on the premises,
 - b. Has a hard-surfaced section for wheelchairs, and
 - c. Has an available shaded area;
6. Exterior doors are equipped with ramps or other devices to allow use by a resident using a wheelchair or other assistive device; and

7. The key to the door of a lockable bathroom, bedroom, or residential unit is available to a manager, caregiver, and assistant caregiver.

C. A manager shall ensure that:

1. For every eight residents there is at least one working toilet that flushes and has a seat and one sink with running water;
2. For every eight residents there is at least one working bathtub or shower; and
3. A resident bathroom provides privacy when in use and contains:
 - a. A mirror;
 - b. Toilet tissue for each toilet;
 - c. Soap accessible from each sink;
 - d. Paper towels in a dispenser or a mechanical air hand dryer for a bathroom that is not in a residential unit and used by more than one resident;
 - e. A window that opens or another means of ventilation;
 - f. Grab bars for the toilet and, if applicable, the bathtub or shower and other assistive devices, if required to provide for resident safety; and
 - g. Nonporous surfaces for shower enclosures and slip-resistant surfaces in tubs and showers.

D. A manager shall ensure that:

1. Each resident is provided with a sleeping area in a residential unit or a bedroom;
2. For an assisted living home, a resident's sleeping area is on the ground floor of the assisted living home unless:
 - a. The resident is able to direct self-care;
 - b. The resident is ambulatory without assistance; and
 - c. There are at least two unobstructed, usable exits to the outside from the sleeping area that the resident is capable of using;
3. Except as provided in subsection (E), no more than two individuals reside in a residential unit or bedroom;
4. A resident's sleeping area:
 - a. Is not used as a common area;
 - b. Is not used as a passageway to a common area, another sleeping area, or common bathroom unless the resident's sleeping area:
 - i. Was used as a passageway to a common area, another sleeping area, or common bathroom before October 1, 2013; and

- ii. Written consent is obtained from the resident or the resident's representative;
 - c. Is constructed and furnished to provide unimpeded access to the door;
 - d. Has floor-to-ceiling walls with at least one door;
 - e. Has access to natural light through a window or a glass door to the outside; and
 - f. Has a window or door that can be used for direct egress to outside the building;
5. If a resident's sleeping area is in a bedroom, the bedroom has:
- a. For a private bedroom, at least 80 square feet of floor space, not including a closet or bathroom;
 - b. For a shared bedroom, at least 60 square feet of floor space for each individual occupying the shared bedroom, not including a closet or bathroom; and
 - c. A door that opens into a hallway, common area, or outdoors;
6. If a resident's sleeping area is in a residential unit, the residential unit has:
- a. Except as provided in subsection (E)(2), at least 220 square feet of floor space, not including a closet or bathroom, for one individual residing in the residential unit and an additional 100 square feet of floor space, not including a closet or bathroom, for each additional individual residing in the residential unit;
 - b. An individually keyed entry door;
 - c. A bathroom that provides privacy when in use and contains:
 - i. A working toilet that flushes and has a seat;
 - ii. A working sink with running water;
 - iii. A working bathtub or shower;
 - iv. Lighting;
 - v. A mirror;
 - vi. A window that opens or another means of ventilation;
 - vii. Grab bars for the toilet and, if applicable, the bathtub or shower and other assistive devices, if required to provide for resident safety; and
 - viii. Nonporous surfaces for shower enclosures and slip-resistant surfaces in bathtubs and showers;
 - d. A resident-controlled thermostat for heating and cooling;
 - e. A kitchen area equipped with:
 - i. A working sink and refrigerator,
 - ii. A cooking appliance that can be removed or disconnected,

- iii. Space for food preparation, and
 - iv. Storage for utensils and supplies; and
 - f. If not furnished by a resident:
 - i. An armchair, and
 - ii. A table where a resident may eat a meal; and
 - 7. If not furnished by a resident, each sleeping area has:
 - a. A bed, at least 36 inches in width and 72 inches in length, consisting of at least a frame and mattress that is clean and in good repair;
 - b. Clean linen, including a mattress pad, sheets large enough to tuck under the mattress, pillows, pillow cases, a bedspread, waterproof mattress covers as needed, and blankets to ensure warmth and comfort for the resident;
 - c. Sufficient light for reading;
 - d. Storage space for clothing;
 - e. Individual storage space for personal effects; and
 - f. Adjustable window covers that provide resident privacy.
- E.** A manager may allow more than two individuals to reside in a residential unit or bedroom if:
- 1. There is at least 60 square feet for each individual living in the bedroom;
 - 2. There is at least 100 square feet for each individual living in the residential unit; and
 - 3. The manager has documentation that the assisted living facility has been operating since before November 1, 1998, with more than two individuals living in the residential unit or bedroom.
- F.** If there is a swimming pool on the premises of the assisted living facility, a manager shall ensure that:
- 1. Unless the assisted living facility has documentation of having received an exception from the Department before October 1, 2013, the swimming pool is enclosed by a wall or fence that:
 - a. Is at least five feet in height as measured on the exterior of the wall or fence;
 - b. Has no vertical openings greater than four inches across;
 - c. Has no horizontal openings, except as described in subsection (F)(1)(e);
 - d. Is not chain-link;
 - e. Does not have a space between the ground and the bottom fence rail that exceeds four inches in height; and
 - f. Has a self-closing, self-latching gate that:

- i. Opens away from the swimming pool,
 - ii. Has a latch located at least 54 inches from the ground, and
 - iii. Is locked when the swimming pool is not in use;
 2. A life preserver or shepherd's crook is available and accessible in the swimming pool area; and
 3. Pool safety requirements are conspicuously posted in the swimming pool area.
- G.** A manager shall ensure that a spa that is not enclosed by a wall or fence as described in subsection (F)(1) is covered and locked when not in use.

ARTICLE 10. OUTPATIENT TREATMENT CENTERS

R9-10-1002. Supplemental Application and Documentation Submission Requirements

A. In addition to the license application requirements in A.R.S. § 36-422 and 9 A.A.C. 10, Article 1, a governing authority applying for ~~an initial~~ a license as an outpatient treatment center shall submit, in a Department-provided format ~~provided by the Department~~:

1. The days and hours of clinical operation and, if different from the days and hours of clinical operation, the days and hours of administrative operation; and
2. A request to provide one or more of the following services:
 - a. Behavioral health services and, if applicable;
 - i. Behavioral health observation/stabilization services,
 - ii. Children's behavioral health services,
 - iii. Court-ordered evaluation,
 - iv. Court-ordered treatment,
 - v. Counseling,
 - vi. Crisis services,
 - vii. Opioid treatment services,
 - viii. Pre-petition screening,
 - ix. Respite services,
 - x. Respite services for children on the premises,
 - xi. DUI education,
 - xii. DUI screening,
 - xiii. DUI treatment, or
 - xiv. Misdemeanor domestic violence offender treatment;
 - b. Diagnostic imaging services;
 - c. Clinical laboratory services;
 - d. Dialysis services;
 - e. Emergency room services;
 - f. Pain management services;
 - g. Physical health services;
 - h. Rehabilitation services;
 - i. Sleep disorder services; or
 - j. Urgent care services provided in a freestanding urgent care center setting.

- B.** In addition to the license application requirements in A.R.S. § 36-422 and 9 A.A.C. 10, Article 1, a governing authority of an:
1. Affiliated outpatient treatment center, ~~as defined in R9-10-1901~~, applying for ~~an initial or renewal~~ a license for the affiliated outpatient treatment center shall submit, in a Department-provided format ~~provided by the Department~~, the following information for each counseling facility for which the affiliated outpatient treatment center is providing administrative support:
 - a. Name, and
 - b. Either:
 - i. The license number assigned to the counseling facility by the Department; or
 - ii. If the counseling facility is not currently licensed, the:
 - (1) Counseling facility's street address, and
 - (2) Date the counseling facility submitted to the Department an application for ~~an initial~~ a health care institution license; and
 2. Outpatient treatment center, applying for ~~an initial or renewal~~ a license that includes a request for authorization to provide respite services for children on the premises, shall include the requested respite capacity, ~~as defined in R9-10-1025(A)~~.
- C.** A licensee of an affiliated outpatient treatment center shall submit to the Department the information required in subsection (B)(1) with the relevant fees required in R9-10-106(C) or (D), as applicable.
- D.** A licensee of an outpatient treatment center authorized to provide respite services for children on the premises shall submit to the Department with the relevant fees in R9-10-106(C) or (D), as applicable:
1. The respite capacity, and
 2. The specific 10 continuous hours per day during which the outpatient treatment center provides respite services on the premises.
- E.** A licensee of an outpatient treatment center authorized to operate as a collaborating outpatient treatment center shall submit to the Department with the relevant fees in R9-10-106(C) or (D), as applicable:
1. The information and documentation required in R9-10-1031(D)(1); and
 2. A floor plan that shows:
 - a. Each collocator's proposed treatment area, and
 - b. The areas of the collaborating outpatient treatment center shared by a collocator and

collaborating outpatient treatment center.

R9-10-1003. Administration

- A.** If an outpatient treatment center is operating under a single group license issued to a hospital according to A.R.S. § 36-422(F) or (G), the hospital's governing authority is the governing authority for the outpatient treatment center.
- B.** A governing authority shall:
1. Consist of one or more individuals accountable for the organization, operation, and administration of an outpatient treatment center;
 2. Establish, in writing:
 - a. An outpatient treatment center's scope of services, and
 - b. Qualifications for an administrator;
 3. Designate, in writing, an administrator who has the qualifications established in subsection (B)(2)(b);
 4. Adopt a quality management program according to R9-10-1004;
 5. Review and evaluate the effectiveness of the quality management program in R9-10-1004 at least once every 12 months;
 6. Designate, in writing, an acting administrator who has the qualifications established in subsection (B)(2)(b) if the administrator is:
 - a. Expected not to be present on an outpatient treatment center's premises for more than 30 calendar days, or
 - b. Not present on an outpatient treatment center's premises for more than 30 calendar days; and
 7. Except as provided in subsection (B)(6), notify the Department according to A.R.S. § 36-425(I) when there is a change in an administrator and identify the name and qualifications of the new administrator.
- C.** An administrator:
1. Is directly accountable to the governing authority for the daily operation of the outpatient treatment center and all services provided by or at the outpatient treatment center;
 2. Has the authority and responsibility to manage the outpatient treatment center; and
 3. Except as provided in subsection (B)(6), designates, in writing, an individual who is present on the outpatient treatment center's premises and accountable for the outpatient treatment center when the administrator is not available.
- D.** An administrator shall ensure that:

1. Policies and procedures are established, documented, and implemented to protect the health and safety of a patient that:
 - a. Cover job descriptions, duties, and qualifications, including required skills, knowledge, education, and experience for personnel members, employees, volunteers, and students;
 - b. Cover orientation and in-service education for personnel members, employees, volunteers, and students;
 - c. Include how a personnel member may submit a complaint relating to services provided to a patient;
 - d. Cover the requirements in Title 36, Chapter 4, Article 11;
 - e. Cover cardiopulmonary resuscitation training including:
 - i. The method and content of cardiopulmonary resuscitation training which includes a demonstration of the individual's ability to perform cardiopulmonary resuscitation,
 - ii. The qualifications for an individual to provide cardiopulmonary resuscitation training,
 - iii. The time-frame for renewal of cardiopulmonary resuscitation training, and
 - iv. The documentation that verifies that an individual has received cardiopulmonary resuscitation training;
 - f. Cover first aid training;
 - g. Include a method to identify a patient to ensure the patient receives the services ordered for the patient;
 - h. Cover patient rights, including assisting a patient who does not speak English or who has a physical or other disability to become aware of patient rights;
 - i. Cover health care directives;
 - j. Cover medical records, including electronic medical records;
 - k. Cover quality management, including incident report and supporting documentation;
and
 - l. Cover contracted services;
2. Policies and procedures for services provided at or by an outpatient treatment center are established, documented, and implemented to protect the health and safety of a patient that:
 - a. Cover patient screening, admission, assessment, transport, transfer, discharge plan,

- and discharge;
 - b. Cover the provision of medical services, nursing services, behavioral health services, health-related services, and ancillary services;
 - c. Include when general consent and informed consent are required;
 - d. Cover obtaining, administering, storing, and disposing of medications, including provisions for controlling inventory and preventing diversion of controlled substances;
 - e. Cover prescribing a controlled substance to minimize substance abuse by a patient;
 - f. Cover infection control;
 - g. Cover telemedicine, if applicable;
 - h. Cover environmental services that affect patient care;
 - i. Cover specific steps for:
 - i. A patient to file a complaint, and
 - ii. An outpatient treatment center to respond to a complaint;
 - j. Cover smoking tobacco products on an outpatient treatment center's premises; and
 - k. Cover how personnel members will respond to a patient's sudden, intense, or out-of-control behavior to prevent harm to the patient or another individual;
3. Outpatient treatment center policies and procedures are:
- a. Reviewed at least once every three years and updated as needed, and
 - b. Available to personnel members and employees;
4. Unless otherwise stated:
- a. Documentation required by this Article is provided to the Department within two hours after a Department request; and
 - b. When documentation or information is required by this Chapter to be submitted on behalf of an outpatient treatment center, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the outpatient treatment center;
5. The following are conspicuously posted:
- a. The current license for the outpatient treatment center issued by the Department;
 - b. The name, address, and telephone number of the Department;
 - c. A notice that a patient may file a complaint with the Department about the outpatient treatment center;
 - d. One of the following:

- i. A schedule of rates according to A.R.S. § 36-436.01(C), or
 - ii. A notice that the schedule of rates required in A.R.S. § 36-436.01(C) is available for review upon request;
 - e. A list of patient rights;
 - f. A map for evacuating the facility; and
 - g. A notice identifying the location on the premises where current license inspection reports required in A.R.S. § 36-425(D), with patient information redacted, are available; and
- 6. Patient follow-up instructions are:
 - a. Provided, orally or in written form, to a patient or the patient's representative before the patient leaves the outpatient treatment center unless the patient leaves against a personnel member's advice; and
 - b. Documented in the patient's medical record.
- E.** If abuse, neglect, or exploitation of a patient is alleged or suspected to have occurred before the patient was admitted or while the patient is not on the premises and not receiving services from an outpatient treatment center's employee or personnel member, an administrator shall report the alleged or suspected abuse, neglect, or exploitation of the patient as follows:
 - 1. For a patient 18 years of age or older, according to A.R.S. § 46-454; or
 - 2. For a patient under 18 years of age, according to A.R.S. § 13-3620.
- F.** If an administrator has a reasonable basis, according to A.R.S. § 13-3620 or 46-454, to believe that abuse, neglect, or exploitation has occurred on the premises or while a patient is receiving services from an outpatient treatment center's employee or personnel member, an administrator shall:
 - 1. If applicable, take immediate action to stop the suspected abuse, neglect, or exploitation;
 - 2. Report the suspected abuse, neglect, or exploitation of the patient as follows:
 - a. For a patient 18 years of age or older, according to A.R.S. § 46-454; or
 - b. For a patient under 18 years of age, according to A.R.S. § 13-3620;
 - 3. Document:
 - a. The suspected abuse, neglect, or exploitation;
 - b. Any action taken according to subsection (F)(1); and
 - c. The report in subsection (F)(2);
 - 4. Maintain the documentation in subsection (F)(3) for at least 12 months after the date of the report in subsection (F)(2);

5. Initiate an investigation of the suspected abuse, neglect, or exploitation and document the following information within five working days after the report required in subsection (F)(2):
 - a. The dates, times, and description of the suspected abuse, neglect, or exploitation;
 - b. A description of any injury to the patient related to the suspected abuse or neglect and any change to the patient's physical, cognitive, functional, or emotional condition;
 - c. The names of witnesses to the suspected abuse, neglect, or exploitation; and
 - d. The actions taken by the administrator to prevent the suspected abuse, neglect, or exploitation from occurring in the future; and
6. Maintain a copy of the documented information required in subsection (F)(5) and any other information obtained during the investigation for at least 12 months after the date the investigation was initiated.

G. If an outpatient treatment center is an affiliated outpatient treatment center ~~as defined in R9-10-1901~~, an administrator shall ensure that the outpatient treatment center complies with the requirements for an affiliated outpatient treatment center in 9 A.A.C. 10, Article 19.

R9-10-1013. Court-ordered Evaluation

An administrator of an outpatient treatment center that is authorized to provide court-ordered evaluation shall comply with the requirements for court-ordered evaluation in ~~A.R.S. § 36-425.03~~ A.R.S. Title 36, Chapter 5, Article 4.

R9-10-1014. Court-ordered Treatment

An administrator of an outpatient treatment center that is authorized to provide court-ordered treatment shall comply with the requirements for court-ordered treatment in A.R.S. Title 36, Chapter 5, ~~Article 4~~ Article 5.

R9-10-1017. Diagnostic Imaging Services

An administrator of an outpatient treatment center that is authorized to provide diagnostic imaging services shall:

1. Designate an individual to provide direction for diagnostic imaging services who is a:
 - a. Radiologic technologist, certified under A.R.S. Title 32, Chapter 28, Article **2**, who has at least 12 months experience in an outpatient treatment center;
 - b. Physician; or
 - c. Radiologist; and
2. Ensure that:

- a. Diagnostic imaging services are provided in compliance with A.R.S. Title 30, Chapter 4 and ~~12 A.A.C. 1~~ 9 A.A.C. 7;
- b. A copy of a certificate documenting compliance with subsection (2)(a) is maintained;
- c. Diagnostic imaging services are provided to a patient according to an order that includes:
 - i. The patient's name,
 - ii. The name of the ordering individual,
 - iii. The diagnostic imaging procedure ordered, and
 - iv. The reason for the diagnostic imaging procedure;
- d. A physician or radiologist interprets the diagnostic image; and
- e. A diagnostic imaging patient report is completed that includes:
 - i. The patient's name,
 - ii. The date of the procedure, and
 - iii. A physician's or radiologist's interpretation of the diagnostic image.

R9-10-1018. Dialysis Services

- A.** In addition to the definitions in A.R.S. § 36-401, R9-10-101, and R9-10-1001, the following definitions apply in this Section:
- 1. "Caregiver" means an individual designated by a patient or a patient's representative to perform self-dialysis in the patient's stead.
 - 2. "Chief clinical officer" means a physician appointed to provide direction for dialysis services provided by an outpatient treatment center.
 - 3. "Long-term care plan" means a written plan of action for a patient with kidney failure that is developed to achieve long-term optimum patient outcome.
 - 4. "Modality" means a method of treatment for kidney failure, including transplant, hemodialysis, and peritoneal dialysis.
 - 5. "Nutritional assessment" means an analysis of a patient's weight, height, lifestyle, medication, mobility, food and fluid intake, and diagnostic procedures to identify conditions and behaviors that indicate whether the patient's nutritional needs are being met.
 - 6. "Patient care plan" means a written document for a patient receiving dialysis that identifies the patient's needs for medical services, nursing services, and health-related

services and the process by which the medical services, nursing services, or health-related services will be provided to the patient.

7. “Peritoneal dialysis” means the process of using the peritoneal cavity for removing waste products by fluid exchange.
8. “Psychosocial evaluation” means an analysis of an individual’s mental and social conditions to determine the individual’s need for social work services.
9. “Reprocessing” means cleaning and sterilizing a dialyzer previously used by a patient so that the dialyzer can be reused by the same patient.
10. “Self-dialysis” means dialysis performed by a patient or a caregiver on the patient’s body.
11. “Social worker” means an individual licensed according to A.R.S. Title 32, Chapter 33 to engage in the “practice of social work” as defined in A.R.S. § 32-3251.
12. “Stable means” that a patient’s blood pressure, temperature, pulse, respirations, and diagnostic procedure results are within medically recognized acceptable ranges or consistent with the patient’s usual medical condition so that medical intervention is not indicated.
13. “Transplant surgeon” means a physician who:
 - a. Is board eligible or board certified in general surgery or urology by a professional credentialing board, and
 - b. Has at least 12 months of training or experience performing renal transplants and providing care for patients with renal transplants.

B. A governing authority of an outpatient treatment center that is authorized to provide dialysis services shall:

1. Ensure that the administrator appointed as required in R9-10-1003(B)(3) has at least 12 months of experience in an outpatient treatment center providing dialysis services; and
2. Appoint a chief clinical officer to direct the dialysis services provided by or at the outpatient treatment center who is a physician who:
 - a. Is board eligible or board certified in internal medicine or pediatrics by a professional credentialing board, and
 - b. Has at least 12 months of experience or training in providing dialysis services.

C. An administrator of an outpatient treatment center that is authorized to provide dialysis services shall ensure that:

1. In addition to the policies and procedures required in R9-10-1003(D), policies and procedures are established, documented, and implemented to protect the health and safety of a patient that cover:
 - a. Long-term care plans and patient care plans,
 - b. Assigning a patient an identification number,
 - c. Personnel members' response to a patient's adverse reaction during dialysis, and
 - d. Personnel members' response to an equipment malfunction during dialysis;
 2. A personnel member complies with the requirements in A.R.S. § 36-423 and R9-10-114 for hemodialysis technicians and hemodialysis technician trainees, if applicable;
 3. A personnel member completes basic cardiopulmonary resuscitation training specific to the age of the patients receiving dialysis from the outpatient treatment center:
 - a. Before providing dialysis services, and
 - b. At least once every 12 months after the initial date of employment or volunteer service;
 4. A personnel member wears a name badge that displays the individual's first name, job title, and professional license or certification; and
 5. At least one registered nurse or medical practitioner is on the premises while a patient receiving dialysis services is on the premises.
- D.** An administrator of an outpatient treatment center that is authorized to provide dialysis services shall ensure that:
1. The premises of the outpatient treatment center where dialysis services are provided complies with the applicable physical plant health and safety codes and standards for outpatient treatment centers providing dialysis services, incorporated by reference in A.A.C. R9-1-412, that were in effect on the date listed on the building permit or zoning clearance submitted, as required by R9-10-104, as part of the application for approval of the architectural plans and specifications submitted before initial approval of the inclusion of dialysis services in the outpatient treatment center's scope of services;
 2. Before a modification of the premises of an outpatient treatment center where dialysis services are provided is made, an application for approval of the architectural plans and specifications of the outpatient treatment center required in R9-10-104(A):
 - a. Is submitted to the Department; and

4. The patient's nephrologist or the nephrologist's designee:
 - a. Performs a medical history and physical examination on the patient at least once every 12 months after the date of the patient's admission to the outpatient treatment center, and
 - b. Documents monthly notes related to the patient's progress in the patient's medical record;
5. A registered nurse responsible for the nursing services provided to the patient receiving dialysis services:
 - a. Reviews with the patient the results of any diagnostic tests performed on the patient;
 - b. Assesses the patient's medical condition before the patient begins receiving hemodialysis and after the patient has received hemodialysis;
 - c. If the patient returns to another health care institution after receiving dialysis services at the outpatient treatment center, provides an oral or written notice of information related to the patient's medical condition to the registered nurse responsible for the nursing services provided to the patient at the health care institution or, if there is not a registered nurse responsible, the individual responsible for the medical services, nursing services, or health-related services provided to the patient at the health care institution;
 - d. Informs the patient's nephrologist of any changes in the patient's medical condition or needs; and
 - e. Documents in the patient's medical record:
 - i. Any notice provided as required in subsection (E)(5)(c), and
 - ii. Monthly notes related to the patient's progress;
6. If the patient is not stable, before dialysis is provided to the patient, a nephrologist is notified of the patient's medical condition and dialysis is not provided until the nephrologist provides direction;
7. The patient:
 - a. Is under the care of a nephrologist;
 - b. Is assigned a patient identification number according to the policy and procedure in subsection (C)(1)(b);
 - c. Is identified by a personnel member before beginning dialysis;
 - d. Receives the dialysis services ordered for the patient by a medical practitioner;

- e. Is monitored by a personnel member while receiving dialysis at least once every 30 minutes; and
 - f. If the outpatient treatment center reprocesses and reuses dialyzers, is informed that the outpatient treatment center reprocesses and reuses dialyzers before beginning hemodialysis;
8. Equipment used for hemodialysis is inspected and tested according to the manufacturer's recommendations or the outpatient treatment center's policies and procedures before being used to provide hemodialysis to a patient;
9. The equipment inspection and testing required in subsection (E)(8) is documented in the patient's medical record;
10. Supplies and equipment used for dialysis services for the patient are used, stored, and discarded according to manufacturer's recommendations;
11. If hemodialysis is provided to the patient, a personnel member:
- a. Inspects the dialyzer before use to ensure that the:
 - i. External surface of the dialyzer is clean;
 - ii. Dialyzer label is intact and legible;
 - iii. Dialyzer, blood port, and dialysate port are free from leaks and cracks or other structural damage; and
 - iv. Dialyzer is free of visible blood and other foreign material;
 - b. Verifies the order for the dialyzer to ensure the correct dialyzer is used for the correct patient;
 - c. Verifies the duration of dialyzer storage based on the type of germicide used or method of sterilization or disinfection used;
 - d. If the dialyzer has been reprocessed and is being reused, verifies that the label on the dialyzer includes:
 - i. The patient's name and the patient's identification number,
 - ii. The number of times the dialyzer has been used in patient treatments,
 - iii. The date of the last use of the dialyzer by the patient, and
 - iv. The date of the last reprocessing of the dialyzer;
 - e. If the patient's name is similar to the name of another patient receiving dialysis in the same outpatient treatment center, informs other personnel members, employees, and volunteers, of the similar names to ensure that the name or other identifying information on the label corresponds to the correct patient; and

- f. Ensures that a patient's vascular access is visible to a personnel member during dialysis;
 - 12. A patient receiving dialysis is visible to a nurse at a location used by nurses to coordinate patients and treatment;
 - 13. If the patient has an adverse reaction during dialysis, a personnel member responds by implementing the policy and procedure required in subsection (C)(1)(c);
 - 14. If the equipment used during the patient's dialysis malfunctions, a personnel member responds by implementing the policy and procedure required in subsection (C)(1)(d); and
 - 15. After a patient's discharge from an outpatient treatment center, the nephrologist responsible for the dialysis services provided to the patient documents the patient's discharge in the patient's medical record within 30 calendar days after the patient's discharge and includes:
 - a. A description of the patient's medical condition and the dialysis services provided to the patient, and
 - b. The signature of the nephrologist.
- F.** If an outpatient treatment center provides support for self-dialysis services, an administrator shall ensure that:
- 1. A patient or the patient's caregiver is:
 - a. Instructed to use the equipment to perform self-dialysis by a personnel member trained to provide the instruction, and
 - b. Monitored in the patient's home to assess the patient's or patient caregiver's ability to use the equipment to perform self-dialysis;
 - 2. Instruction provided to a patient as required in subsection (F)(1)(a) and monitoring in the patient's home as required in subsection (F)(1)(b) is documented in the patient's medical record;
 - 3. All supplies for self-dialysis necessary to meet the needs of the patient are provided to the patient;
 - 4. All equipment necessary to meet the needs of the patient's self-dialysis is provided for the patient and maintained by the outpatient treatment center according to the manufacturer's recommendations;
 - 5. The water used for hemodialysis is tested and treated according to the requirements in subsection (N);
 - 6. Documentation of the self-dialysis maintained by the patient or the patient's caregiver is:

- a. Reviewed to ensure that the patient is receiving continuity of care, and
 - b. Placed in the patient's medical record; and
7. If a patient uses self-dialysis and self-administers medication:
- a. The medical practitioner responsible for the dialysis services provided to the patient reviews the patient's diagnostic laboratory tests;
 - b. The patient and the patient's caregiver are informed of any potential:
 - i. Side effects of the medication; and
 - ii. Hazard to a child having access to the medication and, if applicable, a syringe used to inject the medication; and
 - c. The patient or the patient's caregiver is:
 - i. Taught the route and technique of administration and is able to administer the medication, including injecting the medication;
 - ii. Taught and able to perform sterile techniques if the patient or the patient's caregiver will be injecting the medication;
 - iii. Provided with instructions for the administration of the medication, including the specific route and technique the patient or the patient's caregiver has been taught to use;
 - iv. Able to read and understand the directions for using the medication;
 - v. Taught and able to self-monitor the patient's blood pressure; and
 - vi. Informed how to store the medication according to the manufacturer's instructions.

G. An administrator of an outpatient treatment center that is authorized to provide dialysis services shall ensure that a social worker is employed by the outpatient treatment center to meet the needs of a patient receiving dialysis services including:

- 1. Conducting an initial psychosocial evaluation of the patient within 30 calendar days after the patient's admission to the outpatient treatment center;
- 2. Participating in reviewing the patient's need for social work services;
- 3. Recommending changes in treatment based on the patient's psychosocial evaluation;
- 4. Assisting the patient and the patient's representative in obtaining and understanding information for making decisions about the medical services provided to the patient;
- 5. Identifying community agencies and resources and assisting the patient and the patient's representative to utilize the community agencies and resources;

6. Documenting monthly notes related to the patient's progress in the patient's medical record; and
 7. Conducting a follow-up psychosocial evaluation of the patient at least once every 12 months after the date of the patient's admission to the outpatient treatment center.
- H.** An administrator of an outpatient treatment center that is authorized to provide dialysis services shall ensure that a registered dietitian is employed by the outpatient treatment center to assist a patient receiving dialysis services to meet the patient's nutritional and dietetic needs including:
1. Conducting an initial nutritional assessment of the patient within 30 calendar days after the patient's admission to the outpatient treatment center;
 2. Consulting with the patient's nephrologist and recommending a diet to meet the patient's nutritional needs;
 3. Providing advice to the patient and the patient's representative regarding a diet prescribed by the patient's nephrologist;
 4. Monitoring the patient's adherence and response to a prescribed diet;
 5. Reviewing with the patient any diagnostic test performed on the patient that is related to the patient's nutritional or dietetic needs;
 6. Documenting monthly notes related to the patient's progress in the patient's medical record; and
 7. Conducting a follow-up nutritional assessment of the patient at least once every 12 months after the date of the patient's admission to the outpatient treatment center.
- I.** An administrator of an outpatient treatment center that is authorized to provide dialysis services shall ensure that a long-term care plan for each patient:
1. Is developed by a team that includes at least:
 - a. The chief clinical officer of the outpatient treatment center;
 - b. If the chief clinical officer is not a nephrologist, the patient's nephrologist;
 - c. A transplant surgeon or the transplant surgeon's designee;
 - d. A registered nurse responsible for nursing services provided to the patient;
 - e. A social worker;
 - f. A registered dietitian; and
 - g. The patient or patient's representative, if the patient or patient's representative chooses to participate in the development of the long-term care plan;
 2. Identifies the modality of treatment and dialysis services to be provided to the patient;
 3. Is reviewed and approved by the chief clinical officer;

4. Is signed and dated by each personnel member participating in the development of the long-term care plan;
5. Includes documentation signed by the patient or the patient's representative that the patient or the patient's representative was provided an opportunity to participate in the development of the long-term care plan;
6. Is signed and dated by the patient or the patient's representative; and
7. Is reviewed at least once every 12 months by the team in subsection (I)(1) and updated according to the patient's needs.

J. An administrator of an outpatient treatment center that is authorized to provide dialysis services shall ensure that a patient care plan for each patient:

1. Is developed by a team that includes at least:
 - a. The patient's nephrologist;
 - b. A registered nurse responsible for nursing services provided to the patient;
 - c. A social worker;
 - d. A registered dietitian; and
 - e. The patient or the patient's representative, if the patient or patient's representative chooses to participate in the development of the patient care plan;
2. Includes an assessment of the patient's need for dialysis services;
3. Identifies treatment and treatment goals;
4. Is signed and dated by each personnel member participating in the development of the patient care plan;
5. Includes documentation signed by the patient or the patient's representative that the patient or the patient's representative was provided an opportunity to participate in the development of the patient care plan;
6. Is signed and dated by the patient or the patient's representative;
7. Is implemented;
8. Is evaluated by:
 - a. The registered nurse responsible for the dialysis services provided to the patient,
 - b. The registered dietitian providing services to the patient related to the patient's nutritional or dietetic needs, and
 - c. The social worker providing services to the patient related to the patient's psychosocial needs;

9. Includes documentation of interventions, resolutions, and outcomes related to treatment goals; and
 10. Is reviewed and updated according to the needs of the patient:
 - a. At least once every six months for a patient whose medical condition is stable, and
 - b. At least once every 30 calendar days for a patient whose medical condition is not stable.
- K.** In addition to the requirements in R9-10-1009(C), an administrator of an outpatient treatment center that is authorized to provide dialysis services shall ensure that a medical record for each patient contains:
1. An annual medical history;
 2. An annual physical examination;
 3. Monthly notes related to the patient's progress by a medical practitioner, registered dietitian, social worker, and registered nurse;
 4. If applicable, documentation of:
 - a. The equipment inspection and testing required in subsection (E)(9), and
 - b. The self-dialysis required in subsection (F)(2); and
 5. If applicable, documentation of the patient's discharge.
- L.** For a patient who received dialysis services, an administrator shall ensure that after the patient's discharge from an outpatient treatment center that is authorized to provide dialysis services, the nephrologist responsible for the dialysis services provided to the patient documents the patient's discharge in the patient's medical record within 30 calendar days after the patient's discharge and includes:
1. A description of the patient's medical condition and the dialysis services provided to the patient, and
 2. The signature of the nephrologist.
- M.** If an outpatient treatment center reuses dialyzers or other dialysis supplies, an administrator shall ensure that the outpatient treatment center complies with the guidelines adopted by the Association for the Advancement of Medical Instrumentation in ~~Reuse~~ Reprocessing of Hemodialyzers, ANSI/AAMI RD47:2002 & RD47:2002/A1:2003 ANSI/AAMI RD47:2008/(R)2013, incorporated by reference, available through <http://my.aami.org/store/>, on file with the Department, and including no future editions or amendments. ~~Copies may be~~

~~purchased from the Association for the Advancement of Medical Instrumentation, 1110 N. Glebe Road, Suite 220, Arlington, VA 22201-4795.~~

- N. A chief clinical officer shall ensure that the quality of water used in dialysis conforms to the guidelines adopted by the Association for the Advancement of Medical Instrumentation in ~~Hemodialysis systems ANSI/AAMI RD5:2003~~ Dialysis Water and Dialysate Recommendations: A User Guide, incorporated by reference, available through <http://my.aami.org/store/>, on file with the Department, and including no future editions or amendments. ~~Copies may be purchased from the Association for the Advancement of Medical Instrumentation, 1110 N. Glebe Road, Suite 220, Arlington, VA 22201-4795.~~

R9-10-1019. Emergency Room Services

An administrator of an outpatient treatment center that is authorized to provide emergency room services shall ensure that:

1. Emergency room services are:
 - a. Available on the premises:
 - i. At all times, and
 - ii. To stabilize an individual's emergency medical condition; and
 - b. Provided:
 - i. In a designated area, and
 - ii. Under the direction of a physician;
2. Clinical laboratory services are available on the premises;
3. Diagnostic imaging services are available on the premises;
4. An area designated for emergency room services complies with the physical plant codes and standards for a freestanding emergency care facility in A.A.C. R9-1-412;
5. Policies and procedures are established, documented, and implemented to protect the health and safety of a patient that specify requirements for the use of a ~~seclusion~~ room used for seclusion that meets the requirements in R9-10-217(D);
6. A physician is present in an area designated for emergency room services;
7. A registered nurse is present in an area designated for emergency room services and provides direction for nursing services in the designated area;
8. The outpatient treatment center has a documented transfer agreement with a general hospital;
9. Emergency room services are provided to an individual, including a woman in active labor, requesting medical services in an emergency;

10. If emergency room services cannot be provided at the outpatient treatment center, measures and procedures are implemented to minimize the risk to the patient until the patient is transferred to the general hospital with which the outpatient treatment center has a transfer agreement as required in subsection (8);
11. There is a chronological log of emergency room services provided to a patient that includes:
 - a. The patient's name;
 - b. The date, time, and mode of arrival; and
 - c. The disposition of the patient, including discharge or transfer; and
12. The chronological log required in subsection ~~(12)~~ (11) is maintained:
 - a. In the designated area for emergency room services for at least 12 months after the date the emergency room services were provided; and
 - b. By the outpatient treatment center for a total of at least 24 months after the date the emergency room services were provided.

R9-10-1025. Respite Services

A. In addition to the definitions in A.R.S. § 36-401, R9-10-101, and R9-10-1001, the following definitions apply in this Section:

1. "Emergency safety response" has the same meaning as in R9-10-701.
2. "Outing" means travel by a child, who is receiving respite services provided by an outpatient treatment center, to a location away from the outpatient treatment center premises or, if applicable, the child's residence for a specific activity.
3. "Parent" means a child's:
 - a. Mother or father, or
 - b. Legal guardian.
4. ~~"Respite capacity" means the total number of children for whom an outpatient treatment center is authorized by the Department to provide respite services on the outpatient treatment center's premises.~~

B. An administrator of an outpatient treatment center that is authorized to provide respite services shall ensure that:

1. Respite services are not provided in a personnel member's residence unless the personnel member's residence is licensed as a behavioral health respite home;
2. Except for an outpatient treatment center that is authorized to provide respite services for children on the premises, respite services are provided:

- a. In a patient's residence; or
 - b. Up to 10 continuous hours in a 24-hour time period while the individual who is receiving the respite services is:
 - i. Supervised by a personnel member;
 - ii. Awake;
 - iii. Except as stated in subsection (B)(3), provided food;
 - iv. Allowed to rest;
 - v. Provided an opportunity to use the toilet and meet the individual's hygiene needs; and
 - vi. Participating in activities in the community but is not in a licensed health care institution or child care facility; and
 3. If a child is provided respite services according to subsection (B)(2)(b), the child is provided the appropriate meals or snacks in subsection (J)(1) for the amount of time the child is receiving respite services from the outpatient treatment center.
- C. If an outpatient treatment center that is authorized to provide respite services for children includes outings in the outpatient treatment center's scope of services, an administrator shall ensure that:
1. Before a personnel member takes a child receiving respite services on an outing, written permission is obtained from the child's parent that includes:
 - a. The child's name;
 - b. A description of the outing;
 - c. The name of the outing destination, if applicable;
 - d. The street address and, if available, the telephone number of the outing destination;
 - e. Either:
 - i. The date or dates of the outing; or
 - ii. The time period, not to exceed 12 months, during which the permission is given;
 - f. The projected time of departure from the outpatient treatment center or, if applicable, the child's residence;
 - g. The projected time of arrival back at the outpatient treatment center or, if applicable, the child's residence; and
 - h. The dated signature of the child's parent;
 2. Each motor vehicle used on an outing by a personnel member for a child receiving respite services from the outpatient treatment center:

- a. Is maintained in a mechanically safe condition;
 - b. Is free from hazards;
 - c. Has an operational heating system;
 - d. Has an operational air-conditioning system; and
 - e. Is equipped with:
 - i. A first-aid kit that meets the requirements in subsection (S)(1), and
 - ii. Two large, clean towels or blankets;
3. On an outing, a child does not ride in a truck bed, camper, or trailer attached to a motor vehicle;
 4. The Department is notified within 24 hours after a motor vehicle accident that involves a child who is receiving respite services while riding in the motor vehicle on an outing; and
 5. A personnel member who drives a motor vehicle with children receiving respite services from the outpatient treatment center in the motor vehicle:
 - a. Requires that each door be locked before the motor vehicle is set in motion and keeps the doors locked while the motor vehicle is in motion;
 - b. Does not permit a child to be seated in front of a motor vehicle's air bag;
 - c. Requires that a child remain seated and entirely inside the motor vehicle while the motor vehicle is in motion;
 - d. Requires that a child is secured, as required in A.R.S. § 28-907 or 28-909, before the motor vehicle is set in motion and while the motor vehicle is in motion;
 - e. Assists a child into or out of the motor vehicle away from moving traffic at curbside or in a driveway, parking lot, or other location designated for this purpose;
 - f. Carries drinking water in an amount sufficient to meet the needs of each child on the outing and a sufficient number of cups or other drinking receptacles so that each child can drink from a different cup or receptacle; and
 - g. Accounts for each child while on the outing.
- D.** An administrator of an outpatient treatment center that is authorized to provide respite services for children on the premises shall ensure that:
1. Respite services are only provided on the premises for up to 10 continuous hours per day between the hours of 6:00 a.m. and 10:00 p.m.;
 2. The specific 10 continuous hours per day during which the outpatient treatment center provides respite services on the premises is stated in the outpatient treatment center's hours of operation that is submitted as part of the outpatient treatment center's ~~initial or~~

~~renewal~~ license application and according to R9-10-1002(D);

3. A personnel member, who is expected to provide respite services eight or more hours a week, complies with the requirements for tuberculosis screening in R9-10-113;
4. At least one personnel member who has current training in first aid and cardiopulmonary resuscitation is available on the premises when a child is receiving respite services on the premises;
5. At least one personnel member who has completed training in crisis intervention according to R9-10-716(F) is available on the premises when a child is receiving respite services on the premises;
6. A personnel member does not use or possess any of the following items when a child receiving respite services is on the premises:
 - a. A controlled substance as listed in A.R.S. Title 36, Chapter 27, Article 2, except where used as a prescription medication in the manner prescribed;
 - b. A dangerous drug as defined in A.R.S. § 13-3401, except where used as a prescription medication in the manner prescribed;
 - c. A prescription medication as defined in A.R.S. § 32-1901, except where used in the manner prescribed; or
 - d. A firearm as defined in A.R.S. § 13-105;
7. An unannounced fire and emergency evacuation drill is conducted at least once a month, and at different times of the day, and each personnel member providing respite services for children on the premises and each child receiving respite services on the premises participates in the fire and emergency evacuation drill;
8. Each fire and emergency evacuation drill is documented, and the documentation is maintained for at least 12 months after the date of the fire and emergency evacuation drill;
9. Before a child receives respite services on the premises of the outpatient treatment center, in addition to the requirements in R9-10-1009, the following information is obtained and maintained in the child's medical record:
 - a. The name, home address, city, state, zip code, and contact telephone number of each parent of the child;
 - b. The name and contact telephone number of at least two additional individuals authorized by the child's parent to collect the child from the outpatient treatment center;

- c. The name and contact telephone number of the child's health care provider;
 - d. The written authorization for emergency medical care of the child when the parent cannot be contacted at the time of an emergency;
 - e. The name of the individual to be contacted in case of injury or sudden illness of the child;
 - f. If applicable, a description of any dietary restrictions or needs due to a medical condition or diagnosed food sensitivity or allergy;
 - g. A written record completed by the child's parent or health care provider noting the child's susceptibility to illness, physical conditions of which a personnel member should be aware, and any specific requirements for health maintenance; and
10. Documentation is obtained and maintained in the child's medical record each time the child receives respite services on the premises that includes:
- a. The date and time of each admission to and discharge from receiving respite services; and
 - b. A signature, which contains at least a first initial of a first name and the last name of the child's parent or other individual designated by the child's parent, each time the child is admitted or discharged from receiving respite services on the premises;
11. Policies and procedures are developed, documented, and implemented to ensure that the identity of an individual is known to a personnel member or is verified with picture identification before the personnel member discharges a child to the individual;
12. A child is not discharged to an individual other than the child's parent or other individual designated according to subsection (D)(9)(b), except:
- a. When the child's parent authorizes the administrator by telephone or electronic means to release the child to an individual not so designated, and
 - b. The administrator can verify the telephone or electronic authorization using a means of verification that has been agreed to by the administrator and the child's parent and documented in the child's medical record; and
13. The number of personnel members providing respite services for children on the premises is determined by the needs of the children present, with a minimum of at least:
- a. One personnel member providing supervision for every five children receiving respite services on the premises; and
 - b. Two personnel members on the premises when a child is receiving respite services on

the premises.

- E.** If swimming activities are conducted at a swimming pool for a child receiving respite services on the premises of an outpatient treatment center, an administrator shall ensure that there is an individual at the swimming pool on the premises who has current lifeguard certification that includes a demonstration of the individual's ability to perform cardiopulmonary resuscitation. If the individual is a personnel member, the personnel member cannot be counted in the personnel member-to-children ratio required by subsection (D)(13).
- F.** An administrator of an outpatient treatment center that is authorized to provide respite services for children on the premises shall ensure that in each area designated for providing respite services:
1. Drinking water is provided sufficient for the needs of and accessible to each child in both indoor and outdoor areas;
 2. Indoor areas used by children are decorated with age-appropriate articles such as bulletin boards, pictures, and posters;
 3. Storage space is provided for indoor and outdoor toys, materials, and equipment in areas accessible to children;
 4. Clean clothing is available to a child when the child needs a change of clothing;
 5. At least one indoor area in the outpatient treatment center where respite services are provided for children is equipped with at least one cot or mat, a sheet, and a blanket, where a child can rest quietly away from the other children;
 6. Except as provided in subsection (AA)(2)(a), outdoor or large muscle development activities are scheduled to allow not less than 75 square feet for each child occupying the outdoor area or indoor area substituted for outdoor area at any time;
 7. The premises, including the buildings, are maintained free from hazards;
 8. Toys and play equipment, required in this Section, are maintained:
 - a. Free from hazards, and
 - b. In a condition that allows the toy or play equipment to be used for the original purpose of the toy or play equipment;
 9. Temperatures are maintained between 70° F and 84° F in each room or indoor area used by children;
 10. Except when a child is napping or sleeping or for a child who has a sensory issue documented in the child's behavioral health assessment, each room or area used by a child is maintained at a minimum of 30 foot candles of illumination;

11. When a child is napping or sleeping in a room, the room is maintained at a minimum of five foot candles of illumination;
12. Each child's toothbrush, comb, washcloth, and cloth towel that are provided for the child's use by the child's parent are maintained in a clean condition and stored in an identified space separate from those of other children;
13. Except as provided in subsection (F)(14), the following are stored separate from food storage areas and are inaccessible to a child:
 - a. All materials and chemicals labeled as a toxic or flammable substance;
 - b. All substances that have a child warning label and may be a hazard to a child; and
 - c. Lawn mowers, ladders, toilet brushes, plungers, and other equipment that may be a hazard to a child;
14. Hand sanitizers:
 - a. When being stored, are stored separate from food storage areas and are inaccessible to children; and
 - b. When being provided for use, are accessible to children; and
15. Except when used as part of an activity, the following are stored in an area inaccessible to a child:
 - a. Garden tools, such as a rake, trowel, and shovel; and
 - b. Cleaning equipment and supplies, such as a mop and mop bucket.

G. An administrator of an outpatient treatment center that is authorized to provide respite services for children on the premises shall ensure that a personnel member:

1. Supervises each child at all times;
2. Does not smoke or use tobacco:
 - a. In any area where respite services may be provided for a child, or
 - b. When transporting or transferring a child;
3. Except for a child who can change the child's own clothing, changes a child's clothing when wet or soiled;
4. Empties clothing soiled with feces into a toilet without rinsing;
5. Places a child's soiled clothing in a plastic bag labeled with the child's name, stores the clothing in a container used for this purpose, and sends the clothing home with the child's parent;
6. Prepares and posts in each indoor area, before the first child arrives to receive respite services that day, a current schedule of age-appropriate activities that meet the needs of the

children receiving respite services that day, including the times the following are provided:

- a. Meals and snacks,
 - b. Naps,
 - c. Indoor activities,
 - d. Outdoor or large muscle development activities,
 - e. Quiet and active activities,
 - f. Personnel member-directed activities,
 - g. Self-directed activities, and
 - h. Activities that develop small muscles;
7. Provides activities and opportunities, consistent with a child's behavioral health assessment, for each child to:
- a. Gain a positive self-concept;
 - b. Develop and practice social skills;
 - c. Acquire communication skills;
 - d. Participate in large muscle physical activity;
 - e. Develop habits that meet health, safety, and nutritional needs;
 - f. Express creativity;
 - g. Learn to respect cultural diversity of children and staff;
 - h. Learn self-help skills; and
 - i. Develop a sense of responsibility and independence;
8. Implements the schedule in subsection (G)(6);
9. If an activity on the schedule in subsection (G)(6) is not implemented, writes on the schedule the activity that was not implemented and what activity was substituted;
10. Ensures that each indoor area has a supply of age-appropriate toys, materials, and equipment, necessary to implement the schedule required in subsection (G)(6), in a quantity sufficient for the number of children receiving respite services at the outpatient treatment center that day, including:
- a. Art and crafts supplies;
 - b. Books;
 - c. Balls;
 - d. Puzzles, blocks, and toys to enhance manipulative skills;
 - e. Creative play toys;

- f. Musical instruments; and
 - g. Indoor and outdoor equipment to enhance large muscle development;
11. Does the following when a parent permits or asks a personnel member to apply personal products, such as petroleum jelly, diaper rash ointments, sun screen or sun block preparations, toothpaste, and baby diapering preparations on the parent's child:
- a. Obtains the child's personal products and written approval for use of the personal products from the child's parent;
 - b. Labels the personal products with the child's name; and
 - c. Keeps the personal products inaccessible to children; and
12. Monitors a child for overheating or overexposure to the sun.
- H.** An administrator of an outpatient treatment center that is authorized to provide respite services for children on the premises and includes in the outpatient treatment center's scope of respite services for children wearing diapers shall ensure that there is a diaper changing space in the area designated for providing respite services for children that contains:
- 1. A nonabsorbent, sanitizable diaper changing surface that is:
 - a. Seamless and smooth, and
 - b. Kept clear of items not required for diaper changing;
 - 2. A hand-washing sink adjacent to the diaper changing surface, for a personnel member's use when changing diapers and for washing a child during or after diapering, that provides:
 - a. Running water,
 - b. Soap from a dispenser, and
 - c. Single-use paper hand towels from a dispenser;
 - 3. At least one waterproof, sanitizable container with a waterproof liner and a tight-fitting lid for soiled diapers; and
 - 4. At least one waterproof, sanitizable container with a waterproof liner and a tight-fitting lid for soiled clothing.
- I.** In a diaper changing space, an administrator of an outpatient treatment center that is authorized to provide respite services for children on the premises shall ensure that:
- 1. A diaper changing procedure is established, documented, and implemented that states that a child's diaper is changed as soon as it is soiled and that a personnel member when diapering:
 - a. Washes and dries the child, using a separate wash cloth and towel only once for each child;

- b. If applicable, applies the child's individual personal products labeled with the child's name;
 - c. Uses single-use non-porous gloves;
 - d. Washes the personnel member's own hands with soap and running water according to the requirements in R9-10-1028(5);
 - e. Washes each child's hands with soap and running water after each diaper change; and
 - f. Cleans, sanitizes, and dries the diaper changing surface following each diaper change; and
2. A personnel member:
- a. Removes disposable diapers and disposable training pants from a diaper changing space as needed or at least twice every 24 hours to a waste receptacle outside the building; and
 - b. Does not:
 - i. Permit a bottle, formula, food, eating utensil, or food preparation in a diaper changing space;
 - ii. Draw water for human consumption from the hand-washing sink adjacent to a diaper changing surface, required in subsection (H)(2); or
 - iii. If responsible for food preparation, change diapers until food preparation duties have been completed for the day.
- J.** Except as provided in subsection (K)(3), an administrator of an outpatient treatment center that is authorized to provide respite services for children on the premises shall:
- 1. Serve the following meals or snacks to a child receiving respite services on the premises:
 - a. For the following periods of time:
 - i. Two to four hours, one or more snacks;
 - ii. Four to eight hours, one or more snacks and one or more meals; and
 - iii. More than eight hours, two snacks and one or more meals;
 - b. Make breakfast available to a child receiving respite services on the premises before 8:00 a.m.;
 - c. Serve lunch to a child who is receiving respite services on the premises between 11:00 a.m. through 1:00 p.m.; and
 - d. Serve dinner to a child who is receiving respite services on the premises from 5:00 p.m. through 7:00 p.m. and who will remain on the premises after 7:00 p.m.;
 - 2. Ensure that a meal or snack provided by the outpatient treatment center meets the meal

pattern requirements in Table 10.1; and

3. If the outpatient treatment center provides a meal or snack to a child:
 - a. Make a second serving of a food component of a provided snack or meal available to a child who requests a second serving, and
 - b. Substitute a food that is equivalent to a specific food component if a requested second serving of a specific food component is not available.
- K.** An administrator of an outpatient treatment center that is authorized to provide respite services for children on the premises:
 1. May serve food provided for a child by the child's parent;
 2. If a child's parent does not provide a sufficient number of meals or snacks to meet the requirements in subsection (J)(1), shall supplement, according to the requirements in Table 10.1, the meals or snacks provided by the child's parent; and
 3. If applicable, shall serve food to a child at the times and in quantities consistent with the information documented according to subsection (D)(9)(f) for the child and the child's behavioral health assessment, to meet the child's dietary and nutritional needs.
- L.** An administrator of an outpatient treatment center that is authorized to provide respite services for children on the premises that has a respite capacity of more than 10 shall obtain a food establishment license or permit according to the requirements in 9 A.A.C. 8, Article 1, and, if applicable, maintain documentation of the current food establishment license or permit.
- M.** If an administrator of an outpatient treatment center that is authorized to provide respite services for children on the premises serves food to a child receiving respite services on the premises that is not prepared by the outpatient treatment center or provided by the child's parent, the administrator shall ensure that the food was prepared by a food establishment, as defined according to A.A.C. R9-8-101.
- N.** An administrator of an outpatient treatment center that is authorized to provide respite services for children on the premises shall ensure that:
 1. Children, except infants and children who cannot wash their own hands, wash their hands with soap and running water before and after handling or eating food;
 2. A personnel member:
 - a. Washes the hands of an infant or a child who cannot wash the child's own hands before and after the infant or child handles or eats food, using:
 - i. A washcloth,
 - ii. A single-use paper towel, or

- iii. Soap and running water; and
 - b. If using a washcloth, uses each washcloth on only one child and only one time before it is laundered or discarded;
 - 3. Non-single-use utensils and equipment used in preparing, eating, or drinking food are:
 - a. After each use:
 - i. Washed in an automatic dishwasher and air dried or heat dried; or
 - ii. Washed in hot soapy water, rinsed in clean water, sanitized, and air dried or heat dried; and
 - b. Stored in a clean area protected from contamination;
 - 4. Single-use utensils and equipment are disposed of after being used;
 - 5. Perishable foods are covered and stored in a refrigerator at a temperature of 41° F or less;
 - 6. A refrigerator at the outpatient treatment center maintains a temperature of 41° F or less, as shown by a thermometer kept in the refrigerator at all times;
 - 7. A freezer at the outpatient treatment center maintains a temperature of 0° F or less, as shown by a thermometer kept in the freezer at all times; and
 - 8. Foods are prepared as close as possible to serving time and, if prepared in advance, are either:
 - a. Cold held at a temperature of 45° F or less or hot held at a temperature of 130° F or more until served, or
 - b. Cold held at a temperature of 45° F or less and then reheated to a temperature of at least 165° F before being served.
- O.** An administrator of an outpatient treatment center that is authorized to provide respite services for children on the premises:
- 1. May allow a personnel member to separate a child who is receiving respite services on the premises from other children for unacceptable behavior for no longer than three minutes after the child has regained self-control, but not more than 10 minutes without the personnel member interacting with the child, consistent with the child's behavioral health assessment;
 - 2. Shall ensure that:
 - a. A personnel member, consistent with the child's behavioral health assessment:
 - i. Defines and maintains consistent and reasonable guidelines and limitations for a child's behavior;
 - ii. Teaches, models, and encourages orderly conduct, personal control, and age-appropriate behavior; and

- iii. Explains to a child why a particular behavior is not allowed, suggests an alternative, and assists the child to become engaged in an alternative activity;
- b. An emergency safety response is:
 - i. Only used:
 - (1) By a personnel member trained according to R9-10-716(F)(1) to use an emergency safety response,
 - (2) For the management of a child's violent or self-destructive behavior, and
 - (3) When less restrictive interventions have been determined to be ineffective; and
 - ii. Discontinued at the earliest possible time, but no longer than five minutes after the emergency safety response is initiated;
- c. If an emergency safety response was used for a child, a personnel member, when the child is discharged to the child's parent:
 - i. Notifies the child's parent of the use of the emergency safety response for the child and the behavior, event, or environmental factor that caused the need for the emergency safety response; and
 - ii. Documents in the child's medical record that the child's parent was notified of the use of the emergency safety response;
- d. Within 24 hours after an emergency safety response is used for a child receiving respite services on the premises, the following information is entered into the child's medical record:
 - i. The date and time the emergency safety response was used;
 - ii. The name of each personnel member who used an emergency safety response;
 - iii. The specific emergency safety response used;
 - iv. The behavior, event, or environmental factor that caused the need for the emergency safety response; and
 - v. Any injury that resulted from the use of the emergency safety response;
- e. Within 10 working days after an emergency safety response is used for a child receiving respite services on the premises, a behavioral health professional reviews the information in subsection (O)(2)(d) and documents the review in the

child's medical record;

- f. After the review required in subsection (O)(2)(e), the following information is entered into the child's medical record:
 - i. Actions taken or planned to prevent the need for a subsequent use of an emergency safety response for the child,
 - ii. A determination of whether the child is appropriately placed at the outpatient treatment center providing respite services for children on the premises, and
 - iii. Whether the child's treatment plan was reviewed or needs to be reviewed and amended to ensure that the child's treatment plan is meeting the child's treatment needs;
- g. Emergency safety response training is documented according to the requirements in R9-10-716(F)(2); and
- h. Materials used for emergency safety response training are maintained according to the requirements in R9-10-716(F)(3); and

3. A personnel member does not use or permit:

- a. A method of discipline that could cause harm to the health, safety, or welfare of a child;
- b. Corporal punishment;
- c. Abusive language;
- d. Discipline associated with:
 - i. Eating, napping, sleeping, or toileting;
 - ii. Medication; or
 - iii. Mechanical restraint; or
- e. Discipline administered to any child by another child.

P. An administrator of an outpatient treatment center that is authorized to provide respite services for children on the premises shall:

- 1. Provide each child who naps or sleeps on the premises with a separate cot or mat and ensure that:
 - a. A cot or mat used by the child accommodates the child's height and weight;
 - b. A personnel member covers each cot or mat with a clean sheet that is laundered when soiled, or at least once every seven days and before use by a different child;
 - c. A clean blanket or sheet is available for each child;

- d. A rug, carpet, blanket, or towel is not used as a mat; and
 - e. Each cot or mat is maintained in a clean and repaired condition;
 - 2. Not use bunk beds or waterbed mattresses for a child receiving respite services;
 - 3. Provide an unobstructed passageway at least 18 inches wide between each row of cots or mats to allow a personnel member access to each child;
 - 4. Ensure that if a child naps or sleeps while receiving respite services at the outpatient treatment center, the administrator:
 - a. Does not permit the child to lie in direct contact with the floor while napping or sleeping;
 - b. Prohibits the operation of a television in a room where the child is napping or sleeping; and
 - c. Requires that a personnel member remain awake while supervising the napping or sleeping child; and
 - 5. Ensure that storage space is provided on the premises for cots, mats, sheets, and blankets, that is:
 - a. Accessible to an area used for napping or sleeping; and
 - b. Separate from food service and preparation areas, toilet rooms, and laundry rooms.
- Q.** An administrator of an outpatient treatment center that is authorized to provide respite services for children on the premises shall, in the area of the premises where the respite services are provided:
 - 1. Maintain the premises and furnishings:
 - a. Free of insects and vermin,
 - b. In a clean condition, and
 - c. Free from odor; and
 - 2. Ensure that:
 - a. Floor coverings are:
 - i. Clean; and
 - ii. Free from:
 - (1) Dampness,
 - (2) Odors, and
 - (3) Hazards;
 - b. Toilet bowls, lavatory fixtures, and floors in toilet rooms and kitchens are cleaned and sanitized as often as necessary to maintain them in a clean and sanitized condition or at least once every 24 hours;

- c. Each toilet room used by children receiving respite services on the premises contains, within easy reach of children:
 - i. Mounted toilet tissue;
 - ii. A sink with running water;
 - iii. Soap contained in a dispenser; and
 - iv. Disposable, single-use paper towels, in a mounted dispenser, or a mechanical hand dryer;
 - d. Personnel members wash their hands with soap and running water after toileting;
 - e. A child's hands are washed with soap and running water after toileting;
 - f. Except for a cup or receptacle used only for water, food waste is stored in a covered container and the container is clean and lined with a plastic bag;
 - g. Food waste and other refuse is removed from the area of the premises where respite services are provided for children at least once every 24 hours or more often as necessary to maintain a clean condition and avoid odors;
 - h. A personnel member or a child does not draw water for human consumption from a toilet room hand-washing sink;
 - i. Toys, materials, and equipment are maintained in a clean condition;
 - j. Plumbing fixtures are maintained in a clean and working condition; and
 - k. Chipped or cracked sinks and toilets are replaced or repaired.
- R.** If laundry belonging to an outpatient treatment center providing respite services for children on the premises is done on the premises, an administrator shall:
- 1. Not use a kitchen or food storage area for sorting, handling, washing, or drying laundry;
 - 2. Locate the laundry equipment in an area that is separate from areas used by children and inaccessible to children;
 - 3. Not permit a child to be in a laundry room or use a laundry area as a passageway for children; and
 - 4. Ensure that laundry soiled by vomitus, urine, feces, blood, or other body fluid is stored, cleaned, and sanitized separately from other laundry.
- S.** An administrator of an outpatient treatment center that is authorized to provide respite services for children on the premises shall ensure that there is a first aid kit in the designated area of the outpatient treatment center where respite services are provided that:
- 1. Contains first aid supplies in a quantity sufficient to meet the needs of the children receiving respite services, including the following:

- a. Sterile bandages including:
 - i. Self-adhering bandages of assorted sizes,
 - ii. Sterile gauze pads, and
 - iii. Sterile gauze rolls;
 - b. Antiseptic solution or sealed antiseptic wipes;
 - c. A pair of scissors;
 - d. Self-adhering tape;
 - e. Single-use, non-porous gloves; and
 - f. Reclosable plastic bags of at least one-gallon size; and
 2. Is accessible to personnel members but inaccessible to children receiving respite services on the premises.
- T.** An administrator of an outpatient treatment center that is authorized to provide respite services for children on the premises shall:
 1. Prepare and date a written fire and emergency plan that contains:
 - a. The location of the first aid kit;
 - b. The names of personnel members who have first aid training;
 - c. The names of personnel members who have cardiopulmonary resuscitation training;
 - d. The directions for:
 - i. Initiating notification of a child's parent by telephone or other equally expeditious means within 60 minutes after a fire or emergency; and
 - ii. Providing written notification to the child's parent within 24 hours after a fire or emergency; and
 - e. The outpatient treatment center's street address and the emergency telephone numbers for the local fire department, police department, ambulance service, and poison control center;
 2. Maintain the plan required in subsection (T)(1) in the area designated for providing respite services;
 3. Post the plan required in subsection (T)(1) in any indoor area where respite services are provided that does not have an operable telephone service or two-way voice communication system that connects the indoor area where respite services are provided with an individual who has direct access to an in-and-out operable telephone services; and
 4. Update the plan in subsection (T)(1) at least once every 12 months after the date of initial

preparation of the plan or when any information changes.

- U. An administrator of an outpatient treatment center that is authorized to provide respite services for children on the premises shall in the area designated for providing respite services:
 - 1. Post, near a room's designated exit, a building evacuation plan that details the designated exits from the room and the facility where the outpatient treatment center is located; and
 - 2. Maintain and use a communication system that contains:
 - a. A direct-access, in-and-out, operating telephone service in the area where respite services are provided; or
 - b. A two-way voice communication system that connects the area where respite services are provided with an individual who has direct access to an in-and-out, operating telephone service.
- V. If, while receiving respite services at an outpatient treatment center authorized to provide respite services for children on the premises, a child has an accident, injury, or emergency that, based on an evaluation by a personnel member, requires medical treatment by a health care provider, an administrator shall ensure that a personnel member:
 - 1. Notifies the child's parent immediately after the accident, injury, or emergency;
 - 2. Documents:
 - a. A description of the accident, injury, or emergency, including the date, time, and location of the accident, injury, or emergency;
 - b. The method used to notify the child's parent; and
 - c. The time the child's parent was notified; and
 - 3. Maintains the documentation required in subsection (V)(2) for at least 12 months after the date the child last received respite services on the outpatient treatment center's premises.
- W. If a parent of a child who received respite services at an outpatient treatment center authorized to provide respite services for children on the premises informs a personnel member that the child's parent obtained medical treatment for the child from a health care provider for an accident, injury, or emergency the child had while on the premises, an administrator shall ensure that a personnel member:
 - 1. Documents any information about the child's accident, injury, or emergency received from the child's parent; and
 - 2. Maintains the documentation required in subsection (W)(1) for at least 12 months after the date the child last received respite services on the outpatient treatment center's premises.
- X. If a child exhibits signs of illness or infestation at an outpatient treatment center authorized to provide

respite services for children on the premises, an administrator shall ensure that a personnel member:

1. Immediately separates the child from other children,
2. Immediately notifies the child's parent by telephone or other expeditious means to arrange for the child's discharge from the outpatient treatment center,
3. Documents the notification required in subsection (X)(2), and
4. Maintains documentation of the notification required in subsection (X)(3) for at least 12 months after the date of the notification.

Y. An administrator of an outpatient treatment center that is authorized to provide respite services for children on the premises shall comply with the following physical plant requirements:

1. Toilets and hand-washing sinks are available to children in the area designated for providing respite services or on the premises as follows:
 - a. At least one flush toilet and one hand-washing sink for 10 or fewer children;
 - b. At least two flush toilets and two hand-washing sinks for 11 to 25 children; and
 - c. At least one flush toilet and one hand-washing sink for each additional 20 children;
2. A hand-washing sink provides running water with a drain connected to a sanitary sewer as defined in A.R.S. § 45-101;
3. A glass mirror, window, or other glass surface that is located within 36 inches of the floor is made of safety glass that has been manufactured, fabricated, or treated to prevent the glass from shattering or flying when struck or broken, or is shielded by a barrier to prevent impact by or physical injury to a child; and
4. There is at least 30 square feet of unobstructed indoor space for each child who may be receiving respite services on the premises, which excludes floor space occupied by:
 - a. The interior walls;
 - b. A kitchen, a bathroom, a closet, a hallway, a stair, an entryway, an office, an area designated for isolating a child from other children, a storage room, or a room or floor space designated for the sole use of personnel members;
 - c. Room space occupied by desks, file cabinets, storage cabinets, or hand-washing sinks for a personnel member's use; or
 - d. Indoor area that is substituted for required outdoor area.

Z. An administrator of an outpatient treatment center authorized to provide respite services for children on the premises shall ensure that, in addition to the policies and procedures required in this Article, policies and procedures are established, documented, and implemented for the children's

use of a toilet and hand-washing sink that ensure the children's health and safety and include:

1. Supervision requirements for children using the toilet, based on a child's age, gender, and behavioral health issue; and
2. If the outpatient treatment center does not have a toilet and hand-washing sink available for the exclusive use of children receiving respite services, a method to ensure that an individual, other than a child receiving respite services or a personnel member providing respite services, is not present in the toilet and hand-washing sink area when a child receiving respite services is present in the toilet and hand-washing sink area.

AA. To provide activities that develop large muscles and an opportunity to participate in structured large muscle physical activities, an administrator of an outpatient treatment center authorized to provide respite services for children on the premises shall:

1. Provide at least 75 square feet of outdoor area per child for at least 50% of the outpatient treatment center's respite capacity; or
2. Comply with one of the following:
 - a. If no child receives respite services on the premises for more than four hours per day, provide at least 50 square feet of indoor area for each child, based on the outpatient treatment center's respite capacity;
 - b. If a child receives respite services on the premises for more than four hours but less than six hours per day, provide at least 75 square feet of indoor area per child for at least 50% of the outpatient treatment center's respite capacity, in addition to the indoor area required in subsection (Y)(4); or
 - c. Provide at least 37.5 square feet of outdoor area and 37.5 square feet of indoor area per child for at least 50% of the outpatient treatment center's respite capacity, in addition to the activity area required in subsection (Y)(4).

BB. If an administrator of an outpatient treatment center that is authorized to provide respite services for children on the premises is substituting indoor area for outdoor area, the administrator shall:

1. Designate, on the site plan and the floor plan submitted with the license application or a request for an intended change or modification, the indoor area that is being substituted for an outdoor area; and
2. In the indoor area substituted for outdoor area, install and maintain a mat or pad designed to provide impact protection in the fall zone of indoor swings and climbing equipment.

CC. An administrator of an outpatient treatment center that is authorized to provide respite services for children on the premises shall ensure that:

1. An outdoor area used by children receiving respite services:
 - a. Is enclosed by a fence:
 - i. A minimum of 4.0 feet high,
 - ii. Secured to the ground, and
 - iii. With either vertical or horizontal open spaces on the fence or gate that do not exceed 4.0 inches;
 - b. Is maintained free from hazards, such as exposed concrete footings and broken toys; and
 - c. Has gates that are kept closed while a child is in the outdoor area;
2. The following is provided and maintained within the fall zones of swings and climbing equipment in an outdoor area:
 - a. A shock-absorbing unitary surfacing material manufactured for such use in outdoor activity areas; or
 - b. A minimum depth of 6.0 inches of a nonhazardous, resilient material such as fine loose sand or wood chips;
3. Hard surfacing material such as asphalt or concrete is not installed or used under swings or climbing equipment unless used as a base for shock-absorbing unitary surfacing material;
4. A swing or climbing equipment is not located in the fall zone of another swing or climbing equipment; and
5. A shaded area for each child occupying an outdoor area at any time of the day is provided.

DD. An administrator of an outpatient treatment center that is authorized to provide respite services for children on the premises shall install and maintain a portable, pressurized fire extinguisher that meets, at a minimum, a 2A-10-BC rating of the Underwriters Laboratories in an outpatient treatment center's kitchen and any other location required for Existing Health Care Occupancies in National Fire Protection Association 101, Life Safety Code, incorporated by reference in A.A.C. R9-1-412.

EE. In addition to the requirements in R9-10-1029(F), an administrator of an outpatient treatment center that is authorized to provide respite services for children on the premises shall ensure that:

1. Combustible material, such as paper, boxes, or rags, is not permitted to accumulate inside or outside the premises;
2. An unvented or open-flame space heater or portable heater is not used on the premises;
3. A gas valve on an unused gas outlet is removed and capped where it emerges from the wall or floor;

4. Heating and cooling equipment is inaccessible to a child;
5. Fans are mounted and inaccessible to a child;
6. Toilet rooms are ventilated to the outside of the building, either by a screened window open to the outside air or by an exhaust fan and duct system that is operated when the toilet room is in use;
7. A toilet room with a door that opens to the exterior of a building is equipped with a self-closing device that keeps the door closed except when an individual is entering or exiting; and
8. A toilet room door does not open into a kitchen or laundry.

R9-10-1031. Colocation Requirements

A. In addition to the definitions in A.R.S. §§ 36-401 and 36-439 and R9-10-101 and R9-10-1001, the following definition applies in this Section:

“Patient” means an individual who enters the premises of a collaborating outpatient treatment center to obtain physical health services or behavioral health services from the collaborating outpatient treatment center or a colocator that shares ~~common~~ areas with of the collaborating outpatient treatment ~~center~~ center’s premises.

B. Only one outpatient treatment center in a facility may be designated as a collaborating outpatient treatment center for the facility.

C. The following health care institutions are not permitted to be a collaborating outpatient treatment center or a colocator in a collaborating outpatient treatment center:

1. An affiliated counseling facility, ~~as defined in R9-10-1901~~;
2. An outpatient treatment center authorized by the Department to provide dialysis services according to R9-10-1018;
3. An outpatient treatment center authorized by the Department to provide emergency room services according to R9-10-1019; or
4. An outpatient treatment center operating under a single group license according to A.R.S. § ~~36-422 (F)~~ 36-422(F) or (G).

D. In addition to the requirements for ~~an initial~~ a license application in R9-10-105, ~~renewal license application in R9-10-107, or, if part of a license change or modification, the supplemental application requirements in R9-10-1002~~, a governing authority of an outpatient treatment center requesting authorization to operate or continue to operate as a collaborating outpatient treatment center shall submit, in a Department-provided format:

1. The following information for each proposed colocator that may share ~~a common~~ an area of

the collaborating outpatient treatment center's premises and nontreatment personnel at the collaborating outpatient treatment center:

- a. For each proposed associated licensed provider:
 - i. Name,
 - ii. The associated licensed provider's license number or the date the associated licensed provider submitted to the Department ~~an initial~~ a license application for an outpatient treatment center or a counseling facility license,
 - iii. Proposed scope of services, and
 - iv. A copy of the written agreement with the collaborating outpatient treatment center required in subsection (E); and

- b. For each exempt health care provider:
 - i. Name,
 - ii. Current health care professional license number,
 - iii. Proposed scope of services, and
 - iv. A copy of the written agreement required in subsection (F) with the collaborating outpatient treatment center; and

2. In addition to the requirements in ~~R9-10-105(A)(5)(b)(v)~~ R9-10-105(A)(5)(b)(vi), a floor plan that shows:

- a. Each colocator's proposed treatment area, and
- b. The ~~common~~ areas of the collaborating outpatient treatment ~~center~~ center's premises shared with a colocator.

E. An administrator of a collaborating outpatient treatment center shall have a written agreement with each associated licensed provider that includes:

1. In a Department-provided format:
 - a. The associated licensed provider's name;
 - b. The name of the associated licensed provider's governing authority;
 - c. Whether the associated licensed provider plans to share medical records with the collaborating outpatient treatment center;
 - d. If the associated licensed provider plans to share medical records with the collaborating outpatient treatment center, specific information about which party will obtain a patient's:
 - i. General consent or informed consent, as applicable;

- ii. Consent to allow a colocator access to the patient's medical record; and
 - iii. Advance directives;
- e. How the associated licensed provider will transport or transfer a patient to another colocator within the collaborating outpatient treatment center;
- f. How the associated licensed provider will ensure controlled substances stored in the associated licensed provider's licensed premises are not diverted;
- g. How the associated licensed provider will ensure environmental services in the associated licensed provider's licensed premises will not affect patient care in the collaborating outpatient treatment center;
- h. How the associated licensed provider's personnel members will respond to a patient's sudden, intense, or out-of-control behavior, in the associated licensed provider's treatment area, to prevent harm to the patient or another individual in the collaborating outpatient treatment center;
- i. A statement that, if any of the colocators include children's behavioral health services in the colocator's scope of services, the associated licensed provider will ensure that all employees and personnel members of the associated licensed provider comply the fingerprint clearance card requirements in A.R.S. § 36-425.03;
- j. A statement that the associated licensed provider will:
 - i. Document the following each time another colocator provides emergency health care services in the associated licensed provider's treatment area:
 - (1) The name of the colocator;
 - (2) If different from the name of the colocator, the name of the physician, physician assistant, registered nurse practitioner, or behavioral health professional providing the emergency health care services;
 - (3) A description of the emergency health care services provided; and
 - (4) The date and time the emergency health care services were provided;
 - ii. Maintain the documentation in subsection (E)(1)(j)(i) for at least 12 months after the emergency health care services were provided; and
 - iii. Submit a copy of the documentation to the collaborating outpatient treatment center within 48 hours after the provision of the emergency health care

services;

k. A statement that the associated licensed provider will:

i. Document the following each time the associated licensed provider provides emergency health care services in another colocator's treatment area:

(1) If different from the name of the associated licensed provider, the name of the physician, physician assistant, registered nurse practitioner, or behavioral health professional providing the emergency health care services;

(2) The name of the colocator;

(3) A description of the emergency health care services provided; and

(4) The date and time the emergency health care services were provided;

ii. Maintain the documentation in subsection (E)(1)(k)(i) for at least 12 months after the emergency health care services were provided; and

iii. Submit a copy of the documentation to the collaborating outpatient treatment center within 48 hours after the provision of the emergency health care services;

l. An attestation that the associated licensed provider will comply with the written agreement;

m. The signature of the associated licensed provider's governing authority according to A.R.S. § 36-422(B) and the date signed; and

n. The signature of the collaborating outpatient treatment center's governing authority according to A.R.S. § 36-422(B) and the date signed; and

2. A copy of the associated licensed provider's scope of services, including whether the associated licensed provider plans to provide behavioral health services for children.

F. An administrator of a collaborating outpatient treatment center shall have a written agreement with each exempt health care provider that includes:

1. In a Department-provided format:

a. The exempt health care provider's name;

b. The exempt health care provider license type and license number;

c. Whether the exempt health care provider plans to share medical records with the collaborating outpatient treatment center;

- d. If the exempt health care provider plans to share medical records with the collaborating outpatient treatment center, specific information about which party will obtain a patient's:
 - i. General consent or informed consent, as applicable;
 - ii. Consent to allow a colocator access to the patient's medical record; and
 - iii. Advance directives;
- e. How the exempt health care provider will transport or transfer a patient to another colocator within the collaborating outpatient treatment center;
- f. How the exempt health care provider will ensure controlled substances stored in the exempt health care provider's designated premises are not diverted;
- g. How the exempt health care provider will ensure environmental services in the exempt health care provider's licensed premises will not affect patient care in the collaborating outpatient treatment center;
- h. How the exempt health care provider and any staff of the exempt health care provider will respond to a patient's sudden, intense, or out-of-control behavior, in the exempt health care provider's treatment area, to prevent harm to the patient or another individual in the collaborating outpatient treatment center;
- i. A statement that, if any of the colocators include children's behavioral health services in the colocator's statement of services, the exempt health care provider will ensure that all employees and staff of the exempt health care provider comply with the fingerprint clearance card requirements A.R.S. § 36-425.03;
- j. A statement that the exempt health care provider will:
 - i. Document the following each time another colocator provides emergency health care services in the exempt health care provider's treatment area:
 - (1) The name of the colocator;
 - (2) If different from the name of the colocator, the name of the physician, physician assistant, registered nurse practitioner, or behavioral health professional providing the emergency health care services;
 - (3) A description of the emergency health care services provided; and
 - (4) The date and time the emergency health care services were provided;

- ii. Maintain the documentation in subsection (F)(1)(j)(i) for at least 12 months after the emergency health care services were provided; and
 - iii. Submit a copy of the documentation to the collaborating outpatient treatment center within 48 hours after the provision of the emergency health care services;
 - k. A statement that the exempt health care provider will:
 - i. Document the following each time the exempt health care provider provides emergency health care services in another collocator's treatment area:
 - (1) If different from the name of the exempt health care provider, the name of the physician, physician assistant, registered nurse practitioner, or behavioral health professional providing the emergency health care services;
 - (2) The name of the collocator;
 - (3) A description of the emergency health care services provided; and
 - (4) The date and time the emergency health care services were provided;
 - ii. Maintain the documentation in subsection (F)(1)(k)(i) for at least 12 months after the emergency health care services were provided; and
 - iii. Submit a copy of the documentation to the collaborating outpatient treatment center within 48 hours after the provision of the emergency health care services;
 - l. An attestation that the exempt health care provider will comply with the written agreement;
 - m. The signature of the exempt health care provider and the date signed; and
 - n. The signature of the collaborating outpatient treatment center's governing authority according to A.R.S. § 36-422(B) and the date signed; and
 - 2. A copy of the exempt health care provider's scope of services, including whether the exempt health care provider plans to provide behavioral health services for children.
- G. As part of the policies and procedures required in this Article, an administrator of a collaborating outpatient treatment center shall ensure that policies and procedures are established, documented, and implemented to protect the health and safety of a patient based on the scopes of services of all collocators that:

1. Cover job descriptions, duties, and qualifications, including required skills, knowledge, education, and experience for nontreatment personnel who may provide services in the ~~common~~ areas of the collaborating outpatient treatment center center's premises shared with a colocator;
2. Cover orientation and in-service education for nontreatment personnel who may provide services in the ~~common~~ areas of the collaborating outpatient treatment center center's premises shared with a colocator;
3. Cover cardiopulmonary resuscitation training, including:
 - a. The method and content of cardiopulmonary resuscitation training, which includes a demonstration of the individual's ability to perform cardiopulmonary resuscitation;
 - b. The qualifications for an individual to provide cardiopulmonary resuscitation training;
 - c. The time-frame for renewal of cardiopulmonary resuscitation training; and
 - d. The documentation that verifies that an individual has received cardiopulmonary resuscitation training;
4. Cover first aid training;
5. Cover patient screening, including a method to ensure that, if a patient identifies a specific colocator, the patient is directed to the identified colocator;
6. Cover the provision of emergency treatment to protect the health and safety of a patient or individual present in ~~a common~~ an area of the collaborating outpatient treatment center's premises shared with a colocator according to the requirements for emergency treatment policies and procedures in R9-10-1029(A);
7. If medication is stored in an area of the collaborating outpatient treatment center's ~~common areas~~ premises shared with a colocator, cover obtaining, storing, accessing, and disposing of medications, including provisions for controlling inventory and preventing diversion of controlled substances;
8. Cover biohazardous wastes, if applicable;
9. Cover environmental services in ~~the common~~ an area of the collaborating outpatient treatment center's premises shared with a colocator that affect patient care; and
10. Cover how personnel members and nontreatment personnel will respond to a patient's sudden, intense, or out-of-control behavior to prevent harm to the patient or another individual in ~~the~~ an area of the collaborating outpatient treatment center's ~~common areas~~

premises shared with a colocator.

H. An administrator of a collaborating outpatient treatment center shall ensure that:

1. ~~An outpatient treatment center's common areas~~ Areas of the collaborating outpatient treatment center's premises shared with a colocator are:
 - a. Sufficient to accommodate the outpatient treatment center's and any colocators' scopes of services;
 - b. Cleaned and disinfected according to the outpatient treatment center's policies and procedures to prevent, minimize, and control illness and infection; and
 - c. Free from a condition or situation that may cause an individual to suffer physical injury;
2. A written log is maintained that documents the date, time, and circumstances each time a colocator provides emergency health care services in another colocator's designated treatment area; and
3. The documentation in the written log required in subsection (H)(2) is maintained for at least 12 months after the date the colocator provides emergency health care services in another colocator's designated treatment area.

I. If any colocator at a collaborating outpatient treatment center includes children's behavioral health services as part of the colocator's scope of services, an administrator of the collaborating outpatient treatment center shall ensure that the governing authority, employees, personnel members, nontreatment personnel, and volunteers of the collaborating outpatient treatment center comply with the fingerprint clearance card requirements in A.R.S. § 36-425.03.

ARTICLE 11. ADULT DAY HEALTH CARE FACILITIES

R9-10-1102. Supplemental Application Requirements

In addition to the license application requirements in A.R.S. § 36-422 and R9-10-105, an applicant for ~~an~~ ~~initial~~ a license as an adult day health care facility shall include on the application the number of participants for whom the applicant is requesting authorization to provide adult day health services.

ARTICLE 14. SUBSTANCE ABUSE TRANSITIONAL FACILITIES

R9-10-1414. Emergency and Safety Standards

A. An administrator shall ensure that:

1. An evacuation drill for employees and participants on the premises is conducted at least once every six months on each shift;
2. Documentation of each evacuation drill is created, is maintained for at least 12 months after the date of the evacuation drill, and includes:
 - a. The date and time of the drill;
 - b. The amount of time taken for all employees and participants to evacuate the substance abuse transitional facility;
 - c. Any problems encountered in conducting the drill; and
 - d. Recommendations for improvement, if applicable;
3. An evacuation path is conspicuously posted on each hallway of each floor of the facility;
4. A disaster plan is developed, documented, maintained in a location accessible to personnel members, and, if necessary, implemented that includes:
 - a. When, how, and where participants will be relocated;
 - b. How a participant's medical record will be available to individuals providing services to the participant during a disaster;
 - c. A plan to ensure a participant's medication will be available to administer to the participant during a disaster; and
 - d. A plan for obtaining food and water for individuals present in the substance abuse transitional facility or the substance abuse transitional facility's relocation site during a disaster;
5. The disaster plan required in subsection (A)(4) is reviewed at least once every 12 months;
6. Documentation of a disaster plan review required in subsection (A)(5) is created, is maintained for at least 12 months after the date of the disaster plan review, and includes:
 - a. The date and time of the disaster plan review;
 - b. The name of each employee or volunteer participating in the disaster plan review;
 - c. A critique of the disaster plan review; and
 - d. If applicable, recommendations for improvement; and
7. A disaster drill for employees is conducted on each shift at least once every three months and documented.

B. An administrator shall ensure that:

1. A fire inspection is conducted by a local fire department or the State Fire Marshal before ~~initial~~ licensing and according to the time-frame established by the local fire department or the State Fire Marshal,
2. Any repairs or corrections stated on the fire inspection report are made, and
3. Documentation of a current fire inspection is maintained.

ARTICLE 19. COUNSELING FACILITIES

R9-10-1901. Definitions Repealed

~~In addition to the definitions in A.R.S. § 36-401 and R9-10-101, the following definitions apply in this Article:~~

- ~~1. “Affiliated counseling facility” means a counseling facility that shares administrative support with one or more other counseling facilities that operate under the same governing authority.~~
- ~~2. “Affiliated outpatient treatment center” means an outpatient treatment center authorized by the Department to provide behavioral health services that provides administrative support to a counseling facility or counseling facilities that operate under the same governing authority as the outpatient treatment center.~~

R9-10-1902. Supplemental Application Requirements

In addition to the license application requirements in A.R.S. § 36-422 and 9 A.A.C. 10, Article 1, a governing authority applying for ~~an initial~~ a license as a counseling facility shall submit, in a format provided by the Department:

1. The days and hours of clinical operation and, if different from the days and hours of clinical operation, the days and hours of administrative operation;
2. If applicable, a request to provide one of more of the following:
 - a. DUI screening,
 - b. DUI education,
 - c. DUI treatment, or
 - d. Misdemeanor domestic violence offender treatment;
3. Whether the counseling facility has an affiliated outpatient treatment center;
4. If the counseling facility has an affiliated outpatient treatment center:
 - a. The affiliated outpatient treatment center’s name; and
 - b. Either:
 - i. The license number assigned to the affiliated outpatient treatment center by the Department; or
 - ii. If the affiliated outpatient treatment center is not currently licensed, the:
 - (1) Street address of the affiliated outpatient treatment center, and
 - (2) Date the affiliated outpatient treatment center submitted to the Department an ~~initial~~ application for a health care institution

license;

5. Whether the counseling facility is sharing administrative support with an affiliated counseling facility; and
6. If the counseling facility is sharing administrative support with an affiliated counseling facility, for each affiliated counseling facility sharing administrative support with the counseling facility:
 - a. The affiliated counseling facility's name; and
 - b. Either:
 - i. The license number assigned to the affiliated counseling facility by the Department; or
 - ii. If the affiliated counseling facility is not currently licensed, the:
 - (1) Street address of the affiliated counseling facility, and
 - (2) Date the affiliated counseling facility submitted to the Department an ~~initial~~ application for a health care institution license.



February 5, 2019

Psychiatric-Mental Health Nurses Are Qualified Behavioral Health Professionals

Summary

Since the early 2000s, Arizona has recognized Registered Nurses (RN) with one or more years of direct patient care work experience in behavioral health as a professional with standing above technicians and administrative staff in delivering care and treatment to citizens with significant behavioral health conditions. For nearly 15 years, an RN with a minimum of one year behavioral health direct care experience was considered a Behavioral Health Professional (BHP) by Arizona's licensing authorities – the Department of Health Services and the Arizona Board of Nursing. The BHP designation recognized the uniqueness of knowledge and skills acquired by nursing staff working in highly-specialized behavioral health settings, and the critical application of such knowledge and skills in preventing suicides, adverse medication reactions and other poor outcomes within behavioral health service agencies both inpatient and outpatient.

The proposal to remove Registered Nurses operating within their scope of practice in specialized behavioral health settings marginalizes the role of nursing by removing the BHP designation for these licensed professionals. This action limits the role, compensation and career prospects for experienced Registered Nurses within Arizona's health sector at a time when the healthcare industry is increasingly recognizing the impactful role behavioral health plays in the overall health of our citizens. The increasing move to integration of behavioral health and primary care under the new AHCCCS Complete Care and Integrated SMI contracts offers new opportunities to define the role of Nursing at the heart of the movement to integrated care – but not if their experience with complex co-morbidities is not recognized and supported. In many other states, licensing authorities have adopted one of the national certificate programs in mental health/psychiatric nursing that provides a specific credential for this specialized field –thereby growing their healthcare workforce, rather than limiting it.

Our position is that Registered Nurses with experience in behavioral health are specialists and qualified professionals above and beyond regular nursing who should maintain the designation of BHPs in state licensing rules.

Psychiatric/Mental Health Nurses

Psychiatric-mental health (PMH) nurses must possess and maintain specialized psychiatric knowledge in order to assess for, recognize, and mitigate multiform risk factors and/or adverse effects from either an SMI member's psychiatric disease process or complex psychotropic medication treatments. These signs

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and factors can include assessment danger to self/danger to others and suicidal risk, as well as clinical assessments for psychotropic medication toxicity including organ failure, body rash, neutropenia, agranulocytosis, Stevens-Johnson syndrome, neuroleptic malignant syndrome and serotonin syndrome. PMH nurses directly assess and administer medications with significant and multifarious impacts to the humans systems, such as the classes of long acting injectables (LAIs), clozapine, lamotrigine, lithium carbonate, divalproex sodium, and carbamazepine.

In each example, PMH nurses must use their expert knowledge to evaluate the SMI member's mental status and assess for either medication efficacy or signs and symptoms of increasing or newly presenting psychiatric illness. PMH nurses must also use expert knowledge to assess for signs and symptoms of comorbid medical conditions that are uncontrolled, poorly controlled, exacerbated, or brought on by psychotropic medication treatments. PMH nurses must possess expert knowledge of all psychiatric illnesses and their presentations and must use that knowledge to appropriately triage emergent SMI members in crisis and translate their behavior and subjective reports into objective findings from which to formulate plans of care and inform other disciplines on the care team about the crisis.

PMH nurses are instrumental in providing integrated healthcare to members, as they have established member rapport, full knowledge of a member's psychiatric disease process, are able to translate subjective member reports into objective findings and explain a member's mental status and those findings to PCP/specialty providers to facilitate needed care and mitigate medical disease progression. In short, PMH nurses extensively draw upon expert psychiatric knowledge daily in order to maintain the highest levels of SMI member well-being while also providing safe and effective integrated healthcare within their scope.

Medication administration provides multiple clear examples of the application of this behavioral health specialization. Prior to administering any long-acting injectable (LAI), PMH nurses must use their expert knowledge to assess a member's mental status, translate their behavior and subjective reports into objective findings, evaluate medication efficacy, or assess for either increasing or newly presenting psychiatric illness. They must also assess for multiple and varied types of LAI-related side/adverse effects including extra-pyramidal (e.g. muscle stiffness, spasms, restlessness, drooling), anticholinergic (e.g. dry mouth, constipation, blurred vision), psychic (e.g. somnolence, fatigue, insomnia, forgetfulness) and autonomic (e.g. dizziness, diarrhea, hyperhidrosis, palpitations). They must obtain and interpret vital signs and also select an appropriate injection site (dependent upon the specific medication being administered), and assess the potential injection site for lesions, lumps, or pain prior to injection. Once administered, the nurse will assess for post-injection side effects (e.g. pain at injection site, dizziness, excess bleeding) and again for mental status prior to the member leaving.

During administration of clozapine, an antipsychotic available only under a special medication management program, PMH nurses must assess for multiple clozapine-related side effects (e.g. extra-pyramidal, anticholinergic, psychic, autonomic). The PMH nurse must use expert knowledge to obtain and interpret vital signs and monitor for adverse effects such as clozapine toxicity, neutropenia, or agranulocytosis. The PMH nurse must also use expert knowledge to implement appropriate medication

titration for novel patients and also medication monitoring requirements, including use of the Clozapine REMS web based national monitoring site.

The role of the PMH nurse specific to suicide prevention includes both systems and member level interventions. At the systems level the PMH nurse uses specialized knowledge to assess and maintain environmental safety, develop protocols and practices consistent with zero suicide, and participate in training for all staff. At the member level, the PMH nurse uses specialized knowledge to assess risk for suicide, provide suicide-specific psychotherapeutic interventions, monitor and supervise at-risk patients, and assess outcomes of all interventions. This includes use of expert knowledge to do all of the following:

1. Understand the phenomenon of suicide and also legal and ethical issues related to suicide.
2. Develop and maintain a collaborative, therapeutic relationship with the member.
3. Collect accurate assessment information and communicate risk to the care team.
4. Formulate a risk assessment.
5. Develop an ongoing nursing plan of care based on continuous assessment.
6. Perform an ongoing assessment of the environment in determining the level of member safety and modify the environment accordingly.
7. Accurately and thoroughly document suicide risk.

The expectation is that these essential competencies will serve to provide the foundation for training curricula and in measuring the knowledge, skills, and attitudes necessary for expert care (American Psychiatric Nurses Association, 2018).

Considering all of the above, it is Partners In Recovery's position that PMH registered nurses are indeed qualified behavioral health professionals, secondary to their possession and daily use of specialized psychiatric knowledge and expertise in order to provide the safe and effective healthcare which maximizes an SMI member's health and wellbeing.



Ruthann Smejkal <ruthann.smejkal@azdhs.gov>

Fwd: Age of BHT - 21 vs 18

1 message

Kathryn McCanna <kathryn.mccanna@azdhs.gov>
To: Ruthann Smejkal <ruthann.smejkal@azdhs.gov>

Mon, Apr 8, 2019 at 12:55 PM

----- Forwarded message -----

From: **Kathryn Busby** <kathy_busby@yahoo.com>
Date: Mon, Apr 8, 2019 at 12:37 PM
Subject: Age of BHT - 21 vs 18
To: Kathryn McCanna <kathryn.mccanna@azdhs.gov>

Kathy,

Thanks for a very productive meeting this morning. As we discussed, here are the sections which currently require non licensed behavioral health personnel (BHTs) to be 21 years of age. I took these from my comments to Jan rule set but think it will get you what you need. Let me know if I can help in any way. Kathy

R9-10-306 (A) describes staffing requirements for inpatient behavioral health facilities but it is not clear. In A (1) it requires a personnel member to be at least 21 years of age and then in (2) it allows an employee to be 18 years of age. Suggest to combine the two and allow 18 years to be threshold:

" A. An administrator shall ensure that:

- 1. A personnel member and an employee is at least 18 years of age"*

R9-10-706 (A) describes staffing for behavioral health residential facility. The same suggestion as above regarding the age of personnel member/employee by changed to at least 18 years of age.

In existing rules, **R9-10-1011 (A)** and **R9-10-1405 (A)**, which are not included in the proposed rules but are in the same sections, there is reference again to the 21 years of age for personnel members and 18 for employees. Suggest change both of these as outlined above.

--

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and delete the original message. Thank you.

Comments to Proposed Rulemaking
Chapter 10 - Health Care Institution Licensing

1. Proposed rule, R9-10-101 (35), defines Behavioral Health Professional (BHP) and includes:

“g. A registered nurse with a psychiatric-mental health nursing certification.”

We appreciate the inclusion of registered nurses (RNs) as they have been functioning in this role for a number of years. However, to maintain that workforce and because of the shortage of qualified behavioral health personnel we suggest to add an additional path, which has previously been allowed, for RNs to qualify as BHPs:

“g. A registered nurse with a psychiatric-mental health nursing certification **or with a minimum of one year experience in a behavioral health setting.**”

2. Existing rules R9-10-306 (A), R9-10-706 (A), R9-10-1011 (A) and R9-10-1405 (A) describe staffing requirements, respectively, for inpatient behavioral health facilities, behavioral health residential facilities, outpatient treatment centers, and substance abuse transitional facilities (note that the latter two facility type rules on this topic are not in the proposed rules). However these rules are not clear and also limit the development of an adequate workforce. They require an administrator to ensure:

“(1) A personnel member
a. is at least 21 years of age”

But subsequently allows that:

“(2) An employee is at least 18 years of age.”

Not only is this confusing but we also do not believe that there should be this artificial age limit on behavioral health personnel. We suggest, for the purposes of not only adding qualified personnel to the for workforce, but also to allow trained individuals career opportunities, that these requirements be combined to allow 18 years old to be threshold:

“ A. An administrator shall ensure that:

1. A personnel member and an employee is at least 18 years of age”

3. Proposed rule, R9-10- 306 (J), requires 24/7 staffing for inpatient behavioral health facilities by a physician or a registered nurse practitioner and the administrator must ensure that the physician or registered nurse practitioner is:

- a. Present on the behavioral health inpatient facility's premises,
- b. Available through telemedicine, or
- c. On-call and on the premises within 30 minutes after a request to come to the behavioral health inpatient facility

Providers have been confused/concerned about this requirement, particularly the interplay between telemedicine and on-call. We suggest the following to address that concern/confusion:

- a. **Present** on the behavioral health inpatient facility's premises, *or*
- b. ***On-call and available through telemedicine or on the premises within 30 minutes after a request to come to the behavioral health inpatient facility.***

TITLE 9. HEALTH SERVICES

CHAPTER 10. HEALTH CARE INSTITUTIONS: LICENSING

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

April 2019

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 9. HEALTH SERVICES

CHAPTER 10. HEALTH CARE INSTITUTIONS: LICENSING

1. An identification of the rulemaking

In order to ensure public health, safety, and welfare, Arizona Revised Statutes (A.R.S.) §§ 36-405 and 36-406 require the Arizona Department of Health Services (Department) to adopt rules establishing minimum standards and requirements for construction, modification, and licensure of health care institutions. The Department has adopted rules for licensing health care institutions in Arizona Administrative Code (A.A.C.) Title 9, Chapter 10. Laws 2017, Ch. 122, eliminates renewal licensure for health care institutions and states that a health care institution license remains valid unless subsequently suspended or revoked by the Department or the health care institution fails to pay a licensing fee by a specified due date. Laws 2017, Ch. 122, also requires the Department to establish rules regarding the payment of licensing fees and modifies information and documentation required to be submitted as part of a licensing application. Laws 2017, Ch. 134, requires the Department to develop rules related to recidivism reduction staff in adult residential care institutions. In this rulemaking, the Department is revising the rules in 9 A.A.C. 10 to comply with Laws 2017, Ch. 122. As part of the rulemaking, the Department is also making other changes to rules in 9 A.A.C. 10 to improve efficiency and effectiveness, as described in five-year-review reports approved by the Governor’s Regulatory Review Council, including the addition of requirements related to recidivism reduction.

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

- The Department
- Health care institutions
- Personnel members
- Patients/residents of a health care institution and their families
- General public

3. Cost/Benefit Analysis

The new rules contain requirements being made to comply with statutory changes. For Laws 2017, Ch. 122, these include:

- Removing references to “initial” and “renewal” applications and licenses;

- Making documentation submission requirements, which had been associated with renewals, now associated with annual licensing fees;
- Removing the exclusion of a behavioral health facility from requirements in A.R.S. § 36-421(F);
- Adding requirements for submission of annual licensing fees;
- Exempting a history of nonpayment of fees as grounds for license denial;
- Requiring the Department to notify a licensee that annual licensing fees are due;
- Adding provisions for a grace period and late fee;
- Adding provisions for an alternate licensing fee due date; and
- Specifying circumstances when a license becomes invalid.

For Laws 2017, Ch. 134, related to recidivism reduction, these include:

- Adding adult residential care institution as a subclass of behavioral health residential facilities;
- Clarifying that an applicant must be authorized to perform recidivism reduction services;
- Clarifying fingerprinting requirements and requirements for background checks for recidivism reduction staff;
- Adding requirements for a personnel member, who is recidivism reduction staff; and
- Adding a new Section specific to recidivism reduction services.

In addition to these changes, many of the changes being made as part of this rulemaking are in response to issues described in five-year-review reports approved by the Governor's Regulatory Review Council (Council) of Articles in 9 A.A.C. 10, for which an expedited rulemaking would have been conducted if this rulemaking had not been open. Therefore, they are clarifying in nature, will reduce a regulatory burden while achieving the same regulatory objective, comply with regulatory requirements, and help eliminate confusion on the part of the regulated communities. These changes include:

- Clarifying the use of terms defined in R9-10-101 that are used in the Chapter; (Three definitions are being removed; a citation to A.R.S. § 36-439 is added to include definitions related to colocation; 12 definitions are added, including seven moved from other Sections in the Chapter and two replacing definitions being removed; and 22 definitions are revised.)
- Correcting typographical errors, grammatical errors, and cross-references;
- Correcting the inconsistent uses of terms;
- Clarifying when an e-mail address is needed;
- Separating requirements for two persons into different subsections;

- Clarifying for which modifications of a health care institution the requirements in R9-10-104 are applicable;
- Clarifying license application requirements (including when “address” refers to “mailing address” and that not all health care institutions have a “licensed capacity”);
- Clarifying that an applicant for a license does not receive the license until licensing fees are paid;
- Clarifying for what changes a licensee is required to notify the Department, adding a requirement for documentation of the change, and removing requirements related to the Department’s approval of a change because no approval is required;
- Adding a list of types of modifications and for which types of modifications the submission of architectural plans and specifications is required;
- Clarifying that noncompliance with the applicable requirements in A.R.S. Title 36, Chapter 4, and this Chapter is grounds for denial, suspension, or revocation of a license;
- Clarifying requirements for a tuberculosis infection control program;
- Clarifying that a transport to a receiving hospital may come from a health care institution besides a hospital;
- Clarifying documentation requirements for a hospital related to a surgical procedure on a patient;
- Clarifying requirements for a “seclusion room,” including using “secure hold room,” to address a written criticism of the rules;
- Updating dietary guidelines and incorporations by reference to the current versions;
- Making the rules consistent with A.A.C. R3-8-201(C)(4);
- Moving requirements for transfer of a resident of a nursing care institution from R9-10-409 to R9-10-408;
- Clarifying that a behavioral health residential facility must be authorized to provide personal care services or an outdoor behavioral health care program;
- Clarifying requirements for behavioral health services in a behavioral health residential facility; and
- Substituting the phrase “Department-provided format” for consistency with other Department rules and to better allow for electronic submission of information/applications.

Other changes being made in response to issues identified in five-year-review reports of Articles in 9 A.A.C. 10 that were approved by the Council may impose a cost on stakeholders and could not have been made through expedited rulemaking. The costs associated with these

changes, as well as the benefits provided by the changes being made, are described below. No new FTEs will be required due to this rulemaking. Annual costs/revenues changes are designated as minimal when more than \$0 and \$2,000 or less, moderate when between \$2,000 and \$10,000, and substantial when \$10,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification.

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Revenue	Decreased Cost/ Increased Revenue
A. State and Local Government Agencies			
Department	Eliminating license renewals Clarifying requirements Adding information for an application to better enable evaluation and processing Reducing the time for an applicant to supply information or documents Reinstating fees Requiring a personnel member who can communicate in English to be on the premises	None None None None None None	Moderate Significant Significant Significant Substantial Significant
B. Privately Owned Businesses			
Health care institutions	Eliminating license renewals Reducing the time for an applicant to supply information or documents Adding information for an application or for notification and clarifying requirements Revising the definition of “behavioral health professional” Reinstating fees Requiring additional information about satellite facilities to be submitted Clarification of “secure hold room” Eliminating an apparent inconsistency with respect to the use of restraints in Article 4 Adding requirements for establishing an acuity plan and for determining a patient’s acuity in a behavioral health inpatient facility Reducing the time for patient/resident assessment and documentation in a behavioral health inpatient facility	None None-to-minimal None-to-minimal Minimal-to-substantial None-to-moderate None-to-minimal None Minimal-to-moderate None-to-substantial Minimal-to-moderate None	Significant None Significant None/significant None Significant Minimal-to-moderate Significant None Significant Significant

	Allowing medical services to be provided under the direction of a registered nurse practitioner	Minimal-to-moderate	None
	Adding options for ensuring access to a physician or registered nurse practitioner for a behavioral health inpatient facility	Minimal-to-moderate	Significant
	Reducing the time for patient/resident assessment and documentation in a behavioral health residential facility	None-to-minimal	None
	Requiring a personnel member who can communicate in English to be on the premises	None-to-substantial	None-to-substantial
	Specifying requirements for providing recidivism reduction services	Minimal	Significant
	Requiring an assisted living facility to have methods to be aware of a resident's general or specific whereabouts	Minimal	Significant
	Adding requirements related to documentation of staffing and for ensuring backup		

C. Private Persons and Consumers

Personnel members	Clarifying requirements	None	Significant
	Adding options for ensuring access to a physician or registered nurse practitioner for a behavioral health inpatient facility	None-to-minimal/ minimal-to-moderate	Significant/ minimal-to-moderate
	Requiring a personnel member who can communicate in English to be on the premises	None/significant	None
	Specifying requirements for recidivism reduction staff to provide services	None	Significant
Patients/residents of health care institutions and their families	Having rules that are easier to understand and more effective	None	Significant
	Requiring a personnel member who can communicate in English to be on the premises	None	Significant
	Reducing the time for patient/resident assessment and documentation	None	Significant
	Adding requirements for establishing an acuity plan and for determining a patient's acuity	None	Significant
	Adding options for ensuring access to a physician or registered nurse practitioner for a behavioral health inpatient facility	None	Significant
	Eliminating inconsistency with respect to the use of restraints	None	Significant
	Requiring an assisted living facility to have methods to be aware of a resident's general or specific whereabouts	None	Significant

	Adding requirements related to documentation of staffing and for ensuring backup	None	Significant
	Helping ensure the safety of residents receiving recidivism reduction services	None	Significant
General public	Having rules that are easier to understand and more effective	None	Significant
	Having health care institutions providing better treatment	None	Significant

- **The Department**

The Department currently licenses over 6,400 facilities as one of over 18 classes/subclasses of health care institutions. As of February 2019, these include: 110 hospitals, 54 behavioral health inpatient facilities, 146 nursing care institutions, 3 recovery care centers, 7 hospice inpatient facilities, 208 outpatient surgical centers, 2,472 outpatient treatment centers, one behavioral health specialized transitional facility, 3 abortion clinics, 3 substance abuse transitional facilities, 576 behavioral health residential facilities, 171 hospice service agencies, 217 home health agencies, 2,084 assisted living facilities, 21 adult day health care facilities, 13 behavioral health respite homes, 45 adult behavioral health therapeutic homes, 239 counseling facilities, and 43 unclassified health care institutions. For all these facilities, the Department will no longer need to process renewal licenses once the new rules become effective. According to the requirements in the new rules, these health care institutions must only verify information about the facility and pay an annual licensing fee for their licenses to remain active. The Department anticipates that this fee will be paid through an online data system, on which a licensee will also be able to verify the information for the facility currently in the Department’s records. The Department anticipates that this change to perpetual licenses will provide a moderate benefit to the Department through less staff time being spent processing renewal applications. Changes to clarify requirements, as described above, may provide a significant benefit to the Department through less staff time being spent answering questions about the rules.

An applicant will still need to submit an application according to R9-10-105 and, when applicable, according to R9-10-104 when initially applying for a health care institution license. The requirements relating to the application packet have been revised in the new rules so an applicant will now need to indicate the requested licensed capacity for the facility only if applicable, and will need to indicate the respite capacity if applicable. Some classes/subclasses of health care institutions, such as outpatient treatment centers, outpatient surgical centers, home

health agencies, and hospice service agencies do not have a licensed capacity. Only outpatient treatment centers and behavioral health residential facilities providing respite services to children on the premises who do not stay overnight could have a respite capacity. The requirement to include the requested respite capacity for these classes of health care institution was inadvertently left out of the 2016 exempt rulemaking for colocation and respite to implement Laws 2015, Ch.158. A hospital applicant for a single group license will also need to provide, for each satellite facility or accredited satellite facility under the single group license, the class or subclass of the satellite facility and a list of services to be provided at the satellite facility. This change will eliminate the need for Department staff to contact the applicant to get this information before processing the application. A licensee will also need to notify the Department when adding or removing a satellite facility or accredited satellite facility under a single group license to allow the Department to correct records and, if applicable, expect a new application from a health care institution that will no longer be a satellite facility. Because the Department currently notifies licensees of upcoming license renewal due dates, and plans to use the same method when notifying licensees of annual licensing fee due dates, the new rules clarify that an applicant must supply an e-mail address for the facility. The Department believes that the changes to the application packets and notification requirements may provide a significant benefit to Department.

Under the current rules, an applicant has 180 calendar days, from the date the Department notifies the applicant that an application is not complete, to supply the missing information/documentation before the application is considered withdrawn. This time-frame was put in place because an application for licensure was not considered complete until the Department received documentation of the Department's approval of architectural plans and specifications, under R9-10-104. An application packet submitted according to R9-10-104 had to be submitted, and was supposed to be approved, before a licensing application was submitted. The extended time to supply missing documentation was to accommodate the review and approval of an application packet submitted under R9-10-104 at the same time as an application packet for licensing was submitted. Under the new rules, an application would be considered complete if it contained either the application packet for approval of architectural plans and specifications in R9-10-104(A) or documentation of the Department's approval. Therefore, there is no longer a need for an extended time to supply missing information/documents, and the Department is shortening this time-frame to 60 calendar days. Similarly, the Department is keeping the time-frame of 120 calendar days for an applicant to submit information or documentation

requested during the substantive review time-frame for a licensing application or application for a modification requiring architectural plans and specifications, but reducing the time for an applicant to submit information or documentation requested during the substantive review time-frame for a modification not requiring architectural plans and specifications or for a request for an alternate fee due date from 120 calendar days to 30 calendar days. The Department anticipates that these changes may provide a significant benefit to the Department.

As part of an exempt rulemaking of 9 A.A.C. 10, effective July 1, 2014, the Department had added several fees to R9-10-106. These included a fee of \$94 times the licensed occupancy for a behavioral health facility providing behavioral health observation/stabilization services; a fee of \$91 times the licensed occupancy for a hospital or an outpatient treatment center providing behavioral health observation/stabilization services, including an outpatient treatment center under a single group license; a fee of \$91 times the number of dialysis stations for an outpatient treatment center providing dialysis services, including an outpatient treatment center under a single group license; and a fee of \$365 for each of a hospital's satellite facilities under a single group license. The Department did not complete a regular rulemaking to remake these fees, so the fees expired under A.R.S. § 41-1008(E) on June 30, 2016. As part of the current rulemaking, the Department is reinstating these fees.

Based on the number of health care institutions that are currently authorized to provide these services and would begin paying the reinstated fees, the Department anticipates that the Department may receive approximately \$270,500 in additional revenue. For the last few years, the Department had greater expenditures for health care institution licensing than funds received, creating a shortfall. For example, in FY 2018, the Department received \$6,200,732 for health care institution licensing. Expenditures totaled \$6,359,109.04 without indirect costs, which were waived by the Department. If indirect costs had been included, the Department's expenditures in FY 2018 for health care institution licensing would have been \$7,020,918.36. Reinstatement of these fees may help offset some of the shortfall.

Recently, the Department has experienced several/many(?) instances, especially with smaller behavioral health residential facilities, in which a surveyor from the Department arrived at a behavioral health residential facility and was not able to communicate with any personnel member on the premises. This situation caused surveyors to wait around for extended periods of time or to leave and return at another time when someone who could communicate in English was present, resulting in inefficiency and additional costs to the Department. Therefore, in the new rules, the Department is adding a requirement that a personnel member who is able to read, write,

understand, and communicate in English must be on the premises of the behavioral health residential facility. The requirement is similar to a requirement for assisted living facilities in the current rules. The Department anticipates that this new requirement will provide a significant benefit to the Department.

- **Health care institutions**

As stated above, the Department currently licenses over 6,400 facilities as health care institutions. Under the current rules, each must submit a renewal application. The changes being made to the rules to comply with Laws 2017, Ch. 122, eliminate the need for renewal license applications. The provisions in the new rules for a grace period, with payment of a late payment fee of \$250, and for obtaining an alternate licensing fee due date may be of particular benefit to a health care institution. The \$250 late payment fee is consistent with the civil money penalty currently imposed on a facility that does not submit a timely renewal application. The Department believes that these changes, required by statutory changes rather than imposed by the Department, may provide a significant benefit to a health care institution.

Because an application for approval of architectural plans and specifications may now be submitted as part of a licensing application, the Department is shortening the time-frame for submitting missing components of an application packet from 120 calendar days to 60 calendar days, but the Department is keeping the time-frame of 120 calendar days for an applicant to submit information or documentation requested during the substantive review time-frame for a licensing application or application for a modification requiring architectural plans and specifications. The Department is also reducing the time for an applicant to submit information or documentation requested during the substantive review time-frame for a modification not requiring architectural plans and specifications or for a request for an alternate fee due date from 120 calendar days to 30 calendar days. The Department anticipates that an applicant may incur at most minimal costs due to these changes.

Many of the changes being made as part of this rulemaking clarify current requirements. Others, such as a requirement for an e-mail address, are required to facilitate electronic communication with licensees. Requirements relating to the application packet in R9-10-104 or R9-10-105 have been revised in the new rules so an applicant will now need to indicate the requested licensed capacity for the facility only if applicable, and will need to indicate the respite capacity if applicable. Under the current rules and statutes, a licensee is required to notify the Department of certain changes that affect a license, as specified in R9-10-109. The new rules list changes for which notification is required and clarify that a licensee is required to submit

documentation supporting the change. For example, a health care institution is required to notify the Department of a change in the name of the health care institution. As long as there is not a change in the governing authority, a name change just results in the issuance of a new license including the new name. However, a name change associated with a change in ownership would require a new license application to be submitted according to R9-10-105. Documentation showing for which type of name change notification is being made needs to be included with the notification to distinguish the two. The Department estimates that a health care institution may incur at most minimal costs for providing documentation when notifying the Department of a change affecting a license or for other clarifying changes and that the clarifications may provide a significant benefit to a health care institution.

However, the Department anticipates that other changes related to clarifications may cause a health care institution that was not interpreting a requirement consistent with the Department's understanding to incur a cost for compliance. For example, a licensee is required by R9-10-110 to submit a request to the Department for approval of a modification to the health care institution. The new rules clarify what constitutes a modification by listing circumstances that are considered modifications, consistent with the current and revised definition of "substantial," and specify those for which approval of architectural plans and specifications are required, rather than leaving a licensee confused about what to do when planning one of these changes. The new rules also clarify the documentation required to demonstrate that a requested modification complies with applicable requirements in the Chapter. The Department believes that a health care institution may incur minimal-to-moderate costs due to these changes and may receive a significant benefit from the clarity of the rules.

A licensee is required to comply with R9-10-109 and R9-10-110 independent of license renewal, but the Department often learns of some changes that should have been divulged under R9-10-109 or R9-10-110 at the time that a license is renewed, as part of the renewal application. Since, under perpetual licensing, no renewal application will be submitted, the Department plans to require a health care institution to verify information about the health care institution in the Department's licensing database records and to initiate actions to comply with R9-10-109 or R9-10-110, if applicable, before paying the annual licensing fee. A health care institution may incur a late payment fee if the health care institution waits until the last minute before trying to pay the annual licensing fee and cannot verify that the information in the Department's records is accurate because changes or modifications have been made and the health care institution has failed to comply with requirements in R9-10-109 or R9-10-110. If the health care institution waits

until the end of the grace period before attempting to pay the annual licensing fee, the license of the health care institution may even become void in such a circumstance. However, the Department will be informing the health care institution of the need to pay the annual licensing fee and the licensing fee due date well before the licensing fee due date, to give the health care institution plenty of time to comply with R9-10-109 or R9-10-110, if necessary, before the licensing fee due date. While this requirement may result in a health care institution incurring up to substantial costs/loss of revenue, the cause would be due to the inaction of the health care institution rather than to the new rules.

As part of the 2013 exempt rulemaking incorporating behavioral health facilities into 9 A.A.C. 10, the Department defined “behavioral health professional” as: “an individual licensed under A.R.S. Title 32 whose scope of practice allows the individual to:

- a. Independently engage in the practice of behavioral health as defined in A.R.S. § 32-3251; or
- b. Except for a licensed substance abuse technician, engage in the practice of behavioral health as defined in A.R.S. § 32-3251 under direct supervision as defined in A.A.C. R4-6-101.”

The definition was changed to the current definition during the 2014 exempt rulemaking. Because so many of the functions required in rule of a “behavioral health professional” are outside the scope of a registered nurse without additional training/certification, the Department believed that including a registered nurse, without additional qualifications, in the list of licensed individuals included as a “behavioral health professional” in 2014 was inappropriate, and the Department is correcting the error as part of this rulemaking. The revised definition of “behavioral health professional” includes a registered nurse with a psychiatric-mental health nursing certification or one year of experience providing behavioral health services. During inspections of health care institutions, the Department has found few registered nurses serving in the role of “behavioral health professional,” and those few had additional certification credentials or experience. Therefore, the Department believes that this change will have a minimal impact on health care institutions as a whole, although a health care institution using a registered nurse without additional certification credentials or experience in the capacity of a behavioral health professional may incur up to a substantial cost to comply with this change. This cost may be offset because the health care institution would be providing better, more appropriate care for its patients, resulting in a significant benefit to the health care institution.

Because the fees in R9-10-106(C)(3), (6), and (7) and (D) were not remade within two years after the 2014 exempt rulemaking, they have not been in effect since July 1, 2016. In this rulemaking, the Department is reinstating these fees. The fee of \$94 times the licensed occupancy

in subsection (C)(3) affects behavioral health facilities providing behavioral health observation/stabilization services. Currently, there are eight behavioral health facilities providing behavioral health observation/stabilization services, with a licensed occupancy ranging from 8 to 44. Therefore, by reinstating this fee, a behavioral health facility may incur between \$752 and \$4,136 in additional licensing costs. Similarly, there are no hospitals and five outpatient treatment centers authorized to provide behavioral health observation/stabilization services, but only two of them have a licensed occupancy. The two outpatient treatment centers have licensed occupancies of 15 and 40. Therefore, the Department estimates that an outpatient treatment center providing behavioral health observation/stabilization services may incur between \$1,365 and \$3,640 in additional licensing costs with the reinstatement of fees in subsection (C)(7)(b).

An outpatient treatment center providing dialysis services will incur a fee of \$91 times the number of dialysis stations when R9-10-106(C)(7)(a) is reinstated. The Department believes that there are 118 outpatient treatment centers currently providing dialysis services, with the number of dialysis stations in each ranging from zero (for outpatient treatment centers providing education and assistance for dialysis in a patient's home) to 36. Of the 118 outpatient treatment centers providing dialysis services, 71 have 21 or fewer dialysis stations. These outpatient treatment centers would incur minimal additional licensing costs due to the reinstated fees. The remaining 47 outpatient treatment centers have between 22 and 36 dialysis stations and would be expected to incur between \$2,002 and \$3,276 in additional licensing costs due to the reinstated fees.

Of the 110 hospitals licensed by the Department, 51 have satellite facilities that operate under the hospital's single group license, with 15 of these having only one satellite facility and 37 having five or fewer satellite facilities. Only five hospitals have 10 or more satellite facilities, with the hospital with the greatest number having 18 satellite facilities. Therefore, when the fee of \$365 under R9-10-106(D) for each of a hospital's satellite facilities is reinstated, the Department anticipates that 37 hospitals may incur a minimal increased cost and 14 may incur a moderate increase in costs, with the hospital with the greatest number of satellite facilities paying an additional \$6,570 in additional fees.

The new rules also clarify in R9-10-202(B) and (C) that a governing authority applying for a single group license under A.R.S. § 36-422(F) or (G) is required to include the class or subclass of the satellite facility and the list of services to be provided at the satellite facility. By clarifying this requirement in the rules, a hospital will be able to provide this information as part of an application, rather than after an inquiry by Department staff. The new rules are also changing the

requirement in R9-10-217 for a “seclusion room,” in response to a written criticism of the rules noted in the five-year-review report for Article 2. The new rules clarify that this space does not have the same characteristics as a room used for seclusion in a hospital’s psychiatric unit. Instead, the new requirement is for a “secure hold room” in the emergency department, as described in the American Institute of Architects and Facilities Guidelines Institute, Guidelines for Design and Construction of Health Care Facilities, incorporated by reference in A.A.C. R9-1-412. The Department anticipates that a hospital may incur up to minimal costs due to the additional information being provided at the time of application and with the annual licensing fees, and may receive a significant benefit from the clarity of the rules and minimal-to-moderate benefit from not having to provide additional information after the application is submitted or incorrectly designing a “secure hold room” with the same characteristics as a room used for seclusion in a psychiatric unit of the hospital.

During the five-year review of the rules in Article 4, the Department noticed an apparent inconsistency with respect to the use of restraints in a nursing care institution. While R9-10-410(B)(3)(i) states that a resident is not subjected to restraint in a nursing care institution, the term is used in both R9-10-414(A)(1)(d)(xvii) and R9-10-415(2). In the new rules, the reference in R9-10-414(A)(1)(d)(xvii) has been removed, and R9-10-415(2) has been changed to clarify that this subsection pertains to how the nursing care institution will respond to a resident’s sudden, intense, or out-of-control behavior to prevent harm to the resident or another individual. The Department believes that a nursing care institution that was inappropriately using restraints may incur minimal-to-moderate costs to change the procedures being followed and that this clarification may provide all nursing care institutions with a significant benefit.

Several changes described in the five-year-review report for Article 3 may cause a behavioral health inpatient facility to incur additional costs but are necessary to protect the health and safety of patients. During inspections and the investigations of complaints, the Department has found that the seriousness of the behavioral health issues of patients admitted into a behavioral health inpatient facility is higher than anticipated when the rules were originally made. This has resulted in adverse events for patients, including patient deaths. The Department believes that adding requirements for establishing an acuity plan, for determining a patient’s acuity, and for staffing based on patient acuity may help prevent adverse events. Although R9-10-306(B)(3) currently requires a behavioral health inpatient facility to provide sufficient personnel members to provide services, meet the needs of a patient, and ensure the health and safety of a patient, the new requirements may assist a behavioral health inpatient facility to better understand staffing needs

and comply with this requirement. The Department estimates that these changes may cause a behavioral health inpatient facility to incur as much as a substantial increase in cost, especially if additional personnel members must be hired to adequately staff the behavioral health inpatient facility to meet the needs of the patients admitted to the behavioral health inpatient facility.

Similarly, reducing the time to perform a medical history and physical examination on a patient after admission to a behavioral health inpatient facility and to document the results, from within 72 hours to within 24 hours after admission, may improve patient health and safety. The added requirement for assessing a patient to identify the behavioral health services needed by a patient whenever a patient has a significant change in condition or experiences an event that affects treatment may also improve the health and safety of patients, as well as improve the efficacy of treatment. To ensure that the correct information about a patient's condition is available to personnel members, the new rules reduce the time for documentation of a patient's behavior health assessment from within 48 hours to within 24 hours after completing the assessment, and for a patient receiving crisis services from within 24 hours to within eight hours after completing the assessment. The Department anticipates that a behavioral health inpatient facility may incur minimal-to-moderate costs to implement these changes, but receive a significant benefit from providing better, more appropriate patient care.

To offset some of these costs, the new rules allow medical services in a behavioral health inpatient facility to be provided under the direction of a registered nurse practitioner, as well as under a physician. The new rules also include more options, in R9-10-306(J), for a behavioral health inpatient facility to ensure access to a physician or registered nurse practitioner, but it is possible that changes in the requirements related to an on-call physician or registered nurse practitioner, being made to protect the health and safety of patients, may also cause a behavioral health inpatient facility to incur minimal-to-moderate additional costs. The ability to use telemedicine may be especially helpful to behavioral health inpatient facilities in more rural areas of Arizona. To ensure that an on-call physician or registered nurse practitioner can provide medical services if needed within a reasonable time to protect the health and safety of patients, the new rules require the on-call physician or registered nurse practitioner to be on the premises within 30 minutes after being called and requested to come and adds documentation requirements for an on-call physician or registered nurse practitioner. The Department believes that these changes may cause one behavioral health inpatient facility to incur minimal costs to change procedures and may provide a significant benefit to another behavioral health inpatient facility.

The new rules also contain changes, described in the five-year-review report for Article 7,

that are necessary to protect the health and safety of residents but may cause a behavioral health residential facility to incur additional costs. For example, the Department has learned of several instances of harm to a resident due to the resident not receiving an adequate assessment of the resident's condition and needs in a timely manner. The Department believes that allowing a resident to go up to seven days before a medical practitioner performs a medical history and physical examination or a registered nurse performs a nursing assessment on a resident is too long to ensure the health and safety of a resident and has shortened this period to a maximum of 72 hours. This will allow an individual who is admitted on a Friday to receive an assessment on Monday, rather than requiring a behavioral health residential facility to incur additional costs for conducting an assessment on a weekend. The new rules also reduce the time for documenting an interval note from within 48 hours to within 24 hours after new information is obtained to ensure personnel members have up-to-date information about a resident. Although the Department believes that most well-run facilities already meet these standards and may receive a significant benefit from providing better, more appropriate patient care, the Department anticipates that these changes may impose a minimal-to-moderate additional cost on a behavioral health residential facility that was waiting until the maximum time limit to perform these actions.

As mentioned above, the new rules require that a personnel member who is able to read, write, understand, and communicate in English must be on the premises of the behavioral health residential facility. This requirement is similar to a requirement for assisted living facilities in the current rules. The Department is unaware of any behavioral health residential facility that has no English-speakers as personnel members. Those behavioral health residential facilities at which the Department's surveyors encountered no one who could communicate in English had other personnel members who were not working that day who could communicate in English. Therefore, the Department believes that this new requirement may cause a behavioral health residential facility to incur at most minimal additional costs to ensure that a personnel member who can communicate in English is scheduled to work on each shift.

In addition to the changes described above, the five-year-review report for Article 7 states that these rules are inconsistent with Laws 2017, Ch. 134, because the rules do not address requirements relevant to a behavioral health residential facility that provides recidivism reduction services. In these new rules, the Department has added in R9-10-102 the adult residential care institution subclass of behavioral health residential facilities; clarified in R9-10-702 that an applicant must be authorized to perform recidivism reduction services; clarified in R9-10-703, R9-10-706, and R9-10-717.01 fingerprinting requirements and requirements for background

checks for recidivism reduction staff; added in R9-10-706 requirements for a personnel member who is recidivism reduction staff; and added in R9-10-717.01 a new Section specific to recidivism reduction services. A.R.S. § 36-411.01(A) mentions an “adult residential care institution subclass” for the provision of recidivism reduction services. Therefore, the Department plans to make “adult residential care institutions” a subclass of behavioral health residential facilities. R9-10-101 has been revised to add a definition for “adult residential care institution,” and “adult residential care institution” has been added as a subclass of health care institution in R9-10-102. Making adult residential care institutions its own subclass may also help prevent recidivism reduction staff from interacting with residents other than those receiving recidivism reduction and co-mingling of residents who are receiving recidivism reduction services with residents admitted for other reasons. Therefore, a behavioral health residential facility in which recidivism reduction services will be provided would need to be relicensed as an adult residential care institution. Any costs imposed by these requirements originate from statutes rather than rule and would pertain only to those facilities that voluntarily apply for approval to become the adult residential care institution subclass of behavioral health residential facilities. The Department anticipates that these health care institutions may incur up to substantial costs to comply with the requirements, but may also receive substantial benefits/increased revenue from being able to hire and retain individuals who cannot comply the fingerprinting requirements in A.R.S. § 36-411.

Changes are also being made to requirements in R9-10-803 and R9-10-806 of the new rules, consistent with the five-year-review report for Article 8. The new rules require, in R9-10-803(C)(1)(m), policies and procedures by which an assisted living facility is aware of the general or specific whereabouts of a resident, based on the level of assisted living services provided to the resident and the assisted living services the assisted living facility is authorized to provide. This requirement is closely associated with the ability of a facility to carry out the service plan for a resident. If a resident’s service plan requires a caregiver to assist a resident with medication or provide personal care services to a resident, the caregiver cannot comply with requirements in the service plan if the resident is not on the premises. Nor can a caregiver assist a resident with medication at a specific time, according to the resident’s prescription, if the resident is not where the resident is expected to be at that time and no one has any idea of the resident’s whereabouts. Furthermore, requiring that a facility have policies and procedures that cover how the facility is aware of a resident’s whereabouts may help prevent a resident going out on a patio at 10:00 a.m. in August, falling asleep, and not being discovered until 2:00 p.m., by which time the resident may have suffered heat stroke or other serious medical conditions. The requirement is

also consistent with the definition in A.R.S. § 36-401 of “supervisory care services,” which includes “general supervision, including daily awareness of resident functioning and continuing needs, the ability to intervene in a crisis and assistance in the self-administration of prescribed medications.” A caregiver cannot intervene in a crisis if the caregiver does not know where a resident is. The Department believes that a facility is in the best position to devise methods to address this, based on the level of services being provided to the resident, without intruding on the resident’s privacy, and that these methods will differ from one assisted living facility to another. The policies and procedures would not include individuals in independent living situations associated with an assisted living facility, but would apply to residents receiving supervisory care services, personal care services, or directed care services on a continuous basis. The Department anticipates that developing these policies and procedures may cause an assisted living facility to incur minimal costs, but also to receive a significant benefit from providing better care to residents.

In R9-10-806(A)(7), the new rules require an assisted living facility to document staffing but leave the method by which the assisted living facility accomplishes this end up to the assisted living facility. The Department expects that the method could vary from one facility to another. The rule change would enable the Department to determine if there were enough staff to meet the needs of residents and to know who was at the facility when investigating a complaint. A related change is being made in R9-10-806(B)(3) for assisted living homes, which provide services to 10 or fewer residents and often have only one or two caregivers on the premises at a time. The new rules require the manager of an assisted living home shall ensure that there is a plan for back-up to ensure that assisted living services are provided to a resident if the manager or a caregiver assigned to work is not available or not able to provide the required assisted living services. This requirement may prevent residents of an assisted living home from being left unattended if staff assigned to work become ill or have an emergency that requires them to leave suddenly. The Department expects that these changes may cause an assisted living facility, including an assisted living home, to incur minimal costs and to receive a significant benefit from providing better care to residents.

- **Personnel members**

The Department anticipates that the changes clarifying requirements may provide a significant benefit to a personnel member of a health care institution by making it easier to understand and comply with the requirements. The changes adding options for ensuring access to a physician or registered nurse practitioner for a behavioral health inpatient facility may cause a

personnel member to take a little longer when communicating with a physician or registered nurse practitioner, and perhaps incurring minimal costs. A personnel member who is an on-call physician or registered nurse practitioner may incur minimal-to-moderate costs from having to be on the premises of a behavioral health inpatient facility within 30 minutes after being summoned to come, but they may also receive a minimal-to moderate benefit from being able to respond through teleconferencing.

The change in the new rules requiring a personnel member who can communicate in English to be on the premises of a behavioral health residential facility may cause a personnel member, whose shift is moved to ensure compliance with the requirement, to incur some costs or inconvenience, but the amount or cause cannot be determined. Nor would the cost or inconvenience be directly tied to the requirement but be more related to how the personnel member's employer chooses to comply with the new requirement.

Individuals working in an adult residential care institution, which will be a subclass of behavioral health residential facilities, are required by A.R.S. § 36-411 to have a fingerprint clearance card or apply for a fingerprint clearance card within twenty working days after employment or beginning volunteer work at the facility. Laws 2017, Ch. 134, added A.R.S. § 36-411.01, which allows an individual to be employed as recidivism reduction staff, after having been denied a fingerprint clearance card, under specified conditions. In the rules, the Department has specified how an adult residential care institution can ensure that an applicant for recidivism reduction staff can meet those conditions. The Department believes that specifying these methods may provide some consistency in an evaluation by a prospective employer and may provide a significant benefit to an individual applying to become recidivism reduction staff.

- **Patients and residents of health care institutions and their families**

The Department believes that the rule changes being made to improve the clarity of the rules, as well as those improving the efficiency and effectiveness of the rules, will help personnel members to better understand requirements in the rules and, thus, better comply with the requirements. A patient or resident of a health care institution may receive better services from these individuals as a result of personnel members better complying with requirements in the rules. Thus, the rule changes may provide a significant benefit to a patient or resident. A resident of a behavioral health residential facility and family members may also receive a significant benefit from the requirement for a personnel member who can communicate in English to be on the premises, especially if the resident or family member only understands English.

Several requirements are being added by the new rules to improve the health and safety of

patients/residents. These include reducing the time for patient/resident assessment and documentation, adding requirements for a behavioral health inpatient facility to establish an acuity plan and determine a patient's acuity, adding options for ensuring access to a physician or registered nurse practitioner for a behavioral health inpatient facility, eliminating an apparent inconsistency with respect to the use of restraints in a nursing care institution, requiring an assisted living facility to have methods to be aware of a resident's general or specific whereabouts, and adding requirements for assisted living facilities related to documentation of staffing and for ensuring backup. The Department anticipates that these changes may provide a significant benefit to a patient/resident and their families.

The requirements in the new rules specific to recidivism reduction services, to comply with Laws 2017, Ch. 134, may also help ensure the safety of residents receiving recidivism reduction services. They may also help improve the effectiveness of recidivism reduction services by including evaluation criteria for successful completion of treatment by recidivism reduction staff and making an evaluation somewhat consistent. The Department believes that these requirements may provide a significant benefit to an individual receiving recidivism reduction services and their families.

- **General public**

The Department believes that the changes being made in the new rules will make the rules more effective and enable health care institutions to provide better treatment. Having rules that are more easily understood, complied with, and enforced may provide a significant benefit to the general public, as will enabling health care facilities to provide better treatment.

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

Public and private employment in the State of Arizona is not expected to be affected due to the changes required in the rule.

5. A statement of the probable impact of the rules on small business

a. Identification of the small businesses subject to the rules

Small businesses affected by the rules may include small health care institutions and personnel members who are physicians, registered nurse practitioners, or registered nurses.

b. The administrative and other costs required for compliance with the rules

Anticipated costs for complying with the rules are described under paragraph 3.

c. A description of the methods that the agency may use to reduce the impact on small

businesses

The methods that the Department may use to reduce the impact on small businesses are described in paragraph 3 and include the option to use telemedicine to ensure access to a physician or registered nurse practitioner for a behavioral health inpatient facility. The rules also allow for a behavioral health residential facility to devise its own methods to ensure adequate oversight of residents and adequate staffing, rather than having to comply with specific methods determined by the Department.

d. The probable costs and benefits to private persons and consumers who are directly affected by the rules

The costs to private persons and consumers from the rules changes are described in paragraph 3.

6. A statement of the probable effect on state revenues

The rulemaking includes the reinstatement of fees that expired under A.R.S. § 41-1008(E) on June 30, 2016. These fees are a 90/10 split between the health services licensing fund and the general fund, according to A.R.S. § 36-405(D). Based on the number of health care institutions that are currently authorized to provide the services for which fees are being reinstated and would begin paying the reinstated fees, the Department anticipates that the general fund may receive approximately \$30,000 in additional revenue.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking

There are no less intrusive or less costly alternatives for achieving the purpose of the rules.

8. A description of any data on which the rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data

Not applicable

Statutory Authority for 9 A.A.C. 10, Article 1

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

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

1. Protect the health of the people of the state.
2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.
3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.
4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.
5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.
6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.
7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.
8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.
9. Encourage and aid in the coordination of local programs concerning nutrition of the people of this state.
10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.
11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.
12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.
13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.
14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug, and cosmetic act (52 Stat. 1040; 21 United States Code sections 1 through 905).
15. Recruit and train personnel for state, local and district health departments.

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.

17. License and regulate health care institutions according to chapter 4 of this title.

18. Issue or direct the issuance of licenses and permits required by law.

19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

(a) Screening in early pregnancy for detecting high-risk conditions.

(b) Comprehensive prenatal health care.

(c) Maternity, delivery and postpartum care.

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

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

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

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

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

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

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

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.

2. Perform all duties necessary to carry out the functions and responsibilities of the department.

3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.

4. Administer and enforce the laws relating to health and sanitation and the rules of the department.

5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.

6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The

director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

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

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

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

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation

of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

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

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

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

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

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

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

(d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.

(e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.

(f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.

(g) Baked and confectionary goods that are not potentially hazardous and that are prepared in a kitchen of a private home for commercial purposes if packaged with a label that clearly states the address of the maker, includes contact information for the maker, lists all the ingredients in the product and discloses that the product was prepared in a home. The label must be given to the final consumer of the product. If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must obtain a food handler's card or certificate if one is issued by the local county and must register with an online registry established by the department pursuant to paragraph 13 of this subsection. For the purposes of this subdivision, "potentially hazardous" means baked and confectionary goods that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

(h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum

standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

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

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

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

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

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

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

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

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that

with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

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

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

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

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

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

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

36-401. Definitions; adult foster care

A. In this chapter, unless the context otherwise requires:

1. "Accredited health care institution" means a health care institution, other than a hospital, that is currently accredited by a nationally recognized accreditation organization.
2. "Accredited hospital" means a hospital that is currently accredited by a nationally recognized organization on hospital accreditation.
3. "Adult day health care facility" means a facility that provides adult day health services during a portion of a continuous twenty-four-hour period for compensation on a regular basis for five or more adults who are not related to the proprietor.
4. "Adult day health services" means a program that provides planned care supervision and activities, personal care, personal living skills training, meals and health monitoring in a group setting during a portion of a continuous twenty-four-hour period. Adult day health services may also include preventive, therapeutic and restorative health-related services that do not include behavioral health services.
5. "Adult foster care home" means a residential setting that provides room and board and adult foster care services for at least one and no more than four adults who are participants in the Arizona long-term care system pursuant to chapter 29, article 2 of this title or contracts for services with the United States department of veterans affairs and in which the sponsor or the manager resides with the residents and integrates the residents who are receiving adult foster care into that person's family.
6. "Adult foster care services" means supervision, assistance with eating, bathing, toileting, dressing, self-medication and other routines of daily living or services authorized by rules adopted pursuant to section 36-405 and section 36-2939, subsection C.
7. "Assisted living center" means an assisted living facility that provides resident rooms or residential units to eleven or more residents.
8. "Assisted living facility" means a residential care institution, including an adult foster care home, that provides or contracts to provide supervisory care services, personal care services or directed care services on a continuous basis.
9. "Assisted living home" means an assisted living facility that provides resident rooms to ten or fewer residents.
10. "Behavioral health services" means services that pertain to mental health and substance use disorders and that are either:

- (a) Performed by or under the supervision of a professional who is licensed pursuant to title 32 and whose scope of practice allows for the provision of these services.
- (b) Performed on behalf of patients by behavioral health staff as prescribed by rule.
11. "Construction" means the building, erection, fabrication or installation of a health care institution.
12. "Continuous" means available at all times without cessation, break or interruption.
13. "Controlling person" means a person who:
- (a) Through ownership, has the power to vote at least ten percent of the outstanding voting securities.
- (b) If the applicant or licensee is a partnership, is the general partner or a limited partner who holds at least ten percent of the voting rights of the partnership.
- (c) If the applicant or licensee is a corporation, an association or a limited liability company, is the president, the chief executive officer, the incorporator or any person who owns or controls at least ten percent of the voting securities. For the purposes of this subdivision, corporation does not include nonprofit corporations.
- (d) Holds a beneficial interest in ten percent or more of the liabilities of the applicant or the licensee.
14. "Department" means the department of health services.
15. "Directed care services" means programs and services, including supervisory and personal care services, that are provided to persons who are incapable of recognizing danger, summoning assistance, expressing need or making basic care decisions.
16. "Direction" means authoritative policy or procedural guidance for the accomplishment of a function or activity.
17. "Director" means the director of the department of health services.
18. "Facilities" means buildings that are used by a health care institution for providing any of the types of services as defined in this chapter.
19. "Freestanding urgent care center":
- (a) Means an outpatient treatment center that, regardless of its posted or advertised name, meets any of the following requirements:
- (i) Is open twenty-four hours a day, excluding at its option weekends or certain holidays, but is not licensed as a hospital.
- (ii) Claims to provide unscheduled medical services not otherwise routinely available in primary care physician offices.
- (iii) By its posted or advertised name, gives the impression to the public that it provides medical care for urgent, immediate or emergency conditions.
- (iv) Routinely provides ongoing unscheduled medical services for more than eight consecutive hours for an individual patient.
- (b) Does not include the following:
- (i) A medical facility that is licensed under a hospital's license and that uses the hospital's medical provider number.
- (ii) A qualifying community health center pursuant to section 36-2907.06.
- (iii) Any other health care institution licensed pursuant to this chapter.
- (iv) A physician's office that offers extended hours or same-day appointments to existing and new patients and that does not meet the requirements of subdivision (a), item (i), (iii) or (iv) of this paragraph.
20. "Governing authority" means the individual, agency, partners, group or corporation, appointed, elected or otherwise designated, in which the ultimate responsibility and authority for the conduct of the health care institution are vested.
21. "Health care institution" means every place, institution, building or agency, whether organized for profit or not, that provides facilities with medical services, nursing services, behavioral health services, health screening services, other health-related services, supervisory care services, personal care services or directed care services and includes home health agencies as defined in section 36-151, outdoor behavioral health care programs and hospice service agencies. Health care institution does not include a community residential setting as defined in section 36-551.
22. "Health-related services" means services, other than medical, that pertain to general supervision, protective, preventive and personal care services, supervisory care services or directed care services.

23. "Health screening services" means the acquisition, analysis and delivery of health-related data of individuals to aid in the determination of the need for medical services.
24. "Hospice" means a hospice service agency or the provision of hospice services in an inpatient facility.
25. "Hospice service" means a program of palliative and supportive care for terminally ill persons and their families or caregivers.
26. "Hospice service agency" means an agency or organization, or a subdivision of that agency or organization, that is engaged in providing hospice services at the place of residence of its clients.
27. "Inpatient beds" or "resident beds" means accommodations with supporting services, such as food, laundry and housekeeping, for patients or residents who generally stay in excess of twenty-four hours.
28. "Licensed capacity" means the total number of persons for whom the health care institution is authorized by the department to provide services as required pursuant to this chapter if the person is expected to stay in the health care institution for more than twenty-four hours. For a hospital, licensed capacity means only those beds specified on the hospital license.
29. "Medical services" means the services that pertain to medical care and that are performed at the direction of a physician on behalf of patients by physicians, dentists, nurses and other professional and technical personnel.
30. "Modification" means the substantial improvement, enlargement, reduction or alteration of or other change in a health care institution.
31. "Nonproprietary institution" means any health care institution that 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, or that is operated by the state or any political subdivision of the state.
32. "Nursing care institution" means a health care institution that provides inpatient beds or resident beds and nursing services to persons who need continuous nursing services but who do not require hospital care or direct daily care from a physician.
33. "Nursing services" means those services that pertain to the curative, restorative and preventive aspects of nursing care and that are performed at the direction of a physician by or under the supervision of a registered nurse licensed in this state.
34. "Organized medical staff" means a formal organization of physicians, and dentists where appropriate, with the delegated authority and responsibility to maintain proper standards of medical care and to plan for continued betterment of that care.
35. "Outdoor behavioral health care program" means an agency that provides behavioral health services in an outdoor environment as an alternative to behavioral health services that are provided in a health care institution with facilities. Outdoor behavioral health care programs do not include:
- (a) Programs, facilities or activities that are operated by a government entity or that are licensed by the department as a child care program pursuant to chapter 7.1 of this title.
 - (b) Outdoor activities for youth that are designated to be primarily recreational and that are organized by church groups, scouting organizations or similar groups.
 - (c) Outdoor youth programs licensed by the department of economic security.
36. "Personal care services" means assistance with activities of daily living that can be performed by persons without professional skills or professional training and includes the coordination or provision of intermittent nursing services and the administration of medications and treatments by a nurse who is licensed pursuant to title 32, chapter 15 or as otherwise provided by law.
37. "Physician" means any person who is licensed pursuant to title 32, chapter 13 or 17.
38. "Recidivism reduction services" means services that are delivered by an adult residential care institution to its residents to encourage lawful behavior and to discourage or prevent residents who are suspected of, charged with or convicted of one or more criminal offenses, or whose mental health and substance use can be reasonably expected to place them at risk for the future threat of prosecution, diversion or incarceration, from engaging in future unlawful behavior.
39. "Recidivism reduction staff" means a person who provides recidivism reduction services.

40. "Residential care institution" means a health care institution other than a hospital or a nursing care institution that provides resident beds or residential units, supervisory care services, personal care services, behavioral health services, directed care services or health-related services for persons who do not need continuous nursing services.

41. "Residential unit" means a private apartment, unless otherwise requested by a resident, that includes a living and sleeping space, kitchen area, private bathroom and storage area.

42. "Respite care services" means services that are provided by a licensed health care institution to persons otherwise cared for in foster homes and in private homes to provide an interval of rest or relief of not more than thirty days to operators of foster homes or to family members.

43. "Substantial compliance" means that the nature or number of violations revealed by any type of inspection or investigation of a health care institution does not pose a direct risk to the life, health or safety of patients or residents.

44. "Supervision" means direct overseeing and inspection of the act of accomplishing a function or activity.

45. "Supervisory care services" means general supervision, including daily awareness of resident functioning and continuing needs, the ability to intervene in a crisis and assistance in the self-administration of prescribed medications.

46. "Temporary license" means a license that is issued by the department to operate a class or subclass of a health care institution at a specific location and that is valid until an initial licensing inspection.

47. "Unscheduled medical services" means medically necessary periodic health care services that are unanticipated or cannot reasonably be anticipated and that require medical evaluation or treatment before the next business day.

B. If there are fewer than four Arizona long-term care system participants receiving adult foster care in an adult foster care home, nonparticipating adults may receive other types of services that are authorized by law to be provided in the adult foster care home as long as the number of adults served, including the Arizona long-term care system participants, does not exceed four.

C. Nursing care services may be provided by the adult foster care licensee if the licensee is a nurse who is licensed pursuant to title 32, chapter 15 and the services are limited to those allowed pursuant to law. The licensee shall keep a record of nursing services rendered.

36-405. Powers and duties of the director

A. The director shall adopt rules to establish minimum standards and requirements for the construction, modification and licensure of health care institutions necessary to ensure the public health, safety and welfare. The standards and requirements shall relate to the construction, equipment, sanitation, staffing for medical, nursing and personal care services, and recordkeeping pertaining to the administration of medical, nursing, behavioral health and personal care services, in accordance with generally accepted practices of health care. The director shall use the current standards adopted by the joint commission on accreditation of hospitals and the commission on accreditation of the American osteopathic association or those adopted by any recognized accreditation organization approved by the department as guidelines in prescribing minimum standards and requirements under this section.

B. The director, by rule, may:

1. Classify and subclassify health care institutions according to character, size, range of services provided, medical or dental specialty offered, duration of care and standard of patient care required for the purposes of licensure. Classes of health care institutions may include hospitals, infirmaries, outpatient treatment centers, health screening services centers and residential care facilities. Whenever the director reasonably deems distinctions in rules and standards to be appropriate among different classes or subclasses of health care institutions, the director may make such distinctions.
2. Prescribe standards for determining a health care institution's substantial compliance with licensure requirements.
3. Prescribe the criteria for the licensure inspection process.
4. Prescribe standards for the selection of health care-related demonstration projects.
5. Establish nonrefundable application and licensing fees for health care institutions, including a grace period and a fee for the late payment of licensing fees, and fees for architectural plans and specifications reviews.
6. Establish a process for the department to notify a licensee of the licensee's licensing fee due date.
7. Establish a process for a licensee to request a different licensing fee due date, including any limits on the number of requests by the licensee.

C. The director, by rule, shall adopt licensing provisions that facilitate the colocation and integration of outpatient treatment centers that provide medical, nursing and health-related services with behavioral health services consistent with article 3.1 of this chapter.

D. Ninety percent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the health services licensing fund established by section 36-414 and ten percent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

E. Subsection B, paragraph 5 of this section does not apply to a health care institution operated by a state agency pursuant to state or federal law or to adult foster care residential settings.

36-406. Powers and duties of the department

In addition to its other powers and duties:

1. The department shall:

(a) Administer and enforce this chapter and the rules, regulations and standards adopted pursuant thereto.

(b) Review, and may approve, plans and specifications for construction or modification or additions to health care institutions regulated by this chapter.

(c) Have access to books, records, accounts and any other information of any health care institution reasonably necessary for the purposes of this chapter.

(d) Require as a condition of licensure that nursing care institutions and assisted living facilities make vaccinations for influenza and pneumonia available to residents on site on a yearly basis. The department shall prescribe the manner by which the institutions and facilities shall document compliance with this subdivision, including documenting residents who refuse to be immunized. The department shall not impose a violation on a licensee for not making a vaccination available if there is a shortage of that vaccination in this state as determined by the director.

2. The department may:

(a) Make or cause to be made inspections consistent with standard medical practice of every part of the premises of health care institutions which are subject to the provisions of this chapter as well as those which apply for or hold a license required by this chapter.

(b) Make studies and investigations of conditions and problems in health care institutions, or any class or subclass thereof, as they relate to compliance with this chapter and rules, regulations and standards adopted pursuant thereto.

(c) Develop manuals and guides relating to any of the several aspects of physical facilities and operations of health care institutions or any class or subclass thereof for distribution to the governing authorities of health care institutions and to the general public.

36-411. Residential care institutions; nursing care institutions; home health agencies; fingerprinting requirements; exemptions; definitions

A. Except as provided in subsections F, G, H and I of this section, as a condition of licensure or continued licensure of a residential care institution, a nursing care institution or a home health agency and as a condition of employment in a residential care institution, a nursing care institution or a home health agency, employees and owners of residential care institutions, nursing care institutions or home health agencies or contracted persons or volunteers who provide medical services, nursing services, behavioral health services, health-related services, home health services or supportive services and who have not been subject to the fingerprinting requirements of a health professional's regulatory board pursuant to title 32 shall have valid fingerprint clearance cards that are issued pursuant to title 41, chapter 12, article 3.1 or shall apply for a fingerprint clearance card within twenty working days of employment or beginning volunteer work.

B. A health professional who has complied with the fingerprinting requirements of the health professional's regulatory board as a condition of licensure or certification pursuant to title 32 is not required to submit an additional set of fingerprints to the department of public safety pursuant to this section.

C. Owners shall make documented, good faith efforts to:

1. Contact previous employers to obtain information or recommendations that may be relevant to a person's fitness to work in a residential care institution, nursing care institution or home health agency.

2. Verify the current status of a person's fingerprint clearance card.

D. An employee, an owner, a contracted person or a volunteer or a facility on behalf of the employee, the owner, the contracted person or the volunteer shall submit a completed application that is provided by the department of public safety within twenty days after the date the person begins work or volunteer service.

E. Except as provided in subsection F of this section, a residential care institution, nursing care institution or home health agency shall not allow an employee to continue employment or a contracted person to continue to provide medical services, nursing services, behavioral health services, health-related services, home health services or supportive services if the person has been denied a fingerprint clearance card pursuant to title 41, chapter 12, article 3.1 or has been denied approval pursuant to this section before May 7, 2001.

F. An employee or contractor who is eligible pursuant to section 41-1758.07, subsection C to petition the board of fingerprinting for a good cause exception and who provides documentation of having applied for a good cause exception pursuant to section 41-619.55 but who has not yet received a decision is exempt from the fingerprinting requirements of this section if the person provides services to residents or patients while under the direct visual supervision of an owner or employee who has a valid fingerprint clearance card.

G. A residential care institution, nursing care institution or home health agency shall require that an owner or employee who has a valid fingerprint clearance card provide direct visual supervision of a volunteer who provides services to residents or patients unless the volunteer has a valid fingerprint clearance card.

H. Notwithstanding the requirements of section 41-1758.02, subsection B, an employee of a residential care institution, home health agency or nursing care institution, after meeting the fingerprinting and criminal records check requirements of this section, is not required to meet the fingerprint and criminal records check requirements of this section again if that person remains employed by the same employer or changes employment within two years after satisfying the requirements of this section. For the purposes of this subsection, if the employer changes through sale, lease or operation of law, a person is deemed to be employed by the same employer if that person remains employed by the new employer.

I. Notwithstanding the requirements of section 41-1758.02, subsection B, a person who has received approval pursuant to this section before May 7, 2001 and who remains employed by the same employer is not required to apply for a fingerprint clearance card.

J. If a person's employment record contains a six-month or longer time frame during which the person was not employed by any employer, a completed application with a new set of fingerprints shall be submitted to the department of public safety.

K. For the purposes of this section:

1. "Direct visual supervision" means continuous visual oversight of the supervised person that does not require the supervisor to be in a superior organizational role to the person being supervised.

2. "Home health services" has the same meaning prescribed in section 36-151.

3. "Supportive services" has the same meaning prescribed in section 36-151.

36-411.01. Adult residential care institutions; recidivism reduction services; rules

A. An adult residential care institution subclass that is authorized to provide recidivism reduction services may employ recidivism reduction staff who are exempt from the requirements of section 36-411, subsection E to assist in the delivery of recidivism reduction services.

B. An applicant for employment is exempt from the requirements of section 36-411, subsection E if the applicant does both of the following:

1. Successfully completes treatment for recidivism reduction as prescribed by rule.

2. Passes a background and screening evaluation conducted by the adult residential care institution as prescribed by rule that demonstrates that the individual is not a threat to the health or safety of staff or residents of the adult residential care institution.

C. As prescribed by rule, only adult residents of an adult residential care institution who have been referred to receive recidivism reduction services may receive services from recidivism reduction staff.

D. An adult resident of an adult residential care institution may be referred for recidivism reduction services if the adult resident is one or more of the following:

1. Charged with or convicted of one or more criminal offenses.

2. Referred by a court, prosecutor or probation officer.

3. Approved for placement at the adult residential care institution by a health care professional who is licensed pursuant to title 32 and whose scope of practice includes recidivism reduction services.

36-413. Nutrition and feeding assistants; training programs; regulation; civil penalty; definition

A. The department may adopt rules to prescribe minimum standards for training programs for nutrition and feeding assistants in licensed skilled nursing facilities, including instructor qualifications, and may grant, deny, suspend and revoke approval of any training program that violates these standards. These standards must include:

1. Screening requirements.
2. Initial qualifications.
3. Continuing education requirements.
4. Testing requirements to assure competency.
5. Supervision requirements.
6. Requirements for additional training based on patient needs.
7. Maintenance of records.
8. Special feeding requirements based on level of care.

B. Pursuant to section 36-431.01, the department may impose a civil penalty on a training program that violates standards adopted by the department.

C. If the department adopts standards for training programs pursuant to subsection A of this section, the department, as part of its routine inspection of a health care facility that provides a training program, shall determine the facility's compliance with these standards.

D. For the purposes of this section, "nutrition and feeding assistant" has the same meaning as paid feeding assistant as defined in 42 Code of Federal Regulations part 483 and section 488.301.

36-421. Construction or modification of a health care institution

A. A license application for a health care institution shall include architectural plans and specifications or the department's approval of the architectural plans and specifications. These plans and specifications shall meet the minimum standards for licensure within the class or subclass of health care institution for which it is intended. The application shall include the name and address of each owner and lessee of any agricultural land that is regulated pursuant to section 3-365.

B. Construction or modification of a licensed health care institution shall meet the minimum standards for licensure within the class or subclass of health care institution for which it is intended.

C. An applicant shall comply with all state statutes and rules and local codes and ordinances required for the health care institution's construction.

D. A health care institution or its facility shall not be licensed if it is located on property that is less than four hundred feet from agricultural land that is regulated pursuant to section 3-365, except that the owner of the agricultural land may agree to comply with the buffer zone requirements of section 3-365. If the owner agrees in writing to comply with the buffer zone requirements and records the agreement in the office of the county recorder as a restrictive covenant running with the title to the land, the health care institution or facility may be licensed and located within the affected buffer zone. The agreement may include any stipulations regarding the health care institution or facility, including conditions for future expansion of the health care institution or facility and changes in the operational status of the health care institution or facility that will result in a breach of the agreement. This subsection does not apply to the issuance of a license for a health care institution located in the same location for which a health care institution license was previously issued.

E. Notwithstanding any law to the contrary, a health care institution that was licensed as a level 1 psychiatric acute behavioral health facility-inpatient facility as of January 1, 2012 and that is not certified under title XIX of the social security act shall be licensed as a hospital and is not required to comply with the physical plant standards for a general hospital, rural general hospital or special hospital prescribed by the department.

F. For the purposes of this section, health care institution does not include a home health agency or a hospice service agency.

36-422. Application for license; notification of proposed change in status; joint licenses; definitions

A. A person who wishes to apply for a license to operate a health care institution pursuant to this chapter shall submit to the department all of the following:

1. An application on a written or electronic form that is prescribed, prepared and furnished by the department that contains all of the following:

(a) The name and location of the health care institution.

(b) Whether the health care institution is to be operated as a proprietary or nonproprietary institution.

(c) The name of the governing authority. The applicant shall be the governing authority having the operative ownership of, or the governmental agency charged with the administration of, the health care institution sought to be licensed. If the applicant is a partnership that is not a limited partnership, the partners shall apply jointly, and the partners are jointly the governing authority for purposes of this article.

(d) The name and business or residential address of each controlling person and an affirmation that none of the controlling persons has been denied a license or certificate by a health profession regulatory board pursuant to title 32 or by a state agency pursuant to chapter 6, article 7 or chapter 17 of this title or a license to operate a health care institution in this state or another state or has had a license or certificate issued by a health profession regulatory board pursuant to title 32 or issued by a state agency pursuant to chapter 6, article 7 or chapter 17 of this title or a license to operate a health care institution revoked. If a controlling person has been denied a license or certificate by a health profession regulatory board pursuant to title 32 or by a state agency pursuant to chapter 6, article 7 or chapter 17 of this title or a license to operate a health care institution in this state or another state or has had a health care professional license or a license to operate a health care institution revoked, the controlling person shall include in the application a comprehensive description of the circumstances for the denial or the revocation.

(e) The class or subclass of health care institution to be established or operated.

(f) The types and extent of the health care services to be provided, including emergency services, community health services and services to indigent patients.

(g) The name and qualifications of the chief administrative officer implementing direction in that specific health care institution.

(h) Other pertinent information required by the department for the proper administration of this chapter and department rules.

2. The architectural plans and specifications or the department's approval of the architectural plans and specifications required by section 36-421, subsection A.

3. The applicable application fee.

B. An application submitted pursuant to this section shall contain the written or electronic signature of:

1. If the applicant is an individual, the owner of the health care institution.

2. If the applicant is a partnership, limited liability company or corporation, two of the officers of the corporation or managing members of the partnership or limited liability company or the sole member of the limited liability company if it has only one member.

3. If the applicant is a governmental unit, the head of the governmental unit.

C. An application for licensure shall be submitted at least sixty but not more than one hundred twenty days before the anticipated date of operation. An application for a substantial compliance survey submitted pursuant to section 36-425, subsection G shall be submitted at least thirty days before the date on which the substantial compliance survey is requested.

D. If a current licensee intends to terminate the operation of a licensed health care institution or if a change of ownership is planned, the current licensee shall notify the director in writing at least thirty days before the termination of operation or change in ownership is to take place. The current licensee is responsible for preventing any interruption of services required to sustain the life, health and safety of the patients or residents. A new owner shall not begin operating the health care institution until the director issues a license to the new owner.

E. A licensed health care institution for which operations have not been terminated for more than thirty days may be relicensed pursuant to the codes and standards for architectural plans and specifications that were applicable under its most recent license.

F. If a person operates a hospital in a county with a population of more than five hundred thousand persons in a setting that includes satellite facilities of the hospital that are located separately from the main hospital building, the department at the request of the applicant or licensee shall issue a single group license to the hospital and its designated satellite facilities located within one-half mile of the main hospital building if all of the facilities meet or exceed department licensure

requirements for the designated facilities. At the request of the applicant or licensee, the department shall also issue a single group license that includes the hospital and not more than ten of its designated satellite facilities that are located farther than one-half mile from the main hospital building if all of these facilities meet or exceed applicable department licensure requirements. Each facility included under a single group license is subject to the department's licensure requirements that are applicable to that category of facility. Subject to compliance with applicable licensure or accreditation requirements, the department shall reissue individual licenses for the facility of a hospital located in separate buildings from the main hospital building when requested by the hospital. This subsection does not apply to nursing care institutions and residential care institutions. The department is not limited in conducting inspections of an accredited health care institution to ensure that the institution meets department licensure requirements. If a person operates a hospital in a county with a population of five hundred thousand persons or less in a setting that includes satellite facilities of the hospital that are located separately from the main hospital building, the department at the request of the applicant or licensee shall issue a single group license to the hospital and its designated satellite facilities located within thirty-five miles of the main hospital building if all of the facilities meet or exceed department licensure requirements for the designated facilities. At the request of the applicant or licensee, the department shall also issue a single group license that includes the hospital and not more than ten of its designated satellite facilities that are located farther than thirty-five miles from the main hospital building if all of these facilities meet or exceed applicable department licensure requirements.

G. If a county with a population of more than one million persons or a special health care district in a county with a population of more than one million persons operates an accredited hospital that includes the hospital's accredited facilities that are located separately from the main hospital building and the accrediting body's standards as applied to all facilities meet or exceed the department's licensure requirements, the department shall issue a single license to the hospital and its facilities if requested to do so by the hospital. If a hospital complies with applicable licensure or accreditation requirements, the department shall reissue individual licenses for each hospital facility that is located in a separate building from the main hospital building if requested to do so by the hospital. This subsection does not limit the department's duty to inspect a health care institution to determine its compliance with department licensure standards. This subsection does not apply to nursing care institutions and residential care institutions.

H. An applicant or licensee must notify the department within thirty days after any change regarding a controlling person and provide the information and affirmation required pursuant to subsection A, paragraph 1, subdivision (d) of this section.

I. This section does not limit the application of federal laws and regulations to an applicant or licensee that is certified as a medicare or an Arizona health care cost containment system provider under federal law.

J. Except for an outpatient treatment center providing dialysis services or abortion procedures, a person wishing to begin operating an outpatient treatment center before a licensing inspection is completed shall submit all of the following:

1. The license application required pursuant to this section.
2. All applicable application and license fees.
3. A written request for a temporary license that includes:

(a) The anticipated date of operation.

(b) An attestation signed by the applicant that the applicant and the facility comply with and will continue to comply with the applicable licensing statutes and rules.

K. Within seven days after the department's receipt of the items required in subsection J of this section, but not before the anticipated operation date submitted pursuant to subsection C of this section, the department shall issue a temporary license that includes:

1. The name of the facility.
2. The name of the licensee.
3. The facility's class or subclass.
4. The temporary license's effective date.
5. The location of the licensed premises.

L. A facility may begin operating on the effective date of the temporary license.

M. The director may cease the issuance of temporary licenses at any time if the director believes that public health and safety is endangered.

N. For the purposes of this section:

1. "Accredited" means accredited by a nationally recognized accreditation organization.
2. "Satellite facility" means an outpatient facility at which the hospital provides outpatient medical services.

36-423. Hemodialysis technicians; minimum requirements; definition

- A. Except as provided in subsection B, beginning on April 1, 2003, a facility that provides hemodialysis treatment shall only use a hemodialysis technician who is certified by a national organization that certifies hemodialysis technicians.
- B. Beginning on April 1, 2003, an employee who provides hemodialysis treatment and who is not certified pursuant to subsection A is a hemodialysis technician trainee. A hemodialysis technician trainee may provide hemodialysis treatment in any facility unless the trainee fails to pass the national certification examination within two years after employment. The department of health services shall establish by rule appropriate clinical practice restrictions for hemodialysis technician trainees. An employee who is employed to provide hemodialysis treatment before April 1, 2003 must meet the requirements of this section on or before April 1, 2006.
- C. A facility that provides hemodialysis treatment must maintain the verification of certification in the hemodialysis technician's personnel file.
- D. For the purposes of this section, "hemodialysis technician" means a person who, under the direct supervision of a physician licensed pursuant to title 32, chapter 13 or 17, or a registered nurse licensed pursuant to title 32, chapter 15, provides assistance in the treatment of patients who receive dialysis treatment for end stage renal disease.

36-424. Inspections; suspension or revocation of license; report to board of examiners of nursing care institution administrators

- A. Subject to the limitation prescribed by subsection B of this section, the director shall inspect the premises of the health care institution and investigate the character and other qualifications of the applicant to ascertain whether the applicant and the health care institution are in substantial compliance with the requirements of this chapter and the rules established pursuant to this chapter. The director may prescribe rules regarding department background investigations into an applicant's character and qualifications.
- B. The director shall accept proof that a health care institution is an accredited hospital or is an accredited health care institution in lieu of all compliance inspections required by this chapter if the director receives a copy of the institution's accreditation report for the licensure period. If the health care institution's accreditation report is not valid for the entire licensure period, the department may conduct a compliance inspection of the health care institution during the time period the department does not have a valid accreditation report for the health care institution.
- C. On a determination by the director that there is reasonable cause to believe a health care institution is not adhering to the licensing requirements of this chapter, the director and any duly designated employee or agent of the director, including county health representatives and county or municipal fire inspectors, consistent with standard medical practices, may enter on and into the premises of any health care institution that is licensed or required to be licensed pursuant to this chapter at any reasonable time for the purpose of determining the state of compliance with this chapter, the rules adopted pursuant to this chapter and local fire ordinances or rules. Any application for licensure under this chapter constitutes permission for and complete acquiescence in any entry or inspection of the premises during the pendency of the application and, if licensed, during the term of the license. If an inspection reveals that the health care institution is not adhering to the licensing requirements established pursuant to this chapter, the director may take action authorized by this chapter. Any health care institution, including an accredited hospital, whose license has been suspended or revoked in accordance with this section is subject to inspection on application for relicensure or reinstatement of license.
- D. The director shall immediately report to the board of examiners of nursing care institution administrators information identifying that a nursing care institution administrator's conduct may be grounds for disciplinary action pursuant to section 36-446.07.

36-425. Inspections; issuance of license; posting requirements; provisional license; denial of license

- A. On receipt of a properly completed application for a health care institution license, the director shall conduct an inspection of the health care institution as prescribed by this chapter. If an application for a license is submitted due to a planned change of ownership, the director shall determine the need for an inspection of the health care institution. Based on the results of the inspection and after the submission of the applicable licensing fee, the director shall either deny the license or issue a regular or provisional license. A license issued by the department shall be posted in a conspicuous location in the reception area of that institution.
- B. The director shall issue a license if the director determines that an applicant and the health care institution for which the license is sought substantially comply with the requirements of this chapter and rules adopted pursuant to this chapter and

the applicant agrees to carry out a plan acceptable to the director to eliminate any deficiencies. The director shall not require a health care institution that was designated as a critical access hospital to make any modifications required by this chapter or rules adopted pursuant to this chapter in order to obtain an amended license with the same licensed capacity the health care institution had before it was designated as a critical access hospital if all of the following are true:

1. The health care institution has subsequently terminated its critical access hospital designation.
 2. The licensed capacity of the health care institution does not exceed its licensed capacity before its designation as a critical access hospital.
 3. The health care institution remains in compliance with the applicable codes and standards that were in effect at the time the facility was originally licensed with the higher licensed capacity.
- C. A health care institution license does not expire and remains valid unless:
1. The department subsequently revokes or suspends the license.
 2. The license is considered void because the licensee did not pay the licensing fee before the licensing fee due date.
- D. Except as provided in section 36-424, subsection B and subsection E of this section, the department shall conduct a compliance inspection of a health care institution to determine compliance with this chapter and rules adopted pursuant to this chapter at least once annually.
- E. If the department determines a facility to be deficiency free on a compliance survey, the department shall not conduct a compliance survey of that facility for twenty-four months after the date of the deficiency free survey. This subsection does not prohibit the department from enforcing licensing requirements as authorized by section 36-424.
- F. A hospital licensed as a rural general hospital may provide intensive care services.
- G. The director shall issue a provisional license for a period of not more than one year if an inspection or investigation of a currently licensed health care institution or a health care institution for which an applicant is seeking a license reveals that the institution is not in substantial compliance with department licensure requirements and the director believes that the immediate interests of the patients and the general public are best served if the institution is given an opportunity to correct deficiencies. The applicant or licensee shall agree to carry out a plan to eliminate deficiencies that is acceptable to the director. The director shall not issue consecutive provisional licenses to a single health care institution. The director shall not issue a license to the current licensee or a successor applicant before the expiration of the provisional license unless the health care institution submits an application for a substantial compliance survey and is found to be in substantial compliance. The director may issue a license only if the director determines that the institution is in substantial compliance with the licensure requirements of the department and this chapter. This subsection does not prevent the director from taking action to protect the safety of patients pursuant to section 36-427.
- H. Subject to the confidentiality requirements of articles 4 and 5 of this chapter, title 12, chapter 13, article 7.1 and section 12-2235, the licensee shall keep current department inspection reports at the health care institution. Unless federal law requires otherwise, the licensee shall post in a conspicuous location a notice that identifies the location at that institution where the inspection reports are available for review.
- I. A health care institution shall immediately notify the department in writing when there is a change of the chief administrative officer specified in section 36-422, subsection A, paragraph 1, subdivision (g).
- J. When the department issues an original license or an original provisional license to a health care institution, it shall notify the owners and lessees of any agricultural land within one-fourth mile of the health care institution. The health care institution shall provide the department with the names and addresses of owners or lessees of agricultural land within one-fourth mile of the proposed health care institution.
- K. In addition to the grounds for denial of licensure prescribed pursuant to subsection A of this section, the director may deny a license because an applicant or anyone in a business relationship with the applicant, including stockholders and controlling persons, has had a license to operate a health care institution denied, revoked or suspended or a license or certificate issued by a health profession regulatory board pursuant to title 32 or issued by a state agency pursuant to chapter 6, article 7 or chapter 17 of this title denied, revoked or suspended or has a licensing history of recent serious violations occurring in this state or in another state that posed a direct risk to the life, health or safety of patients or residents.
- L. In addition to the requirements of this chapter, the director may prescribe by rule other licensure requirements.

36-425.02. Nursing care institutions; quality rating; issuance of license

- A. The department shall issue to each licensed nursing care institution a quality rating based on the results of a licensure survey.
- B. The director may determine the period of time for which a license issued to a nursing care institution is valid according to the quality rating category to which the institution is assigned, except that no license shall be valid for more than three years from the date of issuance.

36-425.03. Children's behavioral health programs; personnel; fingerprinting requirements; exemptions; definitions

- A. Except as provided in subsections B, C and D of this section, children's behavioral health program personnel, including volunteers, shall submit the form prescribed in subsection E of this section to the employer and shall have a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1 or, within seven working days after employment or beginning volunteer work, shall apply for a fingerprint clearance card.
- B. The following persons are exempt from the fingerprinting requirements of this section:
1. When under the direct visual supervision and in the presence of children's behavioral health program personnel who have a valid fingerprint clearance card:
 - (a) Except as provided in subsection C of this section, parents, foster parents, kinship foster care parents and guardians who participate in group activities that include their children who are receiving behavioral health services from a children's behavioral health program if they are not employees of the children's behavioral health program.
 - (b) A volunteer who provides services to children receiving behavioral health services.
 - (c) An employee or contractor who is eligible pursuant to section 41-1758.07, subsection C to petition the board of fingerprinting for a good cause exception and who provides documentation of having applied for a good cause exception pursuant to section 41-619.55 but who has not yet received a decision.
 - (d) A person who is not providing medical services, nursing services, behavioral health services, health-related services, home health services or supportive services and who is either not an employee or contractor or not on the premises on a regular basis.
 2. Hospital medical staff members, employees, contractors and volunteers who are not present in an area of the hospital authorized by the department for providing children's behavioral health services.
- C. A parent, foster parent, kinship foster care parent or guardian of a child who is receiving behavioral health services from a children's behavioral health program is not required to be fingerprinted or supervised for purposes of this section if the person is in the presence of or participating with only the person's own child.
- D. Applicants and employees who are fingerprinted pursuant to section 15-512 or 15-534 are exempt from the fingerprinting requirements of subsection A of this section.
- E. Children's behavioral health program personnel shall certify on forms that are provided by the department and notarized that they are not awaiting trial on or have never been convicted of or admitted in open court or pursuant to a plea agreement to committing any of the offenses listed in section 41-1758.03, subsection B or C in this state or similar offenses in another state or jurisdiction.
- F. Forms submitted pursuant to subsection E of this section are confidential.
- G. Employers of children's behavioral health program personnel shall make documented, good faith efforts to contact previous employers of children's behavioral health program personnel to obtain information or recommendations that may be relevant to an individual's fitness for employment in a children's behavioral health program.
- H. A person who is awaiting trial on or who has been convicted of or who has admitted in open court or pursuant to a plea agreement to committing a criminal offense listed in section 41-1758.03, subsection B is prohibited from working in any capacity in a children's behavioral health program that requires or allows contact with children.
- I. A person who is awaiting trial on or who has been convicted of or who has admitted in open court or pursuant to a plea agreement to committing a criminal offense listed in section 41-1758.03, subsection C shall not work in a children's behavioral health program in any capacity that requires or allows the employee to provide direct services to children unless the person has applied for and received the required fingerprint clearance card pursuant to title 41, chapter 12, article 3.1.
- J. The department of health services shall accept a certification submitted by a United States military base or a federally recognized Indian tribe that either:

1. Personnel who are employed or who will be employed and who provide services directly to children have not been convicted of, have not admitted committing or are not awaiting trial on any offense prescribed in subsection H of this section.

2. Personnel who are employed or who will be employed to provide services directly to children have been convicted of, have admitted committing or are awaiting trial on any offense prescribed in subsection I of this section if the personnel provide these services while under direct visual supervision.

K. The employer shall notify the department of public safety if the employer receives credible evidence that a person who possesses a valid fingerprint clearance card either:

1. Is arrested for or charged with an offense listed in section 41-1758.03, subsection B.

2. Falsified information on the form required by subsection E of this section.

L. For the purposes of this section:

1. "Children's behavioral health program" means a program provided in a health care institution that is licensed by the department to provide children's behavioral health services.

2. "Children's behavioral health program personnel" means an owner, employee or volunteer who works at a children's behavioral health program.

3. "Direct visual supervision" means continuous visual oversight of the supervised person that does not require the supervisor to be in a superior organizational role to the person being supervised.

36-427. Suspension or revocation; intermediate sanctions

A. The director, pursuant to title 41, chapter 6, article 10, may suspend or revoke, in whole or in part, the license of any health care institution if its owners, officers, agents or employees:

1. Violate this chapter or the rules of the department adopted pursuant to this chapter.

2. Knowingly aid, permit or abet the commission of any crime involving medical and health-related services.

3. Have been, are or may continue to be in substantial violation of the requirements for licensure of the institution, as a result of which the health or safety of one or more patients or the general public is in immediate danger.

4. Fail to comply with section 36-2901.08.

5. Violate section 36-2302.

B. If the licensee, the chief administrative officer or any other person in charge of the institution refuses to permit the department or its employees or agents the right to inspect the institution's premises as provided in section 36-424, such action shall be deemed reasonable cause to believe that a substantial violation under subsection A, paragraph 3 of this section exists.

C. If the director reasonably believes that a violation of subsection A, paragraph 3 of this section has occurred and that life or safety of patients will be immediately affected, the director, on written notice to the licensee, may order the immediate restriction of admissions or readmissions, selected transfer of patients out of the facility, reduction of capacity and termination of specific services, procedures, practices or facilities.

D. The director may rescind, in whole or in part, sanctions imposed pursuant to this section on correction of the violation or violations for which the sanctions were imposed.

36-429. Removal of licensee; temporary management continued operation

A. If the director reasonably believes that a violation of this chapter by a licensee endangers the health, safety or welfare of one or more of the licensee's patients, in addition to other remedies provided by this chapter, the director may enter into an agreement with the licensee or bring an action requesting the superior court to:

1. Remove the administrative officers, agents or employees of such licensee by injunction, enjoin the licensee from continued operation and revoke the license.

2. Appoint temporary personnel to continue operation of the health care institution under conditions and requirements set by the court pending correction of the violation and restoration of the licensee, revocation of the license or correction of the violation and change of ownership.

B. The action shall be brought in the name of the people of the state through the attorney general in the superior court in the county in which the health care institution is located.

36-430. Unlicensed operation prohibited; injunction

The operation or maintenance of a health care institution which does not hold a current and valid license or which exceeds the range of the services authorized by the class or subclass for which it is licensed is a violation of this chapter and is declared a nuisance inimical to the public health and safety. The director, in the name of the people of the state, through the attorney general, may bring an action for an injunction to restrain such violation or to enjoin the future operation or maintenance of any such health care institution until substantial compliance with the provisions of this chapter and the rules and regulations and standards adopted pursuant thereto is obtained.

36-431.01. Violations; civil penalties

A. The director may assess a civil penalty against a person who violates this chapter or a rule adopted pursuant to this chapter in an amount of not to exceed five hundred dollars for each violation. Each day that a violation occurs constitutes a separate violation.

B. The director may issue a notice of assessment that shall include the proposed amount of the assessment. A person may appeal the assessment by requesting a hearing pursuant to title 41, chapter 6, article 10. When an assessment is appealed, the director shall take no further action to enforce and collect the assessment until after the hearing.

C. In determining the civil penalty pursuant to subsection A of this section, the department shall consider the following:

1. Repeated violations of statutes or rules.
2. Patterns of noncompliance.
3. Types of violations.
4. Severity of violations.
5. Potential for and occurrences of actual harm.
6. Threats to health and safety.
7. Number of persons affected by the violations.
8. Number of violations.
9. Size of the facility.
10. Length of time that the violations have been occurring.

D. Pursuant to interagency agreement specified in section 36-409, the director may assess a civil penalty, including interest, in accordance with 42 United States Code section 1396r. A person may appeal this assessment by requesting a hearing before the director in accordance with subsection B of this section. Civil penalty amounts may be established by rules adopted by the director that conform to guidelines or regulations adopted by the secretary of the United States department of health and human services pursuant to 42 United States Code section 1396r.

E. Actions to enforce the collection of penalties assessed pursuant to subsections A and D of this section shall be brought by the attorney general or the county attorney in the name of the state in the justice court or the superior court in the county in which the violation occurred.

F. Penalties assessed under subsection D of this section are in addition to and not in limitation of other penalties imposed pursuant to this chapter. All civil penalties and interest assessed pursuant to subsection D of this section shall be deposited in the nursing care institution resident protection revolving fund established by section 36-431.02. The director shall use these monies for the purposes prescribed by 42 United States Code section 1396r, including payment for the costs of relocation of residents to other facilities, maintenance of operation of a facility pending correction of the deficiencies or closure and reimbursement of residents for personal monies lost.

G. The department shall transmit penalties assessed under subsection A of this section to the state general fund.

36-434. Outdoor behavioral health care programs; licensing requirements; inspections

A. An outdoor behavioral health care program shall:

1. Comply with the requirements for a level 2 behavioral health residential agency, as established by the department by rule except as provided in subsection C of this section.
2. Obtain and maintain national accreditation as an outdoor behavioral health care program.
3. Ensure that the outdoor behavioral health program's personnel comply with the requirements of section 36-425.03.

B. In addition to the standards adopted pursuant to section 36-405, subsection A, the department may adopt rules to establish facility, equipment and sanitation standards for outdoor behavioral health care programs.

C. An outdoor behavioral health care program that does not use facilities is exempt from any facility standards applicable to a behavioral health service agency.

D. If the director determines that there is reasonable cause to believe an outdoor behavioral health care program is not adhering to the licensing requirements of this chapter, the director and any duly designated employee or agent of the director, including county health representatives and county or municipal fire inspectors, may enter on and into any area used by the outdoor behavioral health care program at any reasonable time to determine, consistent with standard medical practices or behavioral health practices, compliance with this chapter, rules adopted pursuant to this chapter and local fire ordinances or rules.

E. An application for licensure under this chapter constitutes permission for and complete acquiescence in any entry or inspection of any area used by the outdoor behavioral health care program during the pendency of the application and, if licensed, during the term of the license.

F. If an inspection reveals that the outdoor behavioral health care program is not adhering to the licensing requirements prescribed pursuant to this chapter, the director may take action authorized by this chapter.

G. An outdoor behavioral health care program whose license has been suspended or revoked pursuant to this section is subject to inspection on application for relicensure or reinstatement of license.

36-439. Definitions

In this article, unless the context otherwise requires:

1. "Associated licensed provider" means one or more licensed outpatient treatment centers or one or more licensed counseling facilities that share common areas pursuant to a written agreement with a collaborating outpatient treatment center and that are liable and responsible for the treatment areas that are used by the respective associated licensed provider pursuant to written policies.
2. "Collaborating outpatient treatment center" means a licensed outpatient treatment center that has a written agreement with one or more outpatient treatment centers or exempt health care providers or licensed counseling facilities that requires the collaborating outpatient treatment center to be liable and responsible pursuant to written policies for all common areas that one or more colocators use.
3. "Colocator" means an exempt health care provider or a governing authority operating as an outpatient treatment center or a licensed counseling facility that may share common areas and nontreatment personnel with another colocator pursuant to an agreement as prescribed in this article.
4. "Common areas":
 - (a) Means the licensed public or nonpublic portions of outpatient treatment center premises that are not used for treatment and that are shared by one or more licensees or exempt health care providers.
 - (b) Includes hallways, entrances, elevators, staircases, restrooms, reception areas, conference areas, employee break rooms, records retention areas and other nontreatment areas of an outpatient treatment center.
5. "Emergency health care services" means treatment for a medical or behavioral health condition, including labor and delivery, that manifests itself by acute symptoms of sufficient severity, including severe pain, such that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in any of the following:
 - (a) Placing the patient's health, including mental health, in serious jeopardy.
 - (b) Serious impairment to a bodily function of the patient.
 - (c) Serious dysfunction of any bodily organ or part of the patient.
 - (d) Harm to the patient or others.
6. "Exempt health care provider" means a health care provider who is licensed pursuant to title 32, who holds an active license and whose private office or clinic is exempt from licensure pursuant to section 36-402, subsection A, paragraph 3.
7. "Nontreatment personnel" means employees, agents, students, interns or independent contractors who provide services to an outpatient treatment center colocator that do not entail medical, nursing or behavioral health assessment or treatment.
8. "Treatment areas" means portions of licensed outpatient treatment center premises that are used for the provision of health care assessment and treatment of patients.

36-439.01. Colocation of licensees

Notwithstanding any other provision of this chapter, one or more outpatient treatment center licensees that provide medical, nursing and health-related services may colocate or collocate with one or more licensees that provide behavioral health services or with one or more licensed counseling facilities and may share common areas at the collaborating outpatient treatment center premises and share nontreatment personnel pursuant to the requirements of this article.

36-439.02. Colocators; collaborating outpatient treatment centers; requirements

In addition to any other requirements of this chapter, colocators at a collaborating outpatient treatment center shall:

1. Designate which outpatient treatment center will act as the collaborating outpatient treatment center and be liable and responsible for the health, safety, cleanliness and maintenance of all common areas and the supervision and training of all shared nontreatment personnel pursuant to written policies of the collaborating outpatient treatment center.
2. Designate which areas are considered common areas and which personnel are designated as shared nontreatment personnel.
3. Designate the associated licensed providers.
4. Ensure that medical records that are located in common areas or shared by colocators are maintained pursuant to all federal and state confidentiality laws. A colocator may have access to a patient's medical records only if the patient has consented.

36-439.03. Use of treatment areas

Colocators shall solely maintain and use treatment areas that are designated pursuant to each of their respective licenses and may not use another colocator's treatment areas except as follows:

1. For the provision of emergency health care services.
2. During hours of operation by a colocator that are clearly identified by signage to the public and notice to the department.

36-439.04. Colocation; outpatient treatment centers; health care providers

A. The governing authority of a licensed collaborating outpatient treatment center, by agreement, may share common areas and may share nontreatment personnel with one or more exempt health care providers or one or more licensed counseling facilities pursuant to section 36-439.02.

B. Treatment areas that are licensed under an outpatient treatment center may also be used by an exempt health care provider if the provider's treatment areas and hours of operation are clearly identified by signage to the public and notice to the department.

C. Notwithstanding subsections A and B of this section, an outpatient treatment center may contract with or employ an exempt health care provider to provide health care services to the outpatient treatment center's patients.

36-446.01. Licensure or certification requirements

A. A nursing care institution shall not operate in this state except under the supervision of an administrator licensed pursuant to this article.

B. An assisted living facility shall not operate in this state except under the supervision of a manager certified pursuant to this article.

C. It is unlawful for any person who does not have a license or certificate, or whose license or certificate has lapsed or has been suspended or revoked, to practice or offer to practice skilled nursing facility administration or assisted living facility management or use any title, sign, card or device indicating that such person is an administrator or manager.

36-447.01. Nursing care institutions; notification of services; screening; annual reviews

A. A nursing care institution, before admitting a patient, shall give the patient and his representative a booklet developed by the Arizona health care cost containment system administration pursuant to section 36-2936 that describes in clear and simple language the availability of services and benefits from the Arizona long-term care system pursuant to chapter 29, article 2 of this title. The booklet shall:

1. Explain the availability of preadmission screening that shall assess the functional, medical, nursing and social needs of the patient and make recommendations on services which meet the patient's needs as identified by the preadmission screening assessment.
2. Describe the availability of public and private services appropriate to meet the patient's needs in institutions and alternatives to institutions.

3. Explain financial eligibility standards for the Arizona long-term care system and its effect on separate and community property.

B. All nursing care institutions shall provide the booklet described in subsection A of this section to all of their existing patients who are not currently enrolled and receiving services pursuant to chapter 29, article 2 of this title or designated representative, regardless of the manner by which any patient's cost of care is paid.

C. A nursing care institution certified pursuant to title XIX of the social security act shall cooperate with the Arizona health care cost containment system administration in conducting preadmission screening and annual reviews pursuant to the omnibus budget reconciliation act of 1987 (P.L. 100-203) as amended by the medicare catastrophic coverage act of 1988.

36-447.02. Nursing care institutions; therapeutic substitutions

A. A nursing care institution's quality assessment and assurance committee established pursuant to 42 Code of Federal Regulations section 483.75(o) may establish written guidelines or procedures for making therapeutic substitutions if the committee membership also includes a pharmacist who is licensed in this state. If a nursing care institution does not have a quality assessment and assurance committee, the nursing care institution may establish a committee for the purpose of establishing written guidelines or procedures for making therapeutic substitutions that consists of the same members as required under 42 Code of Federal Regulations section 483.75(o) and includes a pharmacist who is licensed pursuant to title 32, chapter 18.

B. A pharmacy used by a nursing care institution may make therapeutic substitutions consistent with the institution's written guidelines or procedures if the use of the therapeutic substitution has been approved for a patient during the period of the patient's stay in the nursing care institution by the patient's health care provider who is licensed under title 32, who has prescription authority under title 32 and who has prescribed a medication for the patient that the patient is currently taking.

36-513. Seclusion; restraint; treatment

A person undergoing evaluation pursuant to article 4 of this chapter shall not be treated for his mental disorder unless he consents to such treatment, except that seclusion and mechanical or pharmacological restraints may be employed in the case of emergency for the safety of the person or others. A person undergoing treatment pursuant to article 5 of this chapter shall not be subjected to seclusion or mechanical or pharmacological restraints except in case of emergency for the safety of the person or others or as a part of a written plan for the treatment of the patient, prepared by staff members responsible for his care and pursuant to regulations promulgated by the department. All instances of seclusion or restraint shall be properly recorded in the patient's medical record and the use shall be governed by written procedures of the agency caring for the patient and are subject to the rules and regulations of the department.

41-1073. Time frames; exception

A. No later than December 31, 1998, an agency that issues licenses shall have in place final rules establishing an overall time frame during which the agency will either grant or deny each type of license that it issues. Agencies shall submit their overall time frame rules to the governor's regulatory review council pursuant to the schedule developed by the council. The council shall schedule each agency's rules so that final overall time frame rules are in place no later than December 31, 1998. The rule regarding the overall time frame for each type of license shall state separately the administrative completeness review time frame and the substantive review time frame.

B. If a statutory licensing time frame already exists for an agency but the statutory time frame does not specify separate time frames for the administrative completeness review and the substantive review, by rule the agency shall establish separate time frames for the administrative completeness review and the substantive review, which together shall not exceed the statutory overall time frame. An agency may establish different time frames for initial licenses, renewal licenses and revisions to existing licenses.

C. The submission by the department of environmental quality of a revised permit to the United States environmental protection agency in response to an objection by that agency shall be given the same effect as a notice granting or denying a permit application for licensing time frame purposes. For the purposes of this subsection, "permit" means a permit required by title 49, chapter 2, article 3.1 or section 49-426.

D. In establishing time frames, agencies shall consider all of the following:

1. The complexity of the licensing subject matter.
2. The resources of the agency granting or denying the license.

3. The economic impact of delay on the regulated community.
4. The impact of the licensing decision on public health and safety.
5. The possible use of volunteers with expertise in the subject matter area.
6. The possible increased use of general licenses for similar types of licensed businesses or facilities.
7. The possible increased cooperation between the agency and the regulated community.
8. Increased agency flexibility in structuring the licensing process and personnel.

E. This article does not apply to licenses issued either:

1. Pursuant to tribal state gaming compacts.
2. Within seven days after receipt of initial application.
3. By a lottery method.

41-1074. Compliance with administrative completeness review time frame

A. An agency shall issue a written notice of administrative completeness or deficiencies to an applicant for a license within the administrative completeness review time frame.

B. If an agency determines that an application for a license is not administratively complete, the agency shall include a comprehensive list of the specific deficiencies in the written notice provided pursuant to subsection A. If the agency issues a written notice of deficiencies within the administrative completeness time frame, the administrative completeness review time frame and the overall time frame are suspended from the date the notice is issued until the date that the agency receives the missing information from the applicant.

C. If an agency does not issue a written notice of administrative completeness or deficiencies within the administrative completeness review time frame, the application is deemed administratively complete. If an agency issues a timely written notice of deficiencies, an application shall not be complete until all requested information has been received by the agency.

41-1075. Compliance with substantive review time frame

A. During the substantive review time frame, an agency may make one comprehensive written request for additional information. The agency and applicant may mutually agree in writing to allow the agency to submit supplemental requests for additional information. If an agency issues a comprehensive written request or a supplemental request by mutual written agreement for additional information, the substantive review time frame and the overall time frame are suspended from the date the request is issued until the date that the agency receives the additional information from the applicant.

B. By mutual written agreement, an agency and an applicant for a license may extend the substantive review time frame and the overall time frame. An extension of the substantive review time frame and the overall time frame may not exceed twenty-five per cent of the overall time frame.

41-1076. Compliance with overall time frame

Unless an agency and an applicant for a license mutually agree to extend the substantive review time frame and the overall time frame pursuant to section 41-1075, an agency shall issue a written notice granting or denying a license within the overall time frame to an applicant. If an agency denies an application for a license, the agency shall include in the written notice at least the following information:

1. Justification for the denial with references to the statutes or rules on which the denial is based.
2. An explanation of the applicant's right to appeal the denial. The explanation shall include the number of days in which the applicant must file a protest challenging the denial and the name and telephone number of an agency contact person who can answer questions regarding the appeals process.

Statutes and Other Rules Referred to in the Definitions

Statutes

1-215. Definitions

In the statutes and laws of this state, unless the context otherwise requires:

1. "Action" includes any matter or proceeding in a court, civil or criminal.
2. "Adopted rule" means a final rule as defined in section 41-1001.
3. "Adult" means a person who has attained eighteen years of age.
4. "Alternative fuel" means:
 - (a) Electricity.
 - (b) Solar energy.
 - (c) Liquefied petroleum gas, natural gas, hydrogen or a blend of hydrogen with liquefied petroleum or natural gas that complies with any of the following:
 - (i) Is used in an engine that is certified to meet at a minimum the United States environmental protection agency low emission vehicle standard pursuant to 40 Code of Federal Regulations section 88.104-94 or 88.105-94.
 - (ii) Is used in an engine that is certified by the engine modifier to meet the addendum to memorandum 1-A of the United States environmental protection agency as printed in the federal register, volume 62, number 207, October 27, 1997, pages 55635 through 55637.
 - (iii) Is used in an engine that is the subject of a waiver for that specific engine application from the United States environmental protection agency's memorandum 1-A addendum requirements and that waiver is documented to the reasonable satisfaction of the director of the department of environmental quality.
 - (d) Only for vehicles that use alcohol fuels before August 21, 1998, alcohol fuels that contain not less than eighty-five per cent alcohol by volume.
 - (e) A combination of at least seventy per cent alternative fuel and no more than thirty per cent petroleum based fuel that operates in an engine that meets the United States environmental protection agency low emission vehicle standard pursuant to 40 Code of Federal Regulations section 88.104-94 or 88.105-94 and that is certified by the engine manufacturer to consume at least seventy per cent alternative fuel during normal vehicle operations.
5. "Bribe" means anything of value or advantage, present or prospective, asked, offered, given, accepted or promised with a corrupt intent to influence, unlawfully, the person to whom it is given in that person's action, vote or opinion, in any public or official capacity.
6. "Child" or "children" as used in reference to age of persons means persons under eighteen years of age.
7. "Clean burning fuel" means:
 - (a) An emulsion of water-phased hydrocarbon fuel that contains not less than twenty per cent water by volume and that complies with any of the following:
 - (i) Is used in an engine that is certified to meet at a minimum the United States environmental protection agency low emission vehicle standard pursuant to 40 Code of Federal Regulations section 88.104-94 or 88.105-94.
 - (ii) Is used in an engine that is certified by the engine modifier to meet the addendum to memorandum 1-A of the United States environmental protection agency as printed in the federal register, volume 62, number 207, October 27, 1997, pages 55635 through 55637.
 - (iii) Is used in an engine that is the subject of a waiver for that specific engine application from the United States environmental protection agency's memorandum 1-A addendum requirements and that waiver is documented to the reasonable satisfaction of the director of the department of environmental quality.
 - (b) A diesel fuel substitute that is produced from nonpetroleum renewable resources if the qualifying volume of the nonpetroleum renewable resources meets the standards for California diesel fuel as adopted by the California air resources board pursuant to 13 California Code of Regulations sections 2281 and 2282 in effect on January 1,

2000, the diesel fuel substitute meets the registration requirement for fuels and additives established by the United States environmental protection agency pursuant to section 211 of the clean air act as defined in section 49-401.01 and the use of the diesel fuel substitute complies with the requirements listed in 10 Code of Federal Regulations part 490, as printed in the federal register, volume 64, number 96, May 19, 1999.

(c) A diesel fuel that complies with all of the following:

(i) Contains a maximum of fifteen parts per million by weight of sulfur.

(ii) Meets ASTM D975.

(iii) Meets the registration requirements for fuels and additives established by the United States environmental protection agency pursuant to section 211 of the clean air act as defined in section 49-401.01.

(iv) Is used in an engine that is equipped or has been retrofitted with a device that has been certified by the California air resources board diesel emission control strategy verification procedure, the United States environmental protection agency voluntary diesel retrofit program or the United States environmental protection agency verification protocol for retrofit catalyst, particulate filter and engine modification control technologies for highway and nonroad use diesel engines.

(d) A blend of unleaded gasoline that contains at minimum eighty-five per cent ethanol by volume or eighty-five per cent methanol by volume.

(e) Neat methanol.

(f) Neat ethanol.

8. "Corruptly" means a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to, or to some other person.

9. "Daytime" means the period between sunrise and sunset.

10. "Depose" includes every manner of written statement under oath or affirmation.

11. "Federal poverty guidelines" means the poverty guidelines as updated annually in the federal register by the United States department of health and human services.

12. "Grantee" includes every person to whom an estate or interest in real property passes, in or by a deed.

13. "Grantor" includes every person from or by whom an estate or interest in real property passes, in or by a deed.

14. "Includes" or "including" means not limited to and is not a term of exclusion.

15. "Inhabitant" means a resident of a city, town, village, district, county or precinct.

16. "Issue" as used in connection with descent of estates includes all lawful, lineal descendants of the ancestor.

17. "Knowingly":

(a) Means only a knowledge that the facts exist that bring the act or omission within the provisions of the statute using such word.

(b) Does not require any knowledge of the unlawfulness of the act or omission.

18. "Magistrate" means an officer having power to issue a warrant for the arrest of a person charged with a public offense and includes the chief justice and justices of the supreme court, judges of the superior court, judges of the court of appeals, justices of the peace and judges of a municipal court.

19. "Majority" or "age of majority" as used in reference to age of persons means eighteen years of age or more.

20. "Malice" and "maliciously" mean a wish to vex, annoy or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law.

21. "Minor" means a person under the age of eighteen years.

22. "Minor children" means persons under the age of eighteen years.

23. "Month" means a calendar month unless otherwise expressed.

24. "Neglect", "negligence", "negligent" and "negligently" import a want of such attention to the nature or probable consequence of the act or omission as a prudent man ordinarily bestows in acting in his own concerns.

25. "Nighttime" means the period between sunset and sunrise.
26. "Oath" includes an affirmation or declaration.
27. "Peace officers" means sheriffs of counties, constables, marshals, policemen of cities and towns, commissioned personnel of the department of public safety, personnel who are employed by the state department of corrections and the department of juvenile corrections and who have received a certificate from the Arizona peace officer standards and training board, peace officers who are appointed by a multicounty water conservation district and who have received a certificate from the Arizona peace officer standards and training board, police officers who are appointed by community college district governing boards and who have received a certificate from the Arizona peace officer standards and training board, police officers who are appointed by the Arizona board of regents and who have received a certificate from the Arizona peace officer standards and training board, police officers who are appointed by the governing body of a public airport pursuant to section 28-8426 and who have received a certificate from the Arizona peace officer standards and training board, peace officers who are appointed by a private postsecondary institution pursuant to section 15-1897 and who have received a certificate from the Arizona peace officer standards and training board and special agents from the office of the attorney general, or of a county attorney, and who have received a certificate from the Arizona peace officer standards and training board.
28. "Person" includes a corporation, company, partnership, firm, association or society, as well as a natural person. When the word "person" is used to designate the party whose property may be the subject of a criminal or public offense, the term includes the United States, this state, or any territory, state or country, or any political subdivision of this state that may lawfully own any property, or a public or private corporation, or partnership or association. When the word "person" is used to designate the violator or offender of any law, it includes corporation, partnership or any association of persons.
29. "Personal property" includes money, goods, chattels, things in action and evidences of debt.
30. "Population" means the population according to the most recent United States decennial census.
31. "Process" means a citation, writ or summons issued in the course of judicial proceedings.
32. "Property" includes both real and personal property.
33. "Real property" is coextensive with lands, tenements and hereditaments.
34. "Registered mail" includes certified mail.
35. "Seal" as used in reference to a paper issuing from a court or public office to which the seal of such court or office is required to be affixed means an impression of the seal on that paper, an impression of the seal affixed to that paper by a wafer or wax, a stamped seal, a printed seal, a screened seal or a computer generated seal.
36. "Signature" or "subscription" includes a mark, if a person cannot write, with the person's name written near it and witnessed by a person who writes the person's own name as witness.
37. "State", as applied to the different parts of the United States, includes the District of Columbia, this state and the territories.
38. "Testify" includes every manner of oral statement under oath or affirmation.
39. "United States" includes the District of Columbia and the territories.
40. "Vessel", as used in reference to shipping, includes ships of all kinds, steamboats, steamships, barges, canal boats and every structure adapted to navigation from place to place for the transportation of persons or property.
41. "Wilfully" means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or believes that the person's conduct is of that nature or that the circumstance exists.
42. "Will" includes codicils.
43. "Workers' compensation" means workmen's compensation as used in article XVIII, section 8, Constitution of Arizona.
44. "Writ" means an order or precept in writing issued in the name of the state or by a court or judicial officer.
45. "Writing" includes printing.

8-201. Definitions

In this title, unless the context otherwise requires:

1. "Abandoned" means the failure of the parent to provide reasonable support and to maintain regular contact with the child, including providing normal supervision. Abandoned includes a judicial finding that a parent has made only minimal efforts to support and communicate with the child. Failure to maintain a normal parental relationship with the child without just cause for a period of six months constitutes prima facie evidence of abandonment.
2. "Abuse" means the infliction or allowing of physical injury, impairment of bodily function or disfigurement or the infliction of or allowing another person to cause serious emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior and which emotional damage is diagnosed by a medical doctor or psychologist and is caused by the acts or omissions of an individual who has the care, custody and control of a child. Abuse includes:
 - (a) Inflicting or allowing sexual abuse pursuant to section 13-1404, sexual conduct with a minor pursuant to section 13-1405, sexual assault pursuant to section 13-1406, molestation of a child pursuant to section 13-1410, commercial sexual exploitation of a minor pursuant to section 13-3552, sexual exploitation of a minor pursuant to section 13-3553, incest pursuant to section 13-3608 or child sex trafficking pursuant to section 13-3212.
 - (b) Physical injury that results from permitting a child to enter or remain in any structure or vehicle in which volatile, toxic or flammable chemicals are found or equipment is possessed by any person for the purpose of manufacturing a dangerous drug as defined in section 13-3401.
 - (c) Unreasonable confinement of a child.
3. "Adult" means a person who is eighteen years of age or older.
4. "Adult court" means the appropriate justice court, municipal court or criminal division of the superior court that has jurisdiction to hear proceedings concerning offenses committed by juveniles as provided in sections 8-327 and 13-501.
5. "Award" or "commit" means to assign legal custody.
6. "Child", "youth" or "juvenile" means an individual who is under the age of eighteen years.
7. "Complaint" means a written statement of the essential facts constituting a public offense that is any of the following:
 - (a) Made on an oath before a judge or commissioner of the superior court or an authorized juvenile hearing officer.
 - (b) Made pursuant to section 13-3903.
 - (c) Accompanied by an affidavit of a law enforcement officer or employee that swears on information and belief to the accuracy of the complaint pursuant to section 13-4261.
8. "Criminal conduct allegation" means an allegation of conduct by a parent, guardian or custodian of a child or an adult member of the victim's household that, if true, would constitute any of the following:
 - (a) A violation of section 13-3623 involving child abuse.
 - (b) A felony offense that constitutes domestic violence as defined in section 13-3601.
 - (c) A violation of section 13-1404 or 13-1406 involving a minor.
 - (d) A violation of section 13-1405, 13-1410 or 13-1417.
 - (e) Any other act of abuse that is classified as a felony.
 - (f) An offense that constitutes domestic violence as defined in section 13-3601 and that involves a minor who is a victim of or was in imminent danger during the domestic violence.
9. "Custodian" means a person, other than a parent or legal guardian, who stands in loco parentis to the child or a person to whom legal custody of the child has been given by order of the juvenile court.
10. "DCS report" means a communication received by the centralized intake hotline that alleges child abuse or neglect and that meets the criteria for a report as prescribed in section 8-455.

11. "Delinquency hearing" means a proceeding in the juvenile court to determine whether a juvenile has committed a specific delinquent act as set forth in a petition.
12. "Delinquent act" means an act by a juvenile that if committed by an adult would be a criminal offense or a petty offense, a violation of any law of this state, or of another state if the act occurred in that state, or a law of the United States, or a violation of any law that can only be violated by a minor and that has been designated as a delinquent offense, or any ordinance of a city, county or political subdivision of this state defining crime. Delinquent act does not include an offense under section 13-501, subsection A or B if the offense is filed in adult court. Any juvenile who is prosecuted as an adult or who is remanded for prosecution as an adult shall not be adjudicated as a delinquent juvenile for the same offense.
13. "Delinquent juvenile" means a child who is adjudicated to have committed a delinquent act.
14. "Department" means the department of child safety.
15. "Dependent child":
 - (a) Means a child who is adjudicated to be:
 - (i) In need of proper and effective parental care and control and who has no parent or guardian, or one who has no parent or guardian willing to exercise or capable of exercising such care and control.
 - (ii) Destitute or who is not provided with the necessities of life, including adequate food, clothing, shelter or medical care.
 - (iii) A child whose home is unfit by reason of abuse, neglect, cruelty or depravity by a parent, a guardian or any other person having custody or care of the child.
 - (iv) Under eight years of age and who is found to have committed an act that would result in adjudication as a delinquent juvenile or incorrigible child if committed by an older juvenile or child.
 - (v) Incompetent or not restorable to competency and who is alleged to have committed a serious offense as defined in section 13-706.
 - (b) Does not include a child who in good faith is being furnished Christian Science treatment by a duly accredited practitioner if none of the circumstances described in subdivision (a) of this paragraph exists.
16. "Detention" means the temporary confinement of a juvenile who requires secure care in a physically restricting facility that is completely surrounded by a locked and physically secure barrier with restricted ingress and egress for the protection of the juvenile or the community pending court disposition or as a condition of probation.
17. "Director" means the director of the department.
18. "Health professional" has the same meaning prescribed in section 32-3201.
19. "Incorrigible child" means a child who:
 - (a) Is adjudicated as a child who refuses to obey the reasonable and proper orders or directions of a parent, guardian or custodian and who is beyond the control of that person.
 - (b) Is habitually truant from school as defined in section 15-803, subsection C.
 - (c) Is a runaway from the child's home or parent, guardian or custodian.
 - (d) Habitually behaves in such a manner as to injure or endanger the morals or health of self or others.
 - (e) Commits any act constituting an offense that can only be committed by a minor and that is not designated as a delinquent act.
 - (f) Fails to obey any lawful order of a court of competent jurisdiction given in a noncriminal action.
20. "Independent living program" includes a residential program with supervision of less than twenty-four hours a day.
21. "Juvenile court" means the juvenile division of the superior court when exercising its jurisdiction over children in any proceeding relating to delinquency, dependency or incorrigibility.
22. "Law enforcement officer" means a peace officer, sheriff, deputy sheriff, municipal police officer or constable.
23. "Medical director of a mental health agency" means a psychiatrist, or licensed physician experienced in psychiatric matters, who is designated in writing by the governing body of the agency as the person in charge of

the medical services of the agency, or a psychiatrist designated by the governing body to act for the director. The term includes the superintendent of the state hospital.

24. "Mental health agency" means any private or public facility that is licensed by this state as a mental health treatment agency, a psychiatric hospital, a psychiatric unit of a general hospital or a residential treatment center for emotionally disturbed children and that uses secure settings or mechanical restraints.

25. "Neglect" or "neglected" means:

(a) The inability or unwillingness of a parent, guardian or custodian of a child to provide that child with supervision, food, clothing, shelter or medical care if that inability or unwillingness causes unreasonable risk of harm to the child's health or welfare, except if the inability of a parent, guardian or custodian to provide services to meet the needs of a child with a disability or chronic illness is solely the result of the unavailability of reasonable services.

(b) Permitting a child to enter or remain in any structure or vehicle in which volatile, toxic or flammable chemicals are found or equipment is possessed by any person for the purposes of manufacturing a dangerous drug as defined in section 13-3401.

(c) A determination by a health professional that a newborn infant was exposed prenatally to a drug or substance listed in section 13-3401 and that this exposure was not the result of a medical treatment administered to the mother or the newborn infant by a health professional. This subdivision does not expand a health professional's duty to report neglect based on prenatal exposure to a drug or substance listed in section 13-3401 beyond the requirements prescribed pursuant to section 13-3620, subsection E. The determination by the health professional shall be based on one or more of the following:

(i) Clinical indicators in the prenatal period including maternal and newborn presentation.

(ii) History of substance use or abuse.

(iii) Medical history.

(iv) Results of a toxicology or other laboratory test on the mother or the newborn infant.

(d) Diagnosis by a health professional of an infant under one year of age with clinical findings consistent with fetal alcohol syndrome or fetal alcohol effects.

(e) Deliberate exposure of a child by a parent, guardian or custodian to sexual conduct as defined in section 13-3551 or to sexual contact, oral sexual contact or sexual intercourse as defined in section 13-1401, bestiality as prescribed in section 13-1411 or explicit sexual materials as defined in section 13-3507.

(f) Any of the following acts committed by the child's parent, guardian or custodian with reckless disregard as to whether the child is physically present:

(i) Sexual contact as defined in section 13-1401.

(ii) Oral sexual contact as defined in section 13-1401.

(iii) Sexual intercourse as defined in section 13-1401.

(iv) Bestiality as prescribed in section 13-1411.

26. "Newborn infant" means a child who is under thirty days of age.

27. "Petition" means a written statement of the essential facts that allege delinquency, incorrigibility or dependency.

28. "Prevention" means the creation of conditions, opportunities and experiences that encourage and develop healthy, self-sufficient children and that occur before the onset of problems.

29. "Protective supervision" means supervision that is ordered by the juvenile court of children who are found to be dependent or incorrigible.

30. "Referral" means a report that is submitted to the juvenile court and that alleges that a child is dependent or incorrigible or that a juvenile has committed a delinquent or criminal act.

31. "Secure care" means confinement in a facility that is completely surrounded by a locked and physically secure barrier with restricted ingress and egress.

32. "Serious emotional injury" means an injury that is diagnosed by a medical doctor or a psychologist and that

does any one or a combination of the following:

- (a) Seriously impairs mental faculties.
- (b) Causes serious anxiety, depression, withdrawal or social dysfunction behavior to the extent that the child suffers dysfunction that requires treatment.
- (c) Is the result of sexual abuse pursuant to section 13-1404, sexual conduct with a minor pursuant to section 13-1405, sexual assault pursuant to section 13-1406, molestation of a child pursuant to section 13-1410, child sex trafficking pursuant to section 13-3212, commercial sexual exploitation of a minor pursuant to section 13-3552, sexual exploitation of a minor pursuant to section 13-3553 or incest pursuant to section 13-3608.

33. "Serious physical injury" means an injury that is diagnosed by a medical doctor and that does any one or a combination of the following:

- (a) Creates a reasonable risk of death.
- (b) Causes serious or permanent disfigurement.
- (c) Causes significant physical pain.
- (d) Causes serious impairment of health.
- (e) Causes the loss or protracted impairment of an organ or limb.
- (f) Is the result of sexual abuse pursuant to section 13-1404, sexual conduct with a minor pursuant to section 13-1405, sexual assault pursuant to section 13-1406, molestation of a child pursuant to section 13-1410, child sex trafficking pursuant to section 13-3212, commercial sexual exploitation of a minor pursuant to section 13-3552, sexual exploitation of a minor pursuant to section 13-3553 or incest pursuant to section 13-3608.

34. "Shelter care" means the temporary care of a child in any public or private facility or home that is licensed by this state and that offers a physically nonsecure environment that is characterized by the absence of physically restricting construction or hardware and that provides the child access to the surrounding community.

12-2291. Definitions

In this article, unless the context otherwise requires:

1. "Clinical laboratory" has the same meaning prescribed in section 36-451.
2. "Contractor" means an agency or service that duplicates medical records on behalf of health care providers.
3. "Department" means the department of health services.
4. "Health care decision maker" means an individual who is authorized to make health care treatment decisions for the patient, including a parent of a minor or an individual who is authorized pursuant to section 8-514.05, title 14, chapter 5, article 2 or 3 or section 36-3221, 36-3231 or 36-3281.
5. "Health care provider" means:
 - (a) A person who is licensed pursuant to title 32 and who maintains medical records.
 - (b) A health care institution as defined in section 36-401.
 - (c) An ambulance service as defined in section 36-2201.
 - (d) A health care services organization licensed pursuant to title 20, chapter 4, article 9.
6. "Medical records" means all communications related to a patient's physical or mental health or condition that are recorded in any form or medium and that are maintained for purposes of patient diagnosis or treatment, including medical records that are prepared by a health care provider or by other providers. Medical records do not include materials that are prepared in connection with utilization review, peer review or quality assurance activities, including records that a health care provider prepares pursuant to section 36-441, 36-445, 36-2402 or 36-2917. Medical records do not include recorded telephone and radio calls to and from a publicly operated emergency dispatch office relating to requests for emergency services or reports of suspected criminal activity, but include communications that are recorded in any form or medium between emergency medical personnel and medical personnel concerning the diagnosis or treatment of a person.
7. "Payment records" means all communications related to payment for a patient's health care that contain

individually identifiable information.

8. "Source data" means information that is summarized, interpreted or reported in the medical record, including x-rays and other diagnostic images.

13-105. Definitions

In this title, unless the context otherwise requires:

1. "Absconder" means a probationer who has moved from the probationer's primary residence without permission of the probation officer, who cannot be located within ninety days of the previous contact and against whom a petition to revoke has been filed in the superior court alleging that the probationer's whereabouts are unknown. A probationer is no longer deemed an absconder when the probationer is voluntarily or involuntarily returned to probation service.

2. "Act" means a bodily movement.

3. "Benefit" means anything of value or advantage, present or prospective.

4. "Calendar year" means three hundred sixty-five days' actual time served without release, suspension or commutation of sentence, probation, pardon or parole, work furlough or release from confinement on any other basis.

5. "Community supervision" means that portion of a felony sentence that is imposed by the court pursuant to section 13-603, subsection I and that is served in the community after completing a period of imprisonment or served in prison in accordance with section 41-1604.07.

6. "Conduct" means an act or omission and its accompanying culpable mental state.

7. "Crime" means a misdemeanor or a felony.

8. "Criminal street gang" means an ongoing formal or informal association of persons in which members or associates individually or collectively engage in the commission, attempted commission, facilitation or solicitation of any felony act and that has at least one individual who is a criminal street gang member.

9. "Criminal street gang member" means an individual to whom at least two of the following seven criteria that indicate criminal street gang membership apply:

(a) Self-proclamation.

(b) Witness testimony or official statement.

(c) Written or electronic correspondence.

(d) Paraphernalia or photographs.

(e) Tattoos.

(f) Clothing or colors.

(g) Any other indicia of street gang membership.

10. "Culpable mental state" means intentionally, knowingly, recklessly or with criminal negligence as those terms are defined in this paragraph:

(a) "Intentionally" or "with the intent to" means, with respect to a result or to conduct described by a statute defining an offense, that a person's objective is to cause that result or to engage in that conduct.

(b) "Knowingly" means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or believes that the person's conduct is of that nature or that the circumstance exists. It does not require any knowledge of the unlawfulness of the act or omission.

(c) "Recklessly" means, with respect to a result or to a circumstance described by a statute defining an offense, that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard of such risk constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but who is unaware of such risk solely by reason of voluntary intoxication also acts recklessly with respect to such risk.

(d) "Criminal negligence" means, with respect to a result or to a circumstance described by a statute defining an offense, that a person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

11. "Dangerous drug" means dangerous drug as defined in section 13-3401.

12. "Dangerous instrument" means anything that under the circumstances in which it is used, attempted to be used or threatened to be used is readily capable of causing death or serious physical injury.

13. "Dangerous offense" means an offense involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury on another person.

14. "Deadly physical force" means force that is used with the purpose of causing death or serious physical injury or in the manner of its use or intended use is capable of creating a substantial risk of causing death or serious physical injury.

15. "Deadly weapon" means anything designed for lethal use, including a firearm.

16. "Economic loss" means any loss incurred by a person as a result of the commission of an offense. Economic loss includes lost interest, lost earnings and other losses that would not have been incurred but for the offense. Economic loss does not include losses incurred by the convicted person, damages for pain and suffering, punitive damages or consequential damages.

17. "Enterprise" includes any corporation, association, labor union or other legal entity.

18. "Felony" means an offense for which a sentence to a term of imprisonment in the custody of the state department of corrections is authorized by any law of this state.

19. "Firearm" means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun or other weapon that will or is designed to or may readily be converted to expel a projectile by the action of expanding gases, except that it does not include a firearm in permanently inoperable condition.

20. "Government" means the state, any political subdivision of the state or any department, agency, board, commission, institution or governmental instrumentality of or within the state or political subdivision.

21. "Government function" means any activity that a public servant is legally authorized to undertake on behalf of a government.

22. "Historical prior felony conviction" means:

(a) Any prior felony conviction for which the offense of conviction either:

(i) Mandated a term of imprisonment except for a violation of chapter 34 of this title involving a drug below the threshold amount.

(ii) Involved a dangerous offense.

(iii) Involved the illegal control of a criminal enterprise.

(iv) Involved aggravated driving under the influence of intoxicating liquor or drugs.

(v) Involved any dangerous crime against children as defined in section 13-705.

(b) Any class 2 or 3 felony, except the offenses listed in subdivision (a) of this paragraph, that was committed within the ten years immediately preceding the date of the present offense. Any time spent on absconder status while on probation, on escape status or incarcerated is excluded in calculating if the offense was committed within the preceding ten years. If a court determines a person was not on absconder status while on probation or escape status, that time is not excluded. For the purposes of this subdivision, "escape" means:

(i) A departure from custody or from a juvenile secure care facility, a juvenile detention facility or an adult correctional facility in which the person is held or detained, with knowledge that the departure is not permitted, or the failure to return to custody or detention following a temporary leave granted for a specific purpose or for a limited period.

(ii) A failure to report as ordered to custody or detention to begin serving a term of incarceration.

(c) Any class 4, 5 or 6 felony, except the offenses listed in subdivision (a) of this paragraph, that was committed

within the five years immediately preceding the date of the present offense. Any time spent on absconder status while on probation, on escape status or incarcerated is excluded in calculating if the offense was committed within the preceding five years. If a court determines a person was not on absconder status while on probation or escape status, that time is not excluded. For the purposes of this subdivision, "escape" has the same meaning prescribed in subdivision (b) of this paragraph.

(d) Any felony conviction that is a third or more prior felony conviction. For the purposes of this subdivision, "prior felony conviction" includes any offense committed outside the jurisdiction of this state that was punishable by that jurisdiction as a felony.

(e) Any offense committed outside the jurisdiction of this state that was punishable by that jurisdiction as a felony and that was committed within the five years immediately preceding the date of the present offense. Any time spent on absconder status while on probation, on escape status or incarcerated is excluded in calculating if the offense was committed within the preceding five years. If a court determines a person was not on absconder status while on probation or escape status, that time is not excluded. For the purposes of this subdivision, "escape" has the same meaning prescribed in subdivision (b) of this paragraph.

(f) Any offense committed outside the jurisdiction of this state that involved the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of death or serious physical injury and that was punishable by that jurisdiction as a felony. A person who has been convicted of a felony weapons possession violation in any court outside the jurisdiction of this state that would not be punishable as a felony under the laws of this state is not subject to this paragraph.

23. "Human smuggling organization" means an ongoing formal or informal association of persons in which members or associates individually or collectively engage in the smuggling of human beings.

24. "Intoxication" means any mental or physical incapacity resulting from use of drugs, toxic vapors or intoxicating liquors.

25. "Misdemeanor" means an offense for which a sentence to a term of imprisonment other than to the custody of the state department of corrections is authorized by any law of this state.

26. "Narcotic drug" means narcotic drugs as defined in section 13-3401.

27. "Offense" or "public offense" means conduct for which a sentence to a term of imprisonment or of a fine is provided by any law of the state in which it occurred or by any law, regulation or ordinance of a political subdivision of that state and, if the act occurred in a state other than this state, it would be so punishable under the laws, regulations or ordinances of this state or of a political subdivision of this state if the act had occurred in this state.

28. "Omission" means the failure to perform an act as to which a duty of performance is imposed by law.

29. "Peace officer" means any person vested by law with a duty to maintain public order and make arrests and includes a constable.

30. "Person" means a human being and, as the context requires, an enterprise, a public or private corporation, an unincorporated association, a partnership, a firm, a society, a government, a governmental authority or an individual or entity capable of holding a legal or beneficial interest in property.

31. "Petty offense" means an offense for which a sentence of a fine only is authorized by law.

32. "Physical force" means force used upon or directed toward the body of another person and includes confinement, but does not include deadly physical force.

33. "Physical injury" means the impairment of physical condition.

34. "Possess" means knowingly to have physical possession or otherwise to exercise dominion or control over property.

35. "Possession" means a voluntary act if the defendant knowingly exercised dominion or control over property.

36. "Preconviction custody" means the confinement of a person in a jail in this state or another state after the person is arrested for or charged with a felony offense.

37. "Property" means anything of value, tangible or intangible.

38. "Public servant":

(a) Means any officer or employee of any branch of government, whether elected, appointed or otherwise employed, including a peace officer, and any person participating as an advisor or consultant or otherwise in performing a governmental function.

(b) Does not include jurors or witnesses.

(c) Includes those who have been elected, appointed, employed or designated to become a public servant although not yet occupying that position.

39. "Serious physical injury" includes physical injury that creates a reasonable risk of death, or that causes serious and permanent disfigurement, serious impairment of health or loss or protracted impairment of the function of any bodily organ or limb.

40. "Unlawful" means contrary to law or, where the context so requires, not permitted by law.

41. "Vehicle" means a device in, upon or by which any person or property is, may be or could have been transported or drawn upon a highway, waterway or airway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

42. "Voluntary act" means a bodily movement performed consciously and as a result of effort and determination.

43. "Voluntary intoxication" means intoxication caused by the knowing use of drugs, toxic vapors or intoxicating liquors by a person, the tendency of which to cause intoxication the person knows or ought to know, unless the person introduces them pursuant to medical advice or under such duress as would afford a defense to an offense.

13-1404. Sexual abuse; classification

A. A person commits sexual abuse by intentionally or knowingly engaging in sexual contact with any person who is fifteen or more years of age without consent of that person or with any person who is under fifteen years of age if the sexual contact involves only the female breast.

B. It is not a defense to a prosecution for a violation of this section that the other person consented if the other person was fifteen, sixteen or seventeen years of age and the defendant was in a position of trust.

C. Sexual abuse is a class 5 felony unless the victim is under fifteen years of age in which case sexual abuse is a class 3 felony punishable pursuant to section 13-705.

13-1406. Sexual assault; classification; increased punishment

A. A person commits sexual assault by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person without consent of such person.

B. Sexual assault is a class 2 felony, and the person convicted shall be sentenced pursuant to this section and the person is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served or commuted. If the victim is under fifteen years of age, sexual assault is punishable pursuant to section 13-705. The presumptive term may be aggravated or mitigated within the range under this section pursuant to section 13-701, subsections C, D and E. If the sexual assault involved the intentional or knowing administration of flunitrazepam, gamma hydroxy butyrate or ketamine hydrochloride without the victim's knowledge, the presumptive, minimum and maximum sentence for the offense shall be increased by three years. The additional sentence imposed pursuant to this subsection is in addition to any enhanced sentence that may be applicable. The term for a first offense is as follows:

Minimum Presumptive Maximum

5.25 years 7 years 14 years

The term for a defendant who has one historical prior felony conviction is as follows:

Minimum Presumptive Maximum

7 years 10.5 years 21 years

The term for a defendant who has two or more historical prior felony convictions is as follows:

Minimum	Presumptive	Maximum
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14 years	15.75 years	28 years
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C. The sentence imposed on a person for a sexual assault shall be consecutive to any other sexual assault sentence imposed on the person at any time.

D. Notwithstanding section 13-703, section 13-704, section 13-705, section 13-706, subsection A and section 13-708, subsection D, if the sexual assault involved the intentional or knowing infliction of serious physical injury, the person may be sentenced to life imprisonment and is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until at least twenty-five years have been served or the sentence is commuted. If the person was at least eighteen years of age and the victim was twelve years of age or younger, the person shall be sentenced pursuant to section 13-705.

13-3401. Definitions

In this chapter, unless the context otherwise requires:

1. "Administer" means to apply, inject or facilitate the inhalation or ingestion of a substance to the body of a person.
2. "Amidone" means any substance identified chemically as (4-4-diphenyl-6-dimethylamine-heptanone-3), or any salt of such substance, by whatever trade name designated.
3. "Board" means the Arizona state board of pharmacy.
4. "Cannabis" means the following substances under whatever names they may be designated:
 - (a) The resin extracted from any part of a plant of the genus cannabis, and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or its resin. Cannabis does not include oil or cake made from the seeds of such plant, any fiber, compound, manufacture, salt, derivative, mixture or preparation of the mature stalks of such plant except the resin extracted from the stalks or any fiber, oil or cake or the sterilized seed of such plant which is incapable of germination.
 - (b) Every compound, manufacture, salt, derivative, mixture or preparation of such resin or tetrahydrocannabinol.
5. "Coca leaves" means cocaine, its optical isomers and any compound, manufacture, salt, derivative, mixture or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine, ecgonine or substances from which cocaine or ecgonine may be synthesized or made.
6. "Dangerous drug" means the following by whatever official, common, usual, chemical or trade name designated:
 - (a) Any material, compound, mixture or preparation that contains any quantity of the following hallucinogenic substances and their salts, isomers, whether optical, positional or geometric, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:
 - (i) Alpha-ethyltryptamine.
 - (ii) Alpha-methyltryptamine.
 - (iii) (2-aminopropyl) benzofuran (APB).
 - (iv) (2-aminopropyl)-2, 3-dihydrobenzofuran (APDB).
 - (v) Aminorex.
 - (vi) 4-bromo-2, 5-dimethoxyphenethylamine.
 - (vii) 4-bromo-2, 5-dimethoxyamphetamine.
 - (viii) Bufotenine.
 - (ix) [3-(3-carbamoylphenyl)phenyl]N-cyclohexyl carbamate (URB-597).
 - (x) Diethyltryptamine.

- (xi) 2, 5-dimethoxyamphetamine.
- (xii) Dimethyltryptamine.
- (xiii) (2-ethylaminopropyl)-benzofuran (EAPB).
- (xiv) 5-methoxy-alpha-methyltryptamine.
- (xv) 5-methoxy-3, 4-methylenedioxyamphetamine.
- (xvi) 4-methyl-2, 5-dimethoxyamphetamine.
- (xvii) (2-methylaminopropyl)-benzofuran (MAPB).
- (xviii) Ibogaine.
- (xix) Lysergic acid amide.
- (xx) Lysergic acid diethylamide.
- (xxi) Mescaline.
- (xxii) 4-methoxyamphetamine.
- (xxiii) Methoxymethylenedioxyamphetamine (MMDA).
- (xxiv) Methylenedioxyamphetamine (MDA).
- (xxv) 3, 4-methylenedioxymethamphetamine.
- (xxvi) 3, 4-methylenedioxy-N-ethylamphetamine.
- (xxvii) N-ethyl-3-piperidyl benzilate (JB-318).
- (xxviii) N-hydroxy-3, 4-methylenedioxyamphetamine.
- (xxix) N-methyl-3-piperidyl benzilate (JB-336).
- (xxx) N-methyltryptamine mimetic substances that are any substances derived from N-methyltryptamine by any substitution at the nitrogen, any substitution at the indole ring, any substitution at the alpha carbon, any substitution at the beta carbon or any combination of the above. N-methyltryptamine mimetic substances do not include melatonin (5-methoxy-n-acetyltryptamine). Substances in the N-methyltryptamine generic definition include AcO-DMT, Baeocystine, Bromo-DALT, DiPT, DMT, DPT, HO-DET, HO-DiPT, HO-DMT, HO-DPT, HO-MET, MeO-DALT, MeO-DET, MeO-DiPT, MeO-DMT, MeO-DPT, MeO-NMT, MET, NMT and Norbufotenin.
- (xxxi) N-(1-phenylcyclohexyl) ethylamine (PCE).
- (xxxii) Nabilone.
- (xxxiii) 1-(1-phenylcyclohexyl) pyrrolidine (PHP).
- (xxxiv) 1-(1-(2-thienyl)-cyclohexyl) piperidine (TCP).
- (xxxv) 1-(1-(2-thienyl)-cyclohexyl) pyrrolidine.
- (xxxvi) Para-methoxyamphetamine (PMA).
- (xxxvii) Psilacetin.
- (xxxviii) Psilocybin.
- (xxxix) Psilocyn.
- (xl) Synhexyl.
- (xli) Trifluoromethylphenylpiperazine (TFMPP).
- (xlii) Trimethoxyamphetamine (TMA).
- (xliii) 1-pentyl-3-(naphthoyl)indole (JWH-018 and isomers).
- (xliv) 1-butyl-3-(naphthoyl)indole (JWH-073 and isomers).
- (xlv) 1-hexyl-3-(naphthoyl)indole (JWH-019 and isomers).
- (xlvi) 1-pentyl-3-(4-chloro naphthoyl)indole (JWH-398 and isomers).
- (xlvii) 1-(2-(4-(morpholinyl)ethyl))-3-(naphthoyl)indole (JWH-200 and isomers).

(xlviii) 1-pentyl-3-(methoxyphenylacetyl)indole (JWH-250 and isomers).

(xlix) (2-methyl-1-propyl-1H-indol-3-yl)-1-naphthalenyl-methanone (JWH-015 and isomers).

(l) (6AR,

10AR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol) (HU-210).

(li) 5-(1,1-dimethylheptyl)-2-(3-hydroxycyclohexyl)-phenol (CP 47,497 and isomers).

(lii) 5-(1,1-dimethyloctyl)-2-(3-hydroxycyclohexyl)-phenol (cannabicyclohexanol, CP-47,497 C8 homologue and isomers).

(b) Any material, compound, mixture or preparation that contains any quantity of cannabimimetic substances and their salts, isomers, whether optical, positional or geometric, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation. For the purposes of this subdivision, "cannabimimetic substances" means any substances within the following structural classes:

(i) 2-(3-hydroxycyclohexyl)phenol with substitution at the 5-position of the phenolic ring by alkyl or alkenyl, whether or not substituted on the cyclohexyl ring to any extent. Substances in the 2-(3-hydroxycyclohexyl)phenol generic definition include CP-47,497, CP-47,497 C8-Homolog, CP-55,940 and CP-56,667.

(ii) 3-(naphthoyl)indole or 3-(naphthylmethane)indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted on the indole ring to any extent, whether or not substituted on the naphthoyl or naphthyl ring to any extent. Substances in the 3-(naphthoyl)indole generic definition include AM-678, AM-2201, JWH-004, JWH-007, JWH-009, JWH-015, JWH-016, JWH-018, JWH-019, JWH-020, JWH-046, JWH-047, JWH-048, JWH-049, JWH-050, JWH-070, JWH-071, JWH-072, JWH-073, JWH-076, JWH-079, JWH-080, JWH-081, JWH-082, JWH-094, JWH-096, JWH-098, JWH-116, JWH-120, JWH-122, JWH-148, JWH-149, JWH-175, JWH-180, JWH-181, JWH-182, JWH-184, JWH-185, JWH-189, JWH-192, JWH-193, JWH-194, JWH-195, JWH-196, JWH-197, JWH-199, JWH-200, JWH-210, JWH-211, JWH-212, JWH-213, JWH-234, JWH-235, JWH-236, JWH-239, JWH-240, JWH-241, JWH-242, JWH-262, JWH-386, JWH-387, JWH-394, JWH-395, JWH-397, JWH-398, JWH-399, JWH-400, JWH-412, JWH-413, JWH-414 and JWH-415.

(iii) 3-naphthoyl-indazole or 3-(naphthylmethane)-indazole by substitution at one or both of the nitrogen atoms of the indazole ring, whether or not further substituted on the indazole ring to any extent, whether or not substituted on the naphthoyl ring to any extent. Substances in the 3-naphthoyl-indazole or 3-(naphthylmethane)-indazole generic definition include THJ2201 and THJ-018.

(iv) 3-(naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring, whether or not further substituted in the pyrrole ring to any extent, whether or not substituted on the naphthoyl ring to any extent. Substances in the 3-(naphthoyl)pyrrole generic definition include JWH-030, JWH-145, JWH-146, JWH-147, JWH-150, JWH-156, JWH-243, JWH-244, JWH-245, JWH-246, JWH-292, JWH-293, JWH-307, JWH-308, JWH-346, JWH-348, JWH-363, JWH-364, JWH-365, JWH-367, JWH-368, JWH-369, JWH-370, JWH-371, JWH-373 and JWH-392.

(v) 1-(naphthylmethylene)indene by substitution of the 3-position of the indene ring, whether or not further substituted in the indene ring to any extent, whether or not substituted on the naphthyl ring to any extent. Substances in the 1-(naphthylmethylene)indene generic definition include JWH-176.

(vi) 3-(phenylacetyl)indole or 3-(benzoyl)indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent, whether or not substituted on the phenyl ring to any extent. Substances in the 3-(phenylacetyl)indole generic definition include AM-694, AM-2233, JWH-167, JWH-201, JWH-202, JWH-203, JWH-204, JWH-205, JWH-206, JWH-207, JWH-208, JWH-209, JWH-237, JWH-248, JWH-250, JWH-251, JWH-253, JWH-302, JWH-303, JWH-304, JWH-305, JWH-306, JWH-311, JWH-312, JWH-313, JWH-314, JWH-315, JWH-316, RCS-4, RCS-8, SR-18 and SR-19.

(vii) 3-(cyclopropylmethanone) indole or 3-(cyclobutylmethanone) indole or 3-(cyclopentylmethanone) indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent, whether or not substituted on the cyclopropyl, cyclobutyl or cyclopentyl rings to any extent. Substances in the 3-(cyclopropylmethanone) indole generic definition include UR-144, fluoro-UR-144 and XLR-11.

(viii) 3-adamantoylindole with substitution at the nitrogen atom of the indole ring, whether or not further

substituted on the indole ring to any extent, whether or not substituted on the adamantyl ring to any extent. Substances in the 3-adamantoylindole generic definition include AB-001.

(ix) N-(adamantyl)-indole-3-carboxamide with substitution at the nitrogen atom of the indole ring, whether or not further substituted on the indole ring to any extent, whether or not substituted on the adamantyl ring to any extent. Substances in the N-(adamantyl)-indole-3-carboxamide generic definition include SDB-001.

(x) Indole-3-carboxamide or indazole-3-carboxamide with substitution at the nitrogen atom of the indole ring or by substitution at one or both of the nitrogen atoms of the indazole ring, whether or not further substituted on the indole ring or the indazole ring to any extent, whether or not substituted on the nitrogen of the carboxamide to any extent. Substances in the indole-3-carboxamide or indazole-3-carboxamide generic definition include AKB-48, fluoro-AKB-48, APINACA, AB-PINACA, AB-FUBINACA, ABICA and ADBICA.

(xi) 8-Quinolinyln-indole-3-carboxylate or 8-quinolinyln-indazole-3-carboxylate by substitution at the nitrogen atom of the indole ring or by substitution at one or both of the nitrogen atoms of the indazole ring, whether or not further substituted in the indole ring or indazole ring to any extent, whether or not substituted on the quinoline ring to any extent. Substances in the 8-quinolinyln-indole-3-carboxylate or the 8-quinolinyln-indazole-3-carboxylate generic definition include PB-22, fluoro-PB-22, NPB-22 and fluoro-NPB-22.

(xii) Naphthalenyl-indole-3-carboxylate or naphthalenyl-indazole-3-carboxylate by substitution at the nitrogen atom of the indole ring or by substitution at one or both of the nitrogen atoms of the indazole ring, whether or not further substituted in the indole or indazole ring to any extent, whether or not substituted on the naphthalenyl ring to any extent. Substances in the naphthalenyl-indole-3-carboxylate or naphthalenyl-indazole-3-carboxylate generic definition include NM2201, FDU-PB-22, SDB-005 and fluoro SDB-005.

(c) Any material, compound, mixture or preparation that contains any quantity of the following substances and their salts, isomers, whether optical, positional or geometric, and salts of isomers having a potential for abuse associated with a stimulant effect on the central nervous system:

(i) Alpha-pyrrolidinobutiophenone (Alpha-PBP).

(ii) Alpha-pyrrolidinopropiophenone (Alpha-PPP).

(iii) Alpha-pyrrolidinovalerophenone (Alpha-PVP).

(iv) Alpha-pyrrolidinovalerothiophenone (Alpha-PVT).

(v) Aminoindane mimetic substances that are derived from aminoindane by any substitution at the indane ring, replacement of the amino group with another N group or any combination of the above. Substances in the aminoindane generic definition include MDAI, MMAI, IAI and AMMI.

(vi) Amphetamine.

(vii) Benzphetamine.

(viii) Benzylpiperazine (BZP).

(ix) Beta-keto-n-methylbenzodioxolylbutanamine (Butylone).

(x) Beta-keto-n-methylbenzodioxolylpentanamine (Pentylone).

(xi) Butorphanol.

(xii) Cathine ((+)-norpseudoephedrine).

(xiii) Cathinomimetic substances that are any substances derived from cathinone, (2-amino-1-phenyl-1-propanone) by any substitution at the phenyl ring, any substitution at the 3 position, any substitution at the nitrogen atom or any combination of the above substitutions.

(xiv) Cathinone.

(xv) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C-C).

(xvi) Chlorphentermine.

(xvii) Clortermine.

(xviii) Diethylpropion.

(xix) Dihydro-5H-indeno-(5,6-d)-1,3-dioxol-6-amine (MDAI).

- (xx) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E).
- (xxi) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D).
- (xxii) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C-N).
- (xxiii) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C-P).
- (xxiv) 2-(2,5-Dimethoxyphenyl)ethanamine (2C-H).
- (xxv) Dimethylcathinone (Metamfepramone).
- (xxvi) Ethcathinone.
- (xxvii) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-2).
- (xxviii) Fencamfamin.
- (xxix) Fenethylamine.
- (xxx) Fenproporex.
- (xxxi) Fluoroamphetamine.
- (xxxii) Fluoromethamphetamine.
- (xxxiii) Fluoromethcathinone.
- (xxxiv) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I).
- (xxxv) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine(2C-T-4).
- (xxxvi) Mazindol.
- (xxxvii) Mefenorex.
- (xxxviii) Methamphetamine.
- (xxxix) Methcathinone.
- (xl) Methiopropamine.
- (xli) Methoxy-alpha-pyrrolidinopropiophenone (MOPPP).
- (xlii) Methoxymethcathinone (methedrone).
- (xliii) Methoxyphenethylamine mimetic substances that are any substances derived from 2, 5-dimethoxy-phenethylamine by any substitution at the phenyl ring, any substitution at the nitrogen atom, any substitutions at the carbon atoms of the ethylamine, or any combination of the above substitutions.
- (xliv) 4-methylaminorex.
- (xlv) Methyl-a-pyrrolidinobutiophenone (MPBP).
- (xlvi) Methylenedioxy-alpha-pyrrolidinopropiophenone (MDPPP).
- (xlvii) Methylenedioxyethcathinone (Ethylone).
- (xlviii) Methylenedioxymethcathinone (Methylone).
- (xlix) Methylenedioxypyrovalerone (MDPV).
- (l) Methylmethcathinone (Mephedrone).
- (li) Methylphenidate.
- (lii) Modafinil.
- (liii) Naphthylpyrovalerone (Naphyrone).
- (liv) N-ethylamphetamine.
- (lv) N, N-dimethylamphetamine.
- (lvi) Pemoline.
- (lvii) Phendimetrazine.
- (lviii) Phenmetrazine.

(lix) Phentermine.

(lx) Pipradol.

(lxi) Propylhexedrine.

(lxii) Pyrovalerone.

(lxiii) Sibutramine.

(lxiv) Spa ((-)-1-dimethylamino-1,2-diphenylethane).

(d) Any material, compound, mixture or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(i) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, unless specifically excepted.

(ii) Alprazolam.

(iii) Bromazepam.

(iv) Camazepam.

(v) Carisoprodol.

(vi) Chloral betaine.

(vii) Chloral hydrate.

(viii) Chlordiazepoxide.

(ix) Chlorhexadol.

(x) Clobazam.

(xi) Clonazepam.

(xii) Clorazepate.

(xiii) Clotiazepam.

(xiv) Cloxazolam.

(xv) Delorazepam.

(xvi) Diazepam.

(xvii) Dichloralphenazone.

(xviii) Estazolam.

(xix) Ethchlorvynol.

(xx) Ethinamate.

(xxi) Ethyl loflazepate.

(xxii) Etizolam.

(xxiii) Fenfluramine.

(xxiv) Fludiazepam.

(xxv) Flunitrazepam.

(xxvi) Flurazepam.

(xxvii) Gamma hydroxy butyrate.

(xxviii) Glutethimide.

(xxix) Halazepam.

(xxx) Haloxazolam.

(xxxi) Hydroxyphenacyclidine (HO-PCP).

(xxxii) Ketamine.

- (xxxiii) Ketazolam.
- (xxxiv) Loprazolam.
- (xxxv) Lorazepam.
- (xxxvi) Lormetazepam.
- (xxxvii) Lysergic acid.
- (xxxviii) Mebutamate.
- (xxxix) Mecloqualone.
- (xl) Medazepam.
- (xli) Meprobamate.
- (xlii) Methaqualone.
- (xliii) Methohexital.
- (xliv) 2-(methoxyphenyl)-2-(ethylamino)cyclohexanone(Methoxetamine).
- (xlv) 2-(methoxyphenyl)-2-(methylamino)cyclohexanone(Methoxyketamine).
- (xlvi) Methoxyphencyclidine(MeO-PCP).
- (xlvii) Methyprylon.
- (xlviii) Midazolam.
- (xlix) Nimetazepam.
- (l) Nitrazepam.
- (li) Nordiazepam.
- (lii) Oxazepam.
- (liii) Oxazolam.
- (liv) Paraldehyde.
- (lv) Petrichloral.
- (lvi) Phencyclidine (PCP).
- (lvii) Phencyclidine mimetic substances that are any substances derived from phenylcyclohexylpiperidine by any substitution at the phenyl ring, any substitution at the piperidine ring, any substitution at the cyclohexyl ring, any replacement of the phenyl ring or any combination of the above. Substances in the phenylcyclohexylpiperidine generic definition include Amino-PCP, BCP, Bromo-PCP, BTCP, Chloro-PCP, Fluoro-PCP, HO-PCP, MeO-PCP, Methyl-PCP, Nitro-PCP, Oxo-PCP, PCE, PCM, PCPY, TCP and TCPY.
- (lviii) Pinazepam.
- (lix) Prazepam.
- (lx) Scopolamine.
- (lxi) Sulfondiethylmethane.
- (lxii) Sulfonethylmethane.
- (lxiii) Sulfonmethane.
- (lxiv) Quazepam.
- (lxv) Temazepam.
- (lxvi) Tetrazepam.
- (lxvii) Tiletamine.
- (lxviii) Triazolam.
- (lxix) Zaleplon.
- (lxx) Zolazepam.

(lxxi) Zolpidem.

(lxxii) Zopiclone.

(e) Any material, compound, mixture or preparation that contains any quantity of the following anabolic steroids and their salts, isomers or esters:

(i) Boldenone.

(ii) Clostebol (4-chlorotestosterone).

(iii) Dehydrochloromethyltestosterone.

(iv) Drostanolone.

(v) Ethylestrenol.

(vi) Fluoxymesterone.

(vii) Formebolone (formebolone).

(viii) Mesterolone.

(ix) Methandriol.

(x) Methandrostenolone (methandienone).

(xi) Methenolone.

(xii) Methyltestosterone.

(xiii) Mibolerone.

(xiv) Nandrolone.

(xv) Norethandrolon.

(xvi) Oxandrolone.

(xvii) Oxymesterone.

(xviii) Oxymetholone.

(xix) Stanolone (4-dihydrotestosterone).

(xx) Stanozolol.

(xxi) Testolactone.

(xxii) Testosterone.

(xxiii) Trenbolone.

7. "Deliver" means the actual, constructive or attempted exchange from one person to another, whether or not there is an agency relationship.

8. "Director" means the director of the department of health services.

9. "Dispense" means distribute, leave with, give away, dispose of or deliver.

10. "Drug court program" means a program that is established pursuant to section 13-3422 by the presiding judge of the superior court in cooperation with the county attorney in a county for the purpose of prosecuting, adjudicating and treating drug dependent persons who meet the criteria and guidelines for entry into the program that are developed and agreed on by the presiding judge and the prosecutor.

11. "Drug dependent person" means a person who is using a substance that is listed in paragraph 6, 19, 20, 21 or 28 of this section and who is in a state of psychological or physical dependence, or both, arising from the use of that substance.

12. "Federal act" has the same meaning prescribed in section 32-1901.

13. "Isoamidone" means any substance identified chemically as (4-4-diphenyl-5-methyl-6-dimethylaminohexanone-3), or any salt of such substance, by whatever trade name designated.

14. "Isonipecaïne" means any substance identified chemically as (1-methyl-4-phenyl-piperidine-4-carboxylic acid

ethyl ester), or any salt of such substance, by whatever trade name designated.

15. "Ketobemidone" means any substance identified chemically as (4-(3-hydroxyphenyl)-1-methyl-4-piperidylethyl ketone hydrochloride), or any salt of such substance, by whatever trade name designated.

16. "Licensed" or "permitted" means authorized by the laws of this state to do certain things.

17. "Manufacture" means produce, prepare, propagate, compound, mix or process, directly or indirectly, by extraction from substances of natural origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis. Manufacture includes any packaging or repackaging or labeling or relabeling of containers. Manufacture does not include any producing, preparing, propagating, compounding, mixing, processing, packaging or labeling done in conformity with applicable state and local laws and rules by a licensed practitioner incident to and in the course of his licensed practice.

18. "Manufacturer" means a person who manufactures a narcotic or dangerous drug or other substance controlled by this chapter.

19. "Marijuana" means all parts of any plant of the genus cannabis, from which the resin has not been extracted, whether growing or not, and the seeds of such plant. Marijuana does not include the mature stalks of such plant or the sterilized seed of such plant which is incapable of germination.

20. "Narcotic drugs" means the following, whether of natural or synthetic origin and any substance neither chemically nor physically distinguishable from them:

(a) Acetyl-alpha-methylfentanyl.

(b) Acetylmethadol.

(c) Alfentanil.

(d) Allyprodine.

(e) Alphacetylmethadol.

(f) Alphameprodine.

(g) Alphamethadol.

(h) Alpha-methylfentanyl.

(i) Alpha-methylthiofentanyl.

(j) Alphaprodine.

(k) Amidone (methadone).

(l) Anileridine.

(m) Benzethidine.

(n) Benzylfentanyl.

(o) Betacetylmethadol.

(p) Beta-hydroxyfentanyl.

(q) Beta-hydroxy-3-methylfentanyl.

(r) Betameprodine.

(s) Betamethadol.

(t) Betaprodine.

(u) Bezitramide.

(v) Buprenorphine and its salts.

(w) Cannabis.

(x) Carfentanil.

(y) 4-chloro-n-[1-[2-(4-nitrophenyl)ethyl]-2-piperidinylidene]benzenesulfonamide (W-18).

(z) 4-chloro-n-[1-(2-phenylethyl)-2-piperidinylidene] benzenesulfonamide (W-15).

- (aa) Clonitazene.
- (bb) Coca leaves.
- (cc) 1-cyclohexyl-4-(1,2-diphenylethyl)piperazine (MT-45).
- (dd) Dextromoramide.
- (ee) Dextropropoxyphene.
- (ff) Diampromide.
- (gg) 3,4-dichloro-n-[1-(dimethylamino)cyclohexyl]methyl)-benzamide (AH-7921).
- (hh) 3,4-dichloro-n-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide (U-47700).
- (ii) Diethylthiambutene.
- (jj) Difenoazin.
- (kk) Dihydrocodeine.
- (ll) Dimenoxadol.
- (mm) Dimepheptanol.
- (nn) Dimethylthiambutene.
- (oo) Dioxaphetyl butyrate.
- (pp) Diphenidine (DEP).
- (qq) Diphenoxylate.
- (rr) Dipipanone.
- (ss) Ephedrine.
- (tt) Ethylmethylthiambutene.
- (uu) Etonitazene.
- (vv) Etoxadine.
- (ww) Fentanyl.
- (xx) Fentanyl mimetic substances that are any substances derived from fentanyl by any substitution in the phenethyl group, any substitution in the piperidine ring, any substitution in the aniline ring, any replacement of the phenyl portion of the phenethyl group, any replacement of the N-propionyl group or any combination of the above.
- (yy) Furethidine.
- (zz) Hydroxypethidine.
- (aaa) Isoamidone (isomethadone).
- (bbb) Isophenidine.
- (ccc) Pethidine (meperidine).
- (ddd) Ketobemidone.
- (eee) Lefetamine.
- (fff) Levomethorphan.
- (ggg) Levomoramide.
- (hhh) Levophenacymorphan.
- (iii) Levorphanol.
- (jjj) Metazocine.
- (kkk) Methoxphenidine (MXP).
- (lll) 3-methylfentanyl.

(mmm) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP).

(nnn) 3-methylthiofentanyl.

(ooo) Morpheridine.

(ppp) Noracymethadol.

(qqq) Norlevorphanol.

(rrr) Normethadone.

(sss) Norpipanone.

(ttt) Opium.

(uuu) Para-fluorofentanyl.

(vvv) Pentazocine.

(www) Phenadoxone.

(xxx) Phenampromide.

(yyy) Phenazocine.

(zzz) 1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine (PEPAP).

(aaaa) Phenomorphan.

(bbbb) Phenoperidine.

(cccc) Piminodine.

(dddd) Piritramide.

(eeee) Proheptazine.

(ffff) Properidine.

(gggg) Propiram.

(hhhh) Racemethorphan.

(iiii) Racemoramide.

(jjjj) Racemorphan.

(kkkk) Remifentanil.

(llll) Sufentanil.

(mmmm) Thenylfentanyl.

(nnnn) Thiofentanyl.

(oooo) Tilidine.

(pppp) Tramadol, 2-[(dimethylamino)methyl]-1-(3-methoxyphenyl) cyclohexanol, and its salts, optical and geometric isomers, and its salts of isomers.

(qqqq) Trimeperidine.

21. "Opium" means any compound, manufacture, salt, isomer, salt of isomer, derivative, mixture or preparation of the following, but does not include apomorphine or any of its salts:

- (a) Acetorphine.
- (b) Acetyldihydrocodeine.
- (c) Benzylmorphine.
- (d) Codeine.
- (e) Codeine methylbromide.
- (f) Codeine-N-oxide.
- (g) Cyprenorphine.

- (h) Desomorphine.
- (i) Dihydromorphine.
- (j) Drotebanol.
- (k) Ethylmorphine.
- (l) Etorphine.
- (m) Heroin.
- (n) Hydrocodone.
- (o) Hydromorphanol.
- (p) Hydromorphone.
- (q) Levo-alphaacetylmethadol.
- (r) Methyldesorphine.
- (s) Methyldihydromorphine.
- (t) Metopon.
- (u) Morphine.
- (v) Morphine methylbromide.
- (w) Morphine methylsulfonate.
- (x) Morphine-N-oxide.
- (y) Myrophine.
- (z) Nalorphine.
- (aa) Nicocodeine.
- (bb) Nicomorphine.
- (cc) Normorphine.
- (dd) Oxycodone.
- (ee) Oxymorphone.
- (ff) Pholcodine.
- (gg) Thebacon.
- (hh) Thebaine.

22. "Ordinary ephedrine, pseudoephedrine, (-)-norpseudoephedrine or phenylpropanolamine product" means a product that contains ephedrine, pseudoephedrine, (-)-norpseudoephedrine or phenylpropanolamine and that is all of the following:

- (a) Approved for sale under the federal act.
- (b) Labeled, advertised and marketed only for an indication that is approved by the federal food and drug administration.
- (c) Either:
 - (i) A nonliquid that is sold in package sizes of not more than three grams of ephedrine, pseudoephedrine, (-)-norpseudoephedrine or phenylpropanolamine and that is packaged in blister packs containing not more than two dosage units or, if the use of blister packs is technically infeasible, that is packaged in unit dose packets or pouches.
 - (ii) A liquid that is sold in package sizes of not more than three grams of ephedrine, pseudoephedrine, (-)-norpseudoephedrine or phenylpropanolamine.

23. "Peyote" means any part of a plant of the genus *Lophophora*, known as the mescal button.

24. "Pharmacy" means a licensed business where drugs are compounded or dispensed by a licensed pharmacist.

25. "Practitioner" means a person licensed to prescribe and administer drugs.

26. "Precursor chemical I" means any material, compound, mixture or preparation which contains any quantity of the following substances and their salts, optical isomers or salts of optical isomers:

- (a) N-acetylanthranilic acid.
- (b) Anthranilic acid.
- (c) Ephedrine.
- (d) Ergotamine.
- (e) Isosafrole.
- (f) Lysergic acid.
- (g) Methylamine.
- (h) N-ethylephedrine.
- (i) N-ethylpseudoephedrine.
- (j) N-methylephedrine.
- (k) N-methylpseudoephedrine.
- (l) Norephedrine.
- (m) (-)-Norpseudoephedrine.
- (n) Phenylacetic acid.
- (o) Phenylpropanolamine.
- (p) Piperidine.
- (q) Pseudoephedrine.

27. "Precursor chemical II" means any material, compound, mixture or preparation which contains any quantity of the following substances and their salts, optical isomers or salts of optical isomers:

- (a) 4-cyano-2-dimethylamino-4, 4-diphenyl butane.
- (b) 4-cyano-1-methyl-4-phenylpiperidine.
- (c) Chlorephedrine.
- (d) Chlorpseudoephedrine.
- (e) Ethyl-4-phenylpiperidine-4-carboxylate.
- (f) 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid.
- (g) 1-methyl-4-phenylpiperidine-4-carboxylic acid.
- (h) N-formyl amphetamine.
- (i) N-formyl methamphetamine.
- (j) Phenyl-2-propanone.
- (k) 1-piperidinocyclohexane carbonitrile.
- (l) 1-pyrrolidinocyclohexane carbonitrile.

28. "Prescription-only drug" does not include a dangerous drug or narcotic drug but means:

(a) Any drug which because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not generally recognized among experts, qualified by scientific training and experience to evaluate its safety and efficacy, as safe for use except by or under the supervision of a medical practitioner.

(b) Any drug that is limited by an approved new drug application under the federal act or section 32-1962 to use under the supervision of a medical practitioner.

(c) Every potentially harmful drug, the labeling of which does not bear or contain full and adequate directions for

use by the consumer.

(d) Any drug required by the federal act to bear on its label the legend "Caution: Federal law prohibits dispensing without prescription" or "Rx only".

29. "Produce" means grow, plant, cultivate, harvest, dry, process or prepare for sale.

30. "Regulated chemical" means the following substances in bulk form that are not a useful part of an otherwise lawful product:

(a) Acetic anhydride.

(b) Hypophosphorous acid.

(c) Iodine.

(d) Sodium acetate.

(e) Red phosphorus.

(f) Gamma butyrolactone (GBL).

(g) 1, 4-butanediol.

(h) Butyrolactone.

(i) 1, 2 butanolide.

(j) 2-oxalalone.

(k) Tetrahydro-2-furanone.

(l) Dihydro-2(3H)-furanone.

(m) Tetramethylene glycol.

31. "Retailer" means either:

(a) A person other than a practitioner who sells any precursor chemical or regulated chemical to another person for purposes of consumption and not resale, whether or not the person possesses a permit issued pursuant to title 32, chapter 18.

(b) A person other than a manufacturer or wholesaler who purchases, receives or acquires more than twenty-four grams of a precursor chemical.

32. "Sale" or "sell" means an exchange for anything of value or advantage, present or prospective.

33. "Sale for personal use" means the retail sale for a legitimate medical use in a single transaction to an individual customer, to an employer for dispensing to employees from first aid kits or medicine chests or to a school for administration pursuant to section 15-344.

34. "Scientific purpose" means research, teaching or chemical analysis.

35. "Suspicious transaction" means a transaction to which any of the following applies:

(a) A report is required under the federal act.

(b) The circumstances would lead a reasonable person to believe that any person is attempting to possess a precursor chemical or regulated chemical for the purpose of unlawful manufacture of a dangerous drug or narcotic drug, based on such factors as the amount involved, the method of payment, the method of delivery and any past dealings with any participant.

(c) The transaction involves payment for precursor or regulated chemicals in cash or money orders in a total amount of more than two hundred dollars.

(d) The transaction involves a sale, a transfer or furnishing to a retailer for resale without a prescription of ephedrine, pseudoephedrine, (-)-norpseudoephedrine or phenylpropanolamine that is not an ordinary ephedrine, pseudoephedrine, (-)-norpseudoephedrine or phenylpropanolamine product.

36. "Threshold amount" means a weight, market value or other form of measurement of an unlawful substance as follows:

(a) One gram of heroin.

- (b) Nine grams of cocaine.
- (c) Seven hundred fifty milligrams of cocaine base or hydrolyzed cocaine.
- (d) Four grams or 50 milliliters of PCP.
- (e) Nine grams of methamphetamine, including methamphetamine in liquid suspension.
- (f) Nine grams of amphetamine, including amphetamine in liquid suspension.
- (g) One-half milliliter of lysergic acid diethylamide, or in the case of blotter dosage units fifty dosage units.
- (h) Two pounds of marijuana.
- (i) For any combination consisting solely of those unlawful substances listed in subdivisions (a) through (h) of this paragraph, an amount equal to or in excess of the threshold amount, as determined by the application of section 13-3420.
- (j) For any unlawful substance not listed in subdivisions (a) through (h) of this paragraph or any combination involving any unlawful substance not listed in subdivisions (a) through (h) of this paragraph, a value of at least one thousand dollars.

37. "Transfer" means furnish, deliver or give away.

38. "Vapor-releasing substance containing a toxic substance" means a material which releases vapors or fumes containing any of the following:

- (a) Ketones, including acetone, methyl ethyl ketone, mibk, miak, isophorone and mesityl oxide.
- (b) Hydrocarbons, including propane, butane, pentane, hexane, heptane and halogenated hydrocarbons.
- (c) Ethylene dichloride.
- (d) Pentachlorophenol.
- (e) Chloroform.
- (f) Methylene chloride.
- (g) Trichloroethylene.
- (h) Difluoroethane.
- (i) Tetrafluoroethane.
- (j) Aldehydes, including formaldehyde.
- (k) Acetates, including ethyl acetate and butyl acetate.
- (l) Aromatics, including benzene, toluene, xylene, ethylbenzene and cumene.
- (m) Alcohols, including methyl alcohol, ethyl alcohol, isopropyl alcohol, butyl alcohol and diacetone alcohol.
- (n) Ether, including Diethyl ether and petroleum ether.
- (o) Nitrous oxide.
- (p) Amyl nitrite.
- (q) Isobutyl nitrite.

39. "Weight" unless otherwise specified includes the entire weight of any mixture or substance that contains a detectable amount of an unlawful substance. If a mixture or substance contains more than one unlawful substance, the weight of the entire mixture or substance is assigned to the unlawful substance that results in the greater offense. If a mixture or substance contains lysergic acid diethylamide, the offense that results from the unlawful substance shall be based on the greater offense as determined by the entire weight of the mixture or substance or the number of blotter dosage units. For the purposes of this paragraph, "mixture" means any combination of substances from which the unlawful substance cannot be removed without a chemical process.

40. "Wholesaler" means a person who in the usual course of business lawfully supplies narcotic drugs, dangerous drugs, precursor chemicals or regulated chemicals that he himself has not produced or prepared, but not to a person for the purpose of consumption by the person, whether or not the wholesaler has a permit that is issued pursuant to title 32, chapter 18. Wholesaler includes a person who sells, delivers or dispenses a precursor

chemical in an amount or under circumstances that would require registration as a distributor of precursor chemicals under the federal act.

32-1101. Definitions

A. In this chapter, unless the context otherwise requires:

1. "Advertisement" means any written or oral publication, dissemination, solicitation or circulation that is intended to directly or indirectly induce any person to enter into an agreement for contracting services with a contractor, including business cards and telephone directory display advertisements.

2. "Commercial contractor" is synonymous with the terms "commercial builder", "industrial builder" and "public works builder" and means any person, firm, partnership, corporation, association or other organization, or any combination, that, for compensation, undertakes to or offers to undertake to, purports to have the capacity to undertake to, submits a bid to, does himself or by or through others, or directly or indirectly supervises others, except within residential property lines, to:

(a) Construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, excavation or other structure, project, development or improvement, or to do any part thereof, including the erection of scaffolding or any other structure or work in connection with the construction.

(b) Connect such a structure or improvements to utility service lines and metering devices and the sewer line.

(c) Provide mechanical or structural service for any such structure or improvements.

3. "Contractor" is synonymous with the term "builder" and means any person, firm, partnership, corporation, association or other organization, or a combination of any of them, that, for compensation, undertakes to or offers to undertake to, purports to have the capacity to undertake to, submits a bid or responds to a request for qualification or a request for proposals for construction services to, does himself or by or through others, or directly or indirectly supervises others to:

(a) Construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, excavation or other structure, project, development or improvement, or to do any part thereof, including the erection of scaffolding or any other structure or work in connection with the construction.

(b) Connect such a structure or improvements to utility service lines and metering devices and the sewer line.

(c) Provide mechanical or structural service for any such structure or improvements.

4. "Dual licensed contractor" is synonymous with the term "commercial and residential builder" and means any person, firm, partnership, corporation, association or other organization, or any combination, that undertakes to or offers to undertake to, purports to have the capacity to undertake to, submits a bid to, does himself or by or through others, or directly or indirectly supervises others under a single license on commercial or residential property to:

(a) Construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, excavation or other structure or improvement, including any appurtenances, or to do any part thereof.

(b) Connect such a structure or improvements to utility service lines and metering devices and the sewer line.

(c) Provide mechanical or structural service for any such structure or improvements.

5. "License" means an authorization for the person who is listed on the electronic, paper or other records maintained by the registrar to act in the capacity of a contractor.

6. "Named on a license" means required to be identified pursuant to section 32-1122, subsection B.

7. "Person" means a corporation, company, partnership, firm, association, trust, society or natural person.

8. "Registrar" means the registrar of contractors.

9. "Residential contractor" is synonymous with the term "residential builder" and means any person, firm, partnership, corporation, association or other organization, or a combination of any of them, that undertakes to or offers to undertake to, purports to have the capacity to undertake to, submits a bid to, or does himself or by or through others, within residential property lines:

(a) Construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any residential structure, such

as houses, townhouses, condominiums or cooperative units. Residential structures also include apartment complexes of four units or less and any appurtenances on or within residential property lines.

(b) Connect such a residential structure to utility service lines, metering devices or sewer lines.

(c) Provide mechanical or structural service for any such residential structure.

B. "Contractor" includes subcontractors, specialty contractors, floor covering contractors, landscape contractors, other than gardeners, and consultants representing themselves as having the ability to supervise or manage a construction project for the benefit of the property owner, including the hiring and firing of specialty contractors, the scheduling of work on the project and the selection and purchasing of construction material.

C. For the purposes of this chapter, residential contractor does not include an owner making improvements pursuant to section 32-1121, subsection A, paragraph 5.

D. Only contractors as defined in this section are licensed and regulated by this chapter.

32-1601. Definitions

In this chapter, unless the context otherwise requires:

1. "Absolute discharge from the sentence" means completion of any sentence, including imprisonment, probation, parole, community supervision or any form of court supervision.

2. "Appropriate health care professional" means a licensed health care professional whose scope of practice, education, experience, training and accreditation are appropriate for the situation or condition of the patient who is the subject of a consultation or referral.

3. "Approval" means that a regulated training or educational program to prepare persons for licensure, certification or registration has met standards established by the board.

4. "Board" means the Arizona state board of nursing.

5. "Certified nurse midwife" means a registered nurse who:

(a) Is certified by the board.

(b) Has completed a nurse midwife education program approved or recognized by the board and educational requirements prescribed by the board by rule.

(c) Holds a national certification as a certified nurse midwife from a national certifying body recognized by the board.

(d) Has an expanded scope of practice in the provision of health care services for women from adolescence to beyond menopause, including antepartum, intrapartum, postpartum, reproductive, gynecologic and primary care, for normal newborns during the first twenty-eight days of life and for men for the treatment of sexually transmitted diseases. The expanded scope of practice under this subdivision includes:

(i) Assessing patients, synthesizing and analyzing data and understanding and applying principles of health care at an advanced level.

(ii) Managing the physical and psychosocial health care of patients.

(iii) Analyzing multiple sources of data, identifying alternative possibilities as to the nature of a health care problem and selecting, implementing and evaluating appropriate treatment.

(iv) Making independent decisions in solving complex patient care problems.

(v) Diagnosing, performing diagnostic and therapeutic procedures and prescribing, administering and dispensing therapeutic measures, including legend drugs, medical devices and controlled substances, within the scope of the certified nurse midwife practice after meeting requirements established by the board.

(vi) Recognizing the limits of the nurse's knowledge and experience by consulting with or referring patients to other appropriate health care professionals if a situation or condition occurs that is beyond the knowledge and experience of the nurse or if the referral will protect the health and welfare of the patient.

(vii) Delegating to a medical assistant pursuant to section 32-1456.

(viii) Performing additional acts that require education and training as prescribed by the board and that are

recognized by the nursing profession as proper to be performed by a certified nurse midwife.

6. "Certified nursing assistant" means a person who is registered on the registry of nursing assistants pursuant to this chapter to provide or assist in the delivery of nursing or nursing-related services under the supervision and direction of a licensed nursing staff member. Certified nursing assistant does not include a person who:

- (a) Is a licensed health care professional.
- (b) Volunteers to provide nursing assistant services without monetary compensation.
- (c) Is a licensed nursing assistant.

7. "Certified registered nurse" means a registered nurse who has been certified by a national nursing credentialing agency recognized by the board.

8. "Certified registered nurse anesthetist" means a registered nurse who meets the requirements of section 32-1634.03 and who practices pursuant to the requirements of section 32-1634.04.

9. "Clinical nurse specialist" means a registered nurse who:

- (a) Is certified by the board as a clinical nurse specialist.
- (b) Holds a graduate degree with a major in nursing and completes educational requirements as prescribed by the board by rule.
- (c) Is nationally certified as a clinical nurse specialist or, if certification is not available, provides proof of competence to the board.
- (d) Has an expanded scope of practice based on advanced education in a clinical nursing specialty that includes:
 - (i) Assessing clients, synthesizing and analyzing data and understanding and applying nursing principles at an advanced level.
 - (ii) Managing directly and indirectly a client's physical and psychosocial health status.
 - (iii) Analyzing multiple sources of data, identifying alternative possibilities as to the nature of a health care problem and selecting appropriate nursing interventions.
 - (iv) Developing, planning and guiding programs of care for populations of patients.
 - (v) Making independent nursing decisions to solve complex client care problems.
 - (vi) Using research skills and acquiring and applying critical new knowledge and technologies to nursing practice.
 - (vii) Prescribing and dispensing durable medical equipment.
 - (viii) Consulting with or referring a client to other health care providers based on assessment of the client's health status and needs.
 - (ix) Facilitating collaboration with other disciplines to attain the desired client outcome across the continuum of care.
- (x) Performing additional acts that require education and training as prescribed by the board and that are recognized by the nursing profession as proper to be performed by a clinical nurse specialist.

10. "Conditional license" or "conditional approval" means a license or approval that specifies the conditions under which the regulated party is allowed to practice or to operate and that is prescribed by the board pursuant to section 32-1644 or 32-1663.

11. "Delegation" means transferring to a competent individual the authority to perform a selected nursing task in a designated situation in which the nurse making the delegation retains accountability for the delegation.

12. "Disciplinary action" means a regulatory sanction of a license, certificate or approval pursuant to this chapter in any combination of the following:

- (a) A civil penalty for each violation of this chapter, not to exceed one thousand dollars for each violation.
- (b) Restitution made to an aggrieved party.
- (c) A decree of censure.
- (d) A conditional license or a conditional approval that fixed a period and terms of probation.

- (e) Limited licensure.
 - (f) Suspension of a license, a certificate or an approval.
 - (g) Voluntary surrender of a license, a certificate or an approval.
 - (h) Revocation of a license, a certificate or an approval.
13. "Health care institution" has the same meaning prescribed in section 36-401.
14. "Licensed nursing assistant" means a person who is licensed pursuant to this chapter to provide or assist in the delivery of nursing or nursing-related services under the supervision and direction of a licensed nursing staff member. Licensed nursing assistant does not include a person who:
- (a) Is a licensed health care professional.
 - (b) Volunteers to provide nursing assistant services without monetary compensation.
 - (c) Is a certified nursing assistant.
15. "Licensee" means a person who is licensed pursuant to this chapter or in a party state as defined in section 32-1668.
16. "Limited license" means a license that restricts the scope or setting of a licensee's practice.
17. "Medication order" means a written or verbal communication given by a certified registered nurse anesthetist to a health care professional to administer a drug or medication, including controlled substances.
18. "Practical nurse" means a person who holds a practical nurse license issued pursuant to this chapter or pursuant to a multistate compact privilege and who practices practical nursing as defined in this section.
19. "Practical nursing" includes the following activities that are performed under the supervision of a physician or a registered nurse:
- (a) Contributing to the assessment of the health status of individuals and groups.
 - (b) Participating in the development and modification of the strategy of care.
 - (c) Implementing aspects of the strategy of care within the nurse's scope of practice.
 - (d) Maintaining safe and effective nursing care that is rendered directly or indirectly.
 - (e) Participating in the evaluation of responses to interventions.
 - (f) Delegating nursing activities within the scope of practice of a practical nurse.
 - (g) Performing additional acts that require education and training as prescribed by the board and that are recognized by the nursing profession as proper to be performed by a practical nurse.
20. "Presence" means within the same health care institution or office as specified in section 32-1634.04, subsection A, and available as necessary.
21. "Registered nurse" or "professional nurse" means a person who practices registered nursing and who holds a registered nurse license issued pursuant to this chapter or pursuant to a multistate compact privilege.
22. "Registered nurse practitioner" means a registered nurse who:
- (a) Is certified by the board.
 - (b) Has completed a nurse practitioner education program approved or recognized by the board and educational requirements prescribed by the board by rule.
 - (c) If applying for certification after July 1, 2004, holds national certification as a nurse practitioner from a national certifying body recognized by the board.
 - (d) Has an expanded scope of practice within a specialty area that includes:
 - (i) Assessing clients, synthesizing and analyzing data and understanding and applying principles of health care at an advanced level.
 - (ii) Managing the physical and psychosocial health status of patients.
 - (iii) Analyzing multiple sources of data, identifying alternative possibilities as to the nature of a health care problem and selecting, implementing and evaluating appropriate treatment.

- (iv) Making independent decisions in solving complex patient care problems.
- (v) Diagnosing, performing diagnostic and therapeutic procedures, and prescribing, administering and dispensing therapeutic measures, including legend drugs, medical devices and controlled substances within the scope of registered nurse practitioner practice on meeting the requirements established by the board.
- (vi) Recognizing the limits of the nurse's knowledge and experience by consulting with or referring patients to other appropriate health care professionals if a situation or condition occurs that is beyond the knowledge and experience of the nurse or if the referral will protect the health and welfare of the patient.
- (vii) Delegating to a medical assistant pursuant to section 32-1456.
- (viii) Performing additional acts that require education and training as prescribed by the board and that are recognized by the nursing profession as proper to be performed by a nurse practitioner.

23. "Registered nursing" includes the following:

- (a) Diagnosing and treating human responses to actual or potential health problems.
- (b) Assisting individuals and groups to maintain or attain optimal health by implementing a strategy of care to accomplish defined goals and evaluating responses to care and treatment.
- (c) Assessing the health status of individuals and groups.
- (d) Establishing a nursing diagnosis.
- (e) Establishing goals to meet identified health care needs.
- (f) Prescribing nursing interventions to implement a strategy of care.
- (g) Delegating nursing interventions to others who are qualified to do so.
- (h) Providing for the maintenance of safe and effective nursing care that is rendered directly or indirectly.
- (i) Evaluating responses to interventions.
- (j) Teaching nursing knowledge and skills.
- (k) Managing and supervising the practice of nursing.
- (l) Consulting and coordinating with other health care professionals in the management of health care.
- (m) Performing additional acts that require education and training as prescribed by the board and that are recognized by the nursing profession as proper to be performed by a registered nurse.

24. "Registry of nursing assistants" means the nursing assistants registry maintained by the board pursuant to the omnibus budget reconciliation act of 1987 (P.L. 100-203; 101 Stat. 1330), as amended by the medicare catastrophic coverage act of 1988 (P.L. 100-360; 102 Stat. 683).

25. "Regulated party" means any person or entity that is licensed, certified, registered, recognized or approved pursuant to this chapter.

26. "Unprofessional conduct" includes the following, whether occurring in this state or elsewhere:

- (a) Committing fraud or deceit in obtaining, attempting to obtain or renewing a license or a certificate issued pursuant to this chapter.
- (b) Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.
- (c) Aiding or abetting in a criminal abortion or attempting, agreeing or offering to procure or assist in a criminal abortion.
- (d) Any conduct or practice that is or might be harmful or dangerous to the health of a patient or the public.
- (e) Being mentally incompetent or physically unsafe to a degree that is or might be harmful or dangerous to the health of a patient or the public.
- (f) Having a license, certificate, permit or registration to practice a health care profession denied, suspended, conditioned, limited or revoked in another jurisdiction and not reinstated by that jurisdiction.

- (g) Wilfully or repeatedly violating a provision of this chapter or a rule adopted pursuant to this chapter.
- (h) Committing an act that deceives, defrauds or harms the public.
- (i) Failing to comply with a stipulated agreement, consent agreement or board order.
- (j) Violating this chapter or a rule that is adopted by the board pursuant to this chapter.
- (k) Failing to report to the board any evidence that a registered or practical nurse or a nursing assistant is or may be:
 - (i) Incompetent to practice.
 - (ii) Guilty of unprofessional conduct.
 - (iii) Mentally or physically unable to safely practice nursing or to perform nursing-related duties. A nurse who is providing therapeutic counseling for a nurse who is in a drug rehabilitation program is required to report that nurse only if the nurse providing therapeutic counseling has personal knowledge that patient safety is being jeopardized.
- (l) Failing to self-report a conviction for a felony or undesignated offense within ten days after the conviction.
- (m) Cheating or assisting another to cheat on a licensure or certification examination.

32-1901. Definitions

In this chapter, unless the context otherwise requires:

1. "Administer" means the direct application of a controlled substance, prescription-only drug, dangerous drug or narcotic drug, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by a practitioner or by the practitioner's authorized agent or the patient or research subject at the direction of the practitioner.
2. "Advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of drugs, devices, poisons or hazardous substances.
3. "Advisory letter" means a nondisciplinary letter to notify a licensee or permittee that either:
 - (a) While there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee or permittee.
 - (b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.
 - (c) While the licensee or permittee has demonstrated substantial compliance through rehabilitation, remediation or reeducation that has mitigated the need for disciplinary action, the board believes that repetition of the activities that led to the investigation may result in further board action against the licensee or permittee.
4. "Antiseptic", if a drug is represented as such on its label, means a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment or dusting powder or other use that involves prolonged contact with the body.
5. "Authorized officers of the law" means legally empowered peace officers, compliance officers of the board of pharmacy and agents of the division of narcotics enforcement and criminal intelligence of the department of public safety.
6. "Automated prescription-dispensing kiosk" means a mechanical system that is operated as an extension of a pharmacy, that maintains all transaction information within the pharmacy operating system, that is separately permitted from the pharmacy and that performs operations that either:
 - (a) Accept a prescription or refill order, store prepackaged or repackaged medications, label and dispense patient-specific prescriptions and provide counseling on new or refilled prescriptions.
 - (b) Dispense or deliver a prescription or refill that has been prepared by or on behalf of the pharmacy that oversees the automated prescription-dispensing kiosk.
7. "Board" or "board of pharmacy" means the Arizona state board of pharmacy.

8. "Certificate of composition" means a list of a product's ingredients.
9. "Certificate of free sale" means a document that authenticates a product that is generally and freely sold in domestic or international channels of trade.
10. "Color additive" means a material that either:
- (a) Is any dye, pigment or other substance made by a process of synthesis or similar artifice, or extracted, isolated or otherwise derived, with or without intermediate or final change of identity, from any vegetable, animal, mineral or other source.
- (b) If added or applied to a drug, or to the human body or any part of the human body, is capable of imparting color, except that color additive does not include any material that has been or may be exempted under the federal act. Color includes black, white and intermediate grays.
11. "Compounding" means the preparation, mixing, assembling, packaging or labeling of a drug by a pharmacist or an intern or pharmacy technician under the pharmacist's supervision, for the purpose of dispensing to a patient based on a valid prescription order. Compounding includes the preparation of drugs in anticipation of prescription orders prepared on routine, regularly observed prescribing patterns and the preparation of drugs as an incident to research, teaching or chemical analysis or for administration by a medical practitioner to the medical practitioner's patient and not for sale or dispensing. Compounding does not include the preparation of commercially available products from bulk compounds or the preparation of drugs for sale to pharmacies, practitioners or entities for the purpose of dispensing or distribution.
12. "Compressed medical gas distributor" means a person who holds a current permit issued by the board to distribute compressed medical gases pursuant to a compressed medical gas order to compressed medical gas suppliers and other entities that are registered, licensed or permitted to use, administer or distribute compressed medical gases.
13. "Compressed medical gases" means gases and liquid oxygen that a compressed medical gas distributor or manufacturer has labeled in compliance with federal law.
14. "Compressed medical gas order" means an order for compressed medical gases that is issued by a medical practitioner.
15. "Compressed medical gas supplier" means a person who holds a current permit issued by the board to supply compressed medical gases pursuant to a compressed medical gas order and only to the consumer or the patient.
16. "Controlled substance" means a drug, substance or immediate precursor that is identified, defined or listed in title 36, chapter 27, article 2.
17. "Corrosive" means any substance that when it comes in contact with living tissue will cause destruction of tissue by chemical action.
18. "Counterfeit drug" means a drug that, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying mark, imprint, number or device, or any likeness of these, of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed that drug.
19. "Dangerous drug" has the same meaning prescribed in section 13-3401.
20. "Day" means a business day.
21. "Decree of censure" means an official action that is taken by the board and that may include a requirement for restitution of fees to a patient or consumer.
22. "Deliver" or "delivery" means the actual, constructive or attempted transfer from one person to another whether or not there is an agency relationship.
23. "Deputy director" means a pharmacist who is employed by the board and selected by the executive director to perform duties as prescribed by the executive director.
24. "Device", except as used in paragraph 18 of this section, section 32-1965, paragraph 4 and section 32-1967, subsection A, paragraph 15 and subsection C, means instruments, apparatuses and contrivances, including their components, parts and accessories, including all such items under the federal act, intended either:
- (a) For use in the diagnosis, cure, mitigation, treatment or prevention of disease in the human body or other

animals.

(b) To affect the structure or any function of the human body or other animals.

25. "Director" means the director of the division of narcotics enforcement and criminal investigation of the department of public safety.

26. "Direct supervision of a pharmacist" means the pharmacist is present. If relating to the sale of certain items, direct supervision of a pharmacist means that a pharmacist determines the legitimacy or advisability of a proposed purchase of those items.

27. "Dispense" means to deliver to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare for that delivery.

28. "Dispenser" means a practitioner who dispenses.

29. "Distribute" means to deliver, other than by administering or dispensing.

30. "Distributor" means a person who distributes.

31. "Drug" means:

(a) Articles recognized, or for which standards or specifications are prescribed, in the official compendium.

(b) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in the human body or other animals.

(c) Articles other than food intended to affect the structure or any function of the human body or other animals.

(d) Articles intended for use as a component of any articles specified in subdivision (a), (b) or (c) of this paragraph but does not include devices or their components, parts or accessories.

32. "Drug enforcement administration" means the drug enforcement administration of the United States department of justice or its successor agency.

33. "Drug or device manufacturing" means the production, preparation, propagation or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical synthesis and includes any packaging or repackaging of substances or labeling or relabeling of its container and the promotion and marketing of the same. Drug or device manufacturing does not include compounding.

34. "Economic poison" means any substance that alone, in chemical combination with or in formulation with one or more other substances is a pesticide within the meaning of the laws of this state or the federal insecticide, fungicide and rodenticide act and that is used in the production, storage or transportation of raw agricultural commodities.

35. "Enteral feeding" means nourishment provided by means of a tube inserted into the stomach or intestine.

36. "Established name", with respect to a drug or ingredient of a drug, means any of the following:

(a) The applicable official name.

(b) If there is no such name and the drug or ingredient is an article recognized in an official compendium, the official title in an official compendium.

(c) If neither subdivision (a) nor (b) of this paragraph applies, the common or usual name of the drug.

37. "Executive director" means the executive director of the board of pharmacy.

38. "Federal act" means the federal laws and regulations that pertain to drugs, devices, poisons and hazardous substances and that are official at the time any drug, device, poison or hazardous substance is affected by this chapter.

39. "Full service wholesale permittee":

(a) Means a permittee who may distribute prescription-only drugs and devices, controlled substances and over-the-counter drugs and devices to pharmacies or other legal outlets from a place devoted in whole or in part to wholesaling these items.

(b) Includes a virtual wholesaler as defined in rule by the board.

40. "Good manufacturing practice" means a system for ensuring that products are consistently produced and controlled according to quality standards and covering all aspects of design, monitoring and control of manufacturing processes and facilities to ensure that products do not pose any risk to the consumer or public.

41. "Highly toxic" means any substance that falls within any of the following categories:

(a) Produces death within fourteen days in half or more than half of a group of ten or more laboratory white rats each weighing between two hundred and three hundred grams, at a single dose of fifty milligrams or less per kilogram of body weight, when orally administered.

(b) Produces death within fourteen days in half or more than half of a group of ten or more laboratory white rats each weighing between two hundred and three hundred grams, if inhaled continuously for a period of one hour or less at an atmospheric concentration of two hundred parts per million by volume or less of gas or vapor or two milligrams per liter by volume or less of mist or dust, provided the concentration is likely to be encountered by humans if the substance is used in any reasonably foreseeable manner.

(c) Produces death within fourteen days in half or more than half of a group of ten or more rabbits tested in a dosage of two hundred milligrams or less per kilogram of body weight, if administered by continuous contact with the bare skin for twenty-four hours or less.

If the board finds that available data on human experience with any substance indicate results different from those obtained on animals in the dosages or concentrations prescribed in this paragraph, the human data shall take precedence.

42. "Hospital" means any institution for the care and treatment of the sick and injured that is approved and licensed as a hospital by the department of health services.

43. "Intern" means a pharmacy intern.

44. "Internship" means the practical, experiential, hands-on training of a pharmacy intern under the supervision of a preceptor.

45. "Irritant" means any substance, other than a corrosive, that on immediate, prolonged or repeated contact with normal living tissue will induce a local inflammatory reaction.

46. "Jurisprudence examination" means a board-approved pharmacy law examination that is written and administered in cooperation with the national association of boards of pharmacy or another board-approved pharmacy law examination.

47. "Label" means a display of written, printed or graphic matter on the immediate container of any article that, unless easily legible through the outside wrapper or container, also appears on the outside wrapper or container of the article's retail package. For the purposes of this paragraph, the immediate container does not include package liners.

48. "Labeling" means all labels and other written, printed or graphic matter either:

(a) On any article or any of its containers or wrappers.

(b) Accompanying that article.

49. "Letter of reprimand" means a disciplinary letter that is a public document issued by the board and that informs a licensee or permittee that the licensee's or permittee's conduct violates state or federal law and may require the board to monitor the licensee or permittee.

50. "Limited service pharmacy" means a pharmacy that is approved by the board to practice a limited segment of pharmacy as indicated by the permit issued by the board.

51. "Manufacture" or "manufacturer":

(a) Means every person who prepares, derives, produces, compounds, processes, packages or repackages or labels any drug in a place, other than a pharmacy, that is devoted to manufacturing the drug.

(b) Includes a virtual manufacturer as defined in rule by the board.

52. "Marijuana" has the same meaning prescribed in section 13-3401.

53. "Medical practitioner" means any medical doctor, doctor of osteopathic medicine, dentist, podiatrist,

veterinarian or other person who is licensed and authorized by law to use and prescribe drugs and devices for the treatment of sick and injured human beings or animals or for the diagnosis or prevention of sickness in human beings or animals in this state or any state, territory or district of the United States.

54. "Medication order" means a written or verbal order from a medical practitioner or that person's authorized agent to administer a drug or device.

55. "Narcotic drug" has the same meaning prescribed in section 13-3401.

56. "New drug" means either:

(a) Any drug the composition of which is such that the drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs as safe and effective for use under the conditions prescribed, recommended or suggested in the labeling.

(b) Any drug the composition of which is such that the drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but that has not, other than in the investigations, been used to a material extent or for a material time under those conditions.

57. "Nonprescription drug" or "over-the-counter drug" means any nonnarcotic medicine or drug that may be sold without a prescription and that is prepackaged and labeled for use by the consumer in accordance with the requirements of the laws of this state and federal law. Nonprescription drug does not include:

(a) A drug that is primarily advertised and promoted professionally to medical practitioners and pharmacists by manufacturers or primary distributors.

(b) A controlled substance.

(c) A drug that is required to bear a label that states "Rx only".

(d) A drug that is intended for human use by hypodermic injection.

58. "Nonprescription drug wholesale permittee":

(a) Means a permittee who may distribute only over-the-counter drugs and devices to pharmacies or other lawful outlets from a place devoted in whole or in part to wholesaling these items.

(b) Includes a virtual wholesaler as defined in rule by the board.

59. "Notice" means personal service or the mailing of a copy of the notice by certified mail addressed either to the person at the person's latest address of record in the board office or to the person's attorney.

60. "Nutritional supplementation" means vitamins, minerals and caloric supplementation. Nutritional supplementation does not include medication or drugs.

61. "Official compendium" means the latest revision of the United States pharmacopeia and the national formulary or any current supplement.

62. "Other jurisdiction" means one of the other forty-nine states, the District of Columbia, the Commonwealth of Puerto Rico or a territory of the United States of America.

63. "Package" means a receptacle defined or described in the United States pharmacopeia and the national formulary as adopted by the board.

64. "Packaging" means the act or process of placing a drug item or device in a container for the purpose or intent of dispensing or distributing the item or device to another.

65. "Parenteral nutrition" means intravenous feeding that provides a person with fluids and essential nutrients the person needs while the person is unable to receive adequate fluids or feedings by mouth or by enteral feeding.

66. "Person" means an individual, partnership, corporation and association, and their duly authorized agents.

67. "Pharmaceutical care" means the provision of drug therapy and other pharmaceutical patient care services.

68. "Pharmacist" means an individual who is currently licensed by the board to practice the profession of pharmacy in this state.

69. "Pharmacist in charge" means the pharmacist who is responsible to the board for a licensed establishment's compliance with the laws and administrative rules of this state and of the federal government pertaining to the practice of pharmacy, the manufacturing of drugs and the distribution of drugs and devices.

70. "Pharmacist licensure examination" means a board-approved examination that is written and administered in cooperation with the national association of boards of pharmacy or any other board-approved pharmacist licensure examination.

71. "Pharmacy":

(a) Means:

(i) Any place where drugs, devices, poisons or related hazardous substances are offered for sale at retail.

(ii) Any place in which the profession of pharmacy is practiced or where prescription orders are compounded and dispensed.

(iii) Any place that has displayed on it or in it the words "pharmacist", "pharmaceutical chemist", "apothecary", "druggist", "pharmacy", "drugstore", "drugs" or "drug sundries" or any of these words or combinations of these words, or words of similar import either in English or any other language, or that is advertised by any sign containing any of these words.

(iv) Any place where the characteristic symbols of pharmacy or the characteristic prescription sign "Rx" is exhibited.

(v) Any place or a portion of any building or structure that is leased, used or controlled by the permittee to conduct the business authorized by the board at the address for which the permit was issued and that is enclosed and secured when a pharmacist is not in attendance.

(vi) A remote dispensing site pharmacy where a pharmacy technician or pharmacy intern prepares, compounds or dispenses prescription medications under remote supervision by a pharmacist.

(b) Includes a satellite pharmacy.

72. "Pharmacy intern" means a person who has all of the qualifications and experience prescribed in section 32-1923.

73. "Pharmacy technician" means a person who is licensed pursuant to this chapter.

74. "Pharmacy technician trainee" means a person who is licensed pursuant to this chapter.

75. "Poison" or "hazardous substance" includes, but is not limited to, any of the following if intended and suitable for household use or use by children:

(a) Any substance that, according to standard works on medicine, pharmacology, pharmacognosy or toxicology, if applied to, introduced into or developed within the body in relatively small quantities by its inherent action uniformly produces serious bodily injury, disease or death.

(b) A toxic substance.

(c) A highly toxic substance.

(d) A corrosive substance.

(e) An irritant.

(f) A strong sensitizer.

(g) A mixture of any of the substances described in this paragraph, if the substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children.

(h) A substance that is designated by the board to be a poison or hazardous substance. This subdivision does not apply to radioactive substances, economic poisons subject to the federal insecticide, fungicide and rodenticide act or the state pesticide act, foods, drugs and cosmetics subject to state laws or the federal act or substances intended for use as fuels when stored in containers and used in the heating, cooking or refrigeration system of a house. This subdivision applies to any substance or article that is not itself an economic poison within the meaning of the federal insecticide, fungicide and rodenticide act or the state pesticide act, but that is a poison or hazardous substance within the meaning of this paragraph by reason of bearing or containing an economic poison or hazardous substance.

76. "Practice of pharmacy":

- (a) Means furnishing the following health care services as a medical professional:
 - (i) Interpreting, evaluating and dispensing prescription orders in the patient's best interests.
 - (ii) Compounding drugs pursuant to or in anticipation of a prescription order.
 - (iii) Labeling drugs and devices in compliance with state and federal requirements.
 - (iv) Participating in drug selection and drug utilization reviews, drug administration, drug or drug-related research and drug therapy monitoring or management.
 - (v) Providing patient counseling necessary to provide pharmaceutical care.
 - (vi) Properly and safely storing drugs and devices in anticipation of dispensing.
 - (vii) Maintaining required records of drugs and devices.
 - (viii) Offering or performing acts, services, operations or transactions necessary in the conduct, operation, management and control of a pharmacy.
 - (ix) Initiating, monitoring and modifying drug therapy pursuant to a protocol-based drug therapy agreement with a provider as outlined in section 32-1970.
 - (x) Initiating and administering immunizations or vaccines pursuant to section 32-1974.
- (b) Does not include initiating a prescription order for any medication, drug or other substance used to induce or cause a medication abortion as defined in section 36-2151.

77. "Practitioner" means any physician, dentist, veterinarian, scientific investigator or other person who is licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of professional practice or research in this state, or any pharmacy, hospital or other institution that is licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of professional practice or research in this state.

78. "Preceptor" means a pharmacist who is serving as the practical instructor of an intern and complies with section 32-1923.

79. "Precursor chemical" means a substance that is:

- (a) The principal compound that is commonly used or that is produced primarily for use and that is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.
- (b) Listed in section 13-3401, paragraph 26 or 27.

80. "Prescription" means either a prescription order or a prescription medication.

81. "Prescription medication" means any drug, including label and container according to context, that is dispensed pursuant to a prescription order.

82. "Prescription-only device" includes:

- (a) Any device that is limited by the federal act to use under the supervision of a medical practitioner.
- (b) Any device required by the federal act to bear on its label essentially the legend "Rx only".

83. "Prescription-only drug" does not include a controlled substance but does include:

- (a) Any drug that because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use is not generally recognized among experts, qualified by scientific training and experience to evaluate its safety and efficacy, as safe for use except by or under the supervision of a medical practitioner.
- (b) Any drug that is limited by an approved new drug application under the federal act or section 32-1962 to use under the supervision of a medical practitioner.
- (c) Every potentially harmful drug, the labeling of which does not bear or contain full and adequate directions for use by the consumer.
- (d) Any drug, other than a controlled substance, required by the federal act to bear on its label the legend "Rx only".

84. "Prescription order" means any of the following:

(a) An order to a pharmacist for drugs or devices issued and signed by a duly licensed medical practitioner in the authorized course of the practitioner's professional practice.

(b) An order transmitted to a pharmacist through word of mouth, telephone or other means of communication directed by that medical practitioner. Prescription orders received by word of mouth, telephone or other means of communication shall be maintained by the pharmacist pursuant to section 32-1964, and the record so made by the pharmacist constitutes the original prescription order to be dispensed by the pharmacist. This paragraph does not alter or affect laws of this state or any federal act requiring a written prescription order.

(c) An order initiated by a pharmacist pursuant to a protocol-based drug therapy agreement with a provider as outlined in section 32-1970, or immunizations or vaccines administered by a pharmacist pursuant to section 32-1974.

(d) A diet order or an order for enteral feeding, nutritional supplementation or parenteral nutrition that is initiated by a registered dietitian or other qualified nutrition professional in a hospital pursuant to section 36-416.

85. "Professionally incompetent" means:

(a) Incompetence based on a variety of factors, including a lack of sufficient pharmaceutical knowledge or skills or experience to a degree likely to endanger the health of patients.

(b) When considered with other indications of professional incompetence, a pharmacist or pharmacy intern who fails to obtain a passing score on a board-approved pharmacist licensure examination or a pharmacy technician or pharmacy technician trainee who fails to obtain a passing score on a board-approved pharmacy technician licensure examination.

86. "Radioactive substance" means a substance that emits ionizing radiation.

87. "Remote dispensing site pharmacy" means a pharmacy where a pharmacy technician or pharmacy intern prepares, compounds or dispenses prescription medications under remote supervision by a pharmacist.

88. "Remote supervision by a pharmacist" means that a pharmacist directs and controls the actions of pharmacy technicians and pharmacy interns through the use of audio and visual technology.

89. "Revocation" or "revoke" means the official cancellation of a license, permit, registration or other approval authorized by the board for a period of two years unless otherwise specified by the board. A request or new application for reinstatement may be presented to the board for review before the conclusion of the specified revocation period upon review of the executive director.

90. "Safely engage in employment duties" means that a permittee or the permittee's employee is able to safely engage in employment duties related to the manufacture, sale, distribution or dispensing of drugs, devices, poisons, hazardous substances, controlled substances or precursor chemicals.

91. "Satellite pharmacy" means a work area located within a hospital or on a hospital campus that is not separated by other commercial property or residential property, that is under the direction of a pharmacist, that is a remote extension of a centrally licensed hospital pharmacy and that is owned by and dependent on the centrally licensed hospital pharmacy for administrative control, staffing and drug procurement and that is not required to be separately permitted.

92. "Symbol" means the characteristic symbols that have historically identified pharmacy, including show globes and mortar and pestle, and the sign "Rx".

93. "Third-party logistics provider" means an entity that provides or coordinates warehousing or other logistics services for a prescription or over-the-counter dangerous drug or dangerous device in intrastate or interstate commerce on behalf of a manufacturer, wholesaler or dispenser of the prescription or over-the-counter dangerous drug or dangerous device but that does not take ownership of the prescription or over-the-counter dangerous drug or dangerous device or have responsibility to direct its sale or disposition.

94. "Toxic substance" means a substance, other than a radioactive substance, that has the capacity to produce injury or illness in humans through ingestion, inhalation or absorption through any body surface.

95. "Ultimate user" means a person who lawfully possesses a drug or controlled substance for that person's own use, for the use of a member of that person's household or for administering to an animal owned by that person or

by a member of that person's household.

32-2001. Definitions

In this chapter, unless the context otherwise requires:

1. "Assistive personnel" includes physical therapist assistants and physical therapy aides and other assistive personnel who are trained or educated health care providers and who are not physical therapist assistants or physical therapy aides but who perform specific designated tasks related to physical therapy under the supervision of a physical therapist. At the discretion of the supervising physical therapist, and if properly credentialed and not prohibited by any other law, other assistive personnel may be identified by the title specific to their training or education. This paragraph does not apply to personnel assisting other health care professionals licensed pursuant to this title in the performance of delegable treatment responsibilities within their scope of practice.
2. "Board" means the board of physical therapy.
3. "Business entity" means a business organization that has an ownership that includes any persons who are not licensed or certified to provide physical therapy services in this state, that offers to the public professional services regulated by the board and that is established pursuant to the laws of any state or foreign country.
4. "Dry needling" means a skilled intervention performed by a physical therapist that uses a thin filiform needle to penetrate the skin and stimulate underlying neural, muscular and connective tissues for the evaluation and management of neuromusculoskeletal conditions, pain and movement impairments.
5. "General supervision" means that the supervising physical therapist is on call and is readily available via telecommunications when the physical therapist assistant is providing treatment interventions.
6. "Interim permit" means a permit issued by the board that allows a person to practice as a physical therapist in this state or to work as a physical therapist assistant for a specific period of time and under conditions prescribed by the board before that person is issued a license or certificate.
7. "Manual therapy techniques" means a broad group of passive interventions in which physical therapists use their hands to administer skilled movements designed to modulate pain, increase joint range of motion, reduce or eliminate soft tissue swelling, inflammation, or restriction, induce relaxation, improve contractile and noncontractile tissue extensibility, and improve pulmonary function. These interventions involve a variety of techniques, such as the application of graded forces.
8. "On-site supervision" means that the supervising physical therapist is on site and is present in the facility or on the campus where assistive personnel or a holder of an interim permit is performing services, is immediately available to assist the person being supervised in the services being performed and maintains continued involvement in appropriate aspects of each treatment session in which a component of treatment is delegated.
9. "Physical therapist" means a person who is licensed pursuant to this chapter.
10. "Physical therapist assistant" means a person who meets the requirements of this chapter for certification and who performs physical therapy procedures and related tasks that have been selected and delegated by the supervising physical therapist.
11. "Physical therapy" means the care and services provided by or under the direction and supervision of a physical therapist who is licensed pursuant to this chapter.
12. "Physical therapy aide" means a person who is trained under the direction of a physical therapist and who performs designated and supervised routine physical therapy tasks.
13. "Practice of physical therapy" means:
 - (a) Examining, evaluating and testing persons who have mechanical, physiological and developmental impairments, functional limitations and disabilities or other health and movement related conditions in order to determine a diagnosis, a prognosis and a plan of therapeutic intervention and to assess the ongoing effects of intervention.
 - (b) Alleviating impairments and functional limitations by managing, designing, implementing and modifying therapeutic interventions including:

- (i) Therapeutic exercise.
 - (ii) Functional training in self-care and in home, community or work reintegration.
 - (iii) Manual therapy techniques.
 - (iv) Therapeutic massage.
 - (v) Assistive and adaptive orthotic, prosthetic, protective and supportive devices and equipment.
 - (vi) Pulmonary hygiene.
 - (vii) Debridement and wound care.
 - (viii) Physical agents or modalities.
 - (ix) Mechanical and electrotherapeutic modalities.
 - (x) Patient related instruction.
- (c) Reducing the risk of injury, impairments, functional limitations and disability by means that include promoting and maintaining a person's fitness, health and quality of life.
- (d) Engaging in administration, consultation, education and research.
14. "Restricted certificate" means a certificate on which the board has placed any restrictions as the result of a disciplinary action.
15. "Restricted license" means a license on which the board places restrictions or conditions, or both, as to the scope of practice, place of practice, supervision of practice, duration of licensed status or type or condition of a patient to whom the licensee may provide services.
16. "Restricted registration" means a registration the board has placed any restrictions on as the result of disciplinary action.

32-2061. Definitions

In this chapter, unless the context otherwise requires:

1. "Active license" means a valid and existing license to practice psychology.
2. "Adequate records" means records containing, at a minimum, sufficient information to identify the client or patient, the dates of service, the fee for service, the payments for service, the type of service given and copies of any reports that may have been made.
3. "Board" means the state board of psychologist examiners.
4. "Client" means a person or an entity that receives psychological services. A corporate entity, a governmental entity or any other organization may be a client if there is a professional contract to provide services or benefits primarily to an organization rather than to an individual. If an individual has a legal guardian, the legal guardian is the client for decision-making purposes, except that the individual receiving services is the client or patient for:
 - (a) Issues that directly affect the physical or emotional safety of the individual, such as sexual or other exploitative relationships.
 - (b) Issues that the guardian agrees to specifically reserve to the individual.
5. "Committee on behavior analysts" means the committee established by section 32-2091.15.
6. "Exploit" means actions by a psychologist who takes undue advantage of the professional association with a client or patient, a student or a supervisee for the advantage or profit of the psychologist.
7. "Health care institution" means a facility as defined in section 36-401.
8. "Letter of concern" means an advisory letter to notify a psychologist that while there is insufficient evidence to support disciplinary action the board believes the psychologist should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the board may result in action against the psychologist's license.
9. "Patient" means a person who receives psychological services. If an individual has a legal guardian, the legal guardian is the client or patient for decision-making purposes, except that the individual receiving services is the

client or patient for:

(a) Issues that directly affect the physical or emotional safety of the individual, such as sexual or other exploitative relationships.

(b) Issues that the guardian agrees to specifically reserve to the individual.

10. "Practice of psychology" means the psychological assessment, diagnosis, treatment or correction of mental, emotional, behavioral or psychological abilities, illnesses or disorders or purporting or attempting to do this consistent with section 32-2076.

11. "Psychologically incompetent" means a person lacking in sufficient psychological knowledge or skills to a degree likely to endanger the health of clients or patients.

12. "Psychological service" means all actions of the psychologist in the practice of psychology.

13. "Psychologist" means a natural person holding a license to practice psychology pursuant to this chapter.

14. "Supervisee" means any person who functions under the extended authority of the psychologist to provide, or while in training to provide, psychological services.

15. "Telepractice" means providing psychological services through interactive audio, video or electronic communication that occurs between the psychologist and the patient or client, including any electronic communication for diagnostic, treatment or consultation purposes in a secure platform, and that meets the requirements of telemedicine pursuant to section 36-3602. Telepractice includes supervision.

16. "Unprofessional conduct" includes the following activities whether occurring in this state or elsewhere:

(a) Obtaining a fee by fraud or misrepresentation.

(b) Betraying professional confidences.

(c) Making or using statements of a character tending to deceive or mislead.

(d) Aiding or abetting a person who is not licensed pursuant to this chapter in representing that person as a psychologist.

(e) Gross negligence in the practice of a psychologist.

(f) Sexual intimacies or sexual intercourse with a current client or patient or a supervisee or with a former client or patient within two years after the cessation or termination of treatment. For the purposes of this subdivision, "sexual intercourse" has the same meaning prescribed in section 13-1401.

(g) Engaging or offering to engage as a psychologist in activities that are not congruent with the psychologist's professional education, training and experience.

(h) Failing or refusing to maintain and retain adequate business, financial or professional records pertaining to the psychological services provided to a client or patient.

(i) Commission of a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

(j) Making a fraudulent or untrue statement to the board or its investigators, staff or consultants.

(k) Violating any federal or state laws or rules that relate to the practice of psychology or to obtaining a license to practice psychology.

(l) Practicing psychology while impaired or incapacitated to the extent and in a manner that jeopardizes the welfare of the client or patient or renders the psychological services provided ineffective.

(m) Using fraud, misrepresentation or deception to obtain or attempt to obtain a psychology license or to pass or attempt to pass a psychology licensing examination or in assisting another person to do so.

(n) Unprofessional conduct in another jurisdiction that resulted in censure, probation or a civil penalty or in the denial, suspension, restriction or revocation of a certificate or license to practice as a psychologist.

(o) Providing services that are unnecessary or unsafe or otherwise engaging in activities as a psychologist that are unprofessional by current standards of practice.

(p) Falsely or fraudulently claiming to have performed a professional service, charging for a service or representing

a service as the licensee's own when the licensee has not rendered the service or assumed supervisory responsibility for the service.

(q) Representing activities or services as being performed under the licensee's supervision if the psychologist has not assumed responsibility for them and has not exercised control, oversight and review.

(r) Failing to obtain a client's or patient's informed and written consent to release personal or otherwise confidential information to another party unless the release is otherwise authorized by law.

(s) Failing to make client or patient records in the psychologist's possession promptly available to another psychologist who is licensed pursuant to this chapter on receipt of proper authorization to do so from the client or patient, a minor client's or patient's parent, the client's or patient's legal guardian or the client's or patient's authorized representative or failing to comply with title 12, chapter 13, article 7.1.

(t) Failing to take reasonable steps to inform or protect a client's or patient's intended victim and inform the proper law enforcement officials in circumstances in which the psychologist becomes aware during the course of providing or supervising psychological services that a client or patient intends or plans to inflict serious bodily harm on another person.

(u) Failing to take reasonable steps to protect a client or patient in circumstances in which the psychologist becomes aware during the course of providing or supervising psychological services that a client or patient intends or plans to inflict serious bodily harm on self.

(v) Abandoning or neglecting a client or patient in need of immediate care without making suitable arrangements for continuation of the care.

(w) Engaging in direct or indirect personal solicitation of clients or patients through the use of coercion, duress, undue influence, compulsion or intimidation practices.

(x) Engaging in false, deceptive or misleading advertising.

(y) Exploiting a client or patient, a student or a supervisee.

(z) Failing to report information to the board regarding a possible act of unprofessional conduct committed by another psychologist who is licensed pursuant to this chapter unless this reporting violates the psychologist's confidential relationship with the client or patient pursuant to section 32-2085. Any psychologist who reports or provides information to the board in good faith is not subject to an action for civil damages. For the purposes of this subdivision, it is not an act of unprofessional conduct if a licensee addresses an ethical conflict in a manner that is consistent with the ethical standards contained in the document entitled "ethical principles of psychologists and code of conduct" as adopted by the American psychological association and in effect at the time the licensee makes the report.

(aa) Violating a formal board order, consent agreement, term of probation or stipulated agreement issued under this chapter.

(bb) Failing to furnish information in a timely manner to the board or its investigators or representatives if requested or subpoenaed by the board as prescribed by this chapter.

(cc) Failing to make available to a client or patient or to the client's or patient's designated representative, on written request, a copy of the client's or patient's record, including raw test data, psychometric testing materials and other information as provided by law.

(dd) Violating an ethical standard adopted by the board.

32-2091. Definitions

In this article, unless the context otherwise requires:

1. "Active license" means a current license issued by the board to a person licensed pursuant to this article.
2. "Adequate records" means records that contain, at a minimum, sufficient information to identify the client, the dates of service, the fee for service, the payments for service and the type of service given and copies of any reports that may have been made.
3. "Behavior analysis" means the design, implementation and evaluation of systematic environmental

modifications by a behavior analyst to produce socially significant improvements in human behavior based on the principles of behavior identified through the experimental analysis of behavior. Behavior analysis does not include cognitive therapies or psychological testing, neuropsychology, psychotherapy, sex therapy, psychoanalysis, hypnotherapy and long-term counseling as treatment modalities.

4. "Behavior analysis services" means the use of behavior analysis to assist a person to learn new behavior, increase existing behavior, reduce existing behavior and emit behavior under precise environmental conditions. Behavior analysis includes behavioral programming and behavioral programs.

5. "Behavior analyst" means a person who is licensed pursuant to this article to practice behavior analysis.

6. "Client" means:

(a) A person or entity that receives behavior analysis services.

(b) A corporate entity, a governmental entity or any other organization that has a professional contract to provide services or benefits primarily to an organization rather than to an individual.

(c) An individual's legal guardian for decision making purposes, except that the individual is the client for issues that directly affect the individual's physical or emotional safety and issues that the legal guardian agrees to specifically reserve to the individual.

7. "Exploit" means an action by a behavior analyst who takes undue advantage of the professional association with a client, student or supervisee for the advantage or profit of the behavior analyst.

8. "Health care institution" means a facility that is licensed pursuant to title 36, chapter 4, article 1.

9. "Incompetent as a behavior analyst" means that a person who is licensed pursuant to article 4 of this chapter lacks the knowledge or skills of a behavior analyst to a degree that is likely to endanger the health of a client.

10. "Letter of concern" means an advisory letter to notify a licensee that while there is insufficient evidence to support disciplinary action the board believes the licensee should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the board may result in action against the license.

11. "Supervisee" means a person who acts under the extended authority of a behavior analyst to provide behavioral services and includes a person who is in training to provide these services.

12. "Unprofessional conduct" includes the following activities, whether occurring in this state or elsewhere:

(a) Obtaining a fee by fraud or misrepresentation.

(b) Betraying professional confidences.

(c) Making or using statements of a character tending to deceive or mislead.

(d) Aiding or abetting a person who is not licensed pursuant to this article in representing that person as a behavior analyst.

(e) Gross negligence in the practice of a behavior analyst.

(f) Sexual intimacies or sexual intercourse with a current client or a supervisee or with a former client within two years after the cessation or termination of treatment. For the purposes of this subdivision, "sexual intercourse" has the same meaning prescribed in section 13-1401.

(g) Engaging or offering to engage as a behavior analyst in activities that are not congruent with the behavior analyst's professional education, training and experience.

(h) Failing or refusing to maintain and retain adequate business, financial or professional records pertaining to the behavior analysis services provided to a client.

(i) Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

(j) Making a fraudulent or untrue statement to the board or its investigators, staff or consultants.

(k) Violating any federal or state law that relates to the practice of behavior analysis or to obtain a license to practice behavior analysis.

- (l) Practicing behavior analysis while impaired or incapacitated to the extent and in a manner that jeopardizes the welfare of a client or renders the services provided ineffective.
- (m) Using fraud, misrepresentation or deception to obtain or attempt to obtain a behavior analysis license or to pass or attempt to pass a behavior analysis licensing examination or in assisting another person to do so.
- (n) Unprofessional conduct in another jurisdiction that resulted in censure, probation or a civil penalty or in the denial, suspension, restriction or revocation of a certificate or license to practice as a behavior analyst.
- (o) Providing services that are unnecessary or unsafe or otherwise engaging in activities as a behavior analyst that are unprofessional by current standards of practice.
- (p) Falsely or fraudulently claiming to have performed a professional service, charging for a service or representing a service as the licensee's own if the licensee has not rendered the service or assumed supervisory responsibility for the service.
- (q) Representing activities or services as being performed under the licensee's supervision if the behavior analyst has not assumed responsibility for them and has not exercised control, oversight and review.
- (r) Failing to obtain a client's informed and written consent to release personal or otherwise confidential information to another party unless the release is otherwise authorized by law.
- (s) Failing to make client records in the behavior analyst's possession promptly available to another behavior analyst on receipt of proper authorization to do so from the client, a minor client's parent, the client's legal guardian or the client's authorized representative or failing to comply with title 12, chapter 13, article 7.1.
- (t) Failing to take reasonable steps to inform or protect a client's intended victim and inform the proper law enforcement officials if the behavior analyst becomes aware during the course of providing or supervising behavior analysis services that a client intends or plans to inflict serious bodily harm on another person.
- (u) Failing to take reasonable steps to protect a client if the behavior analyst becomes aware during the course of providing or supervising behavior analysis services that a client intends or plans to inflict serious bodily harm on self.
- (v) Abandoning or neglecting a client in need of immediate care without making suitable arrangements for continuation of the care.
- (w) Engaging in direct or indirect personal solicitation of clients through the use of coercion, duress, undue influence, compulsion or intimidation practices.
- (x) Engaging in false, deceptive or misleading advertising.
- (y) Exploiting a client, student or supervisee.
- (z) Failing to report information to the board regarding a possible act of unprofessional conduct committed by another behavior analyst who is licensed pursuant to this article unless this reporting violates the behavior analyst's confidential relationship with a client pursuant to this article. A behavior analyst who reports or provides information to the board in good faith is not subject to an action for civil damages.
- (aa) Violating a formal board order, consent agreement, term of probation or stipulated agreement issued under this article.
- (bb) Failing to furnish information in a timely manner to the board or its investigators or representatives if requested or subpoenaed by the board as prescribed by this article.
- (cc) Failing to make available to a client or to the client's designated representative, on written request, a copy of the client's record, excluding raw test data, psychometric testing materials and other information as provided by law.
- (dd) Violating an ethical standard adopted by the board.
- (ee) Representing oneself as a psychologist or permitting others to do so if the behavior analyst is not also licensed as a psychologist pursuant to this chapter.

32-2501. Definitions

In this chapter, unless the context otherwise requires:

1. "Active license" means a regular license issued pursuant to this chapter.
2. "Adequate records" means legible medical records containing, at a minimum, sufficient information to identify the patient, support the diagnosis, justify the treatment, accurately document the results, indicate advice and cautionary warnings provided to the patient and provide sufficient information for another practitioner to assume continuity of the patient's care at any point in the course of treatment.
3. "Advisory letter" means a nondisciplinary letter to notify a physician assistant that either:
 - (a) While there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee.
 - (b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.
 - (c) While the licensee has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for disciplinary action, the board believes that repetition of the activities that led to the investigation may result in further board action against the licensee.
4. "Approved program" means a physician assistant educational program accredited by the accreditation review commission on education for physician assistants, or one of its predecessor agencies, the committee on allied health education and accreditation or the commission on the accreditation of allied health educational programs.
5. "Board" means the Arizona regulatory board of physician assistants.
6. "Completed application" means an application for which the applicant has supplied all required fees, information and correspondence requested by the board on forms and in a manner acceptable to the board.
7. "Immediate family" means the spouse, natural or adopted children, father, mother, brothers and sisters of the physician assistant and the natural or adopted children, father, mother, brothers and sisters of the physician assistant's spouse.
8. "Letter of reprimand" means a disciplinary letter that is issued by the board and that informs the physician assistant that the physician assistant's conduct violates state or federal law and may require the board to monitor the physician assistant.
9. "Limit" means a nondisciplinary action that is taken by the board and that alters a physician assistant's practice or medical activities if there is evidence that the physician assistant is or may be mentally or physically unable to safely engage in health care tasks.
10. "Medically incompetent" means that a physician assistant lacks sufficient medical knowledge or skills, or both, in performing delegated health care tasks to a degree likely to endanger the health or safety of patients.
11. "Minor surgery" means those invasive procedures that may be delegated to a physician assistant by a supervising physician, that are consistent with the training and experience of the physician assistant, that are normally taught in courses of training approved by the board and that have been approved by the board as falling within a scope of practice of a physician assistant. Minor surgery does not include a surgical abortion.
12. "Physician" means a physician who is licensed pursuant to chapter 13 or 17 of this title.
13. "Physician assistant" means a person who is licensed pursuant to this chapter and who practices medicine with physician supervision.
14. "Regular license" means a valid and existing license that is issued pursuant to section 32-2521 to perform health care tasks.
15. "Restrict" means a disciplinary action that is taken by the board and that alters a physician assistant's practice or medical activities if there is evidence that the physician assistant is or may be medically incompetent or guilty of unprofessional conduct.
16. "Supervising physician" means a physician who holds a current unrestricted license, who supervises a physician assistant and who assumes legal responsibility for health care tasks performed by the physician assistant.
17. "Supervision" means a physician's opportunity or ability to provide or exercise direction and control over the services of a physician assistant. Supervision does not require a physician's constant physical presence if the supervising physician is or can be easily in contact with the physician assistant by telecommunication.

18. "Unprofessional conduct" includes the following acts by a physician assistant that occur in this state or elsewhere:

- (a) Violating any federal or state law or rule that applies to the performance of health care tasks as a physician assistant. Conviction in any court of competent jurisdiction is conclusive evidence of a violation.
- (b) Claiming to be a physician or knowingly permitting another person to represent that person as a physician.
- (c) Performing health care tasks that have not been delegated by the supervising physician.
- (d) Exhibiting a pattern of using or being under the influence of alcohol or drugs or a similar substance while performing health care tasks or to the extent that judgment may be impaired and the ability to perform health care tasks detrimentally affected.
- (e) Signing a blank, undated or predated prescription form.
- (f) Committing gross malpractice, repeated malpractice or any malpractice resulting in the death of a patient.
- (g) Representing that a manifestly incurable disease or infirmity can be permanently cured or that a disease, ailment or infirmity can be cured by a secret method, procedure, treatment, medicine or device, if this is not true.
- (h) Refusing to divulge to the board on demand the means, method, procedure, modality of treatment or medicine used in the treatment of a disease, injury, ailment or infirmity.
- (i) Prescribing or dispensing controlled substances or prescription-only drugs for which the physician assistant is not approved or in excess of the amount authorized pursuant to this chapter.
- (j) Committing any conduct or practice that is or might be harmful or dangerous to the health of a patient or the public.
- (k) Violating a formal order, probation or stipulation issued by the board.
- (l) Failing to clearly disclose the person's identity as a physician assistant in the course of the physician assistant's employment.
- (m) Failing to use and affix the initials "P.A." or "P.A.-C." after the physician assistant's name or signature on charts, prescriptions or professional correspondence.
- (n) Procuring or attempting to procure a physician assistant license by fraud, misrepresentation or knowingly taking advantage of the mistake of another.
- (o) Having professional connection with or lending the physician assistant's name to an illegal practitioner of any of the healing arts.
- (p) Failing or refusing to maintain adequate records on a patient.
- (q) Using controlled substances that have not been prescribed by a physician, physician assistant, dentist or nurse practitioner for use during a prescribed course of treatment.
- (r) Prescribing or dispensing controlled substances to members of the physician assistant's immediate family.
- (s) Prescribing, dispensing or administering any controlled substance or prescription-only drug for other than accepted therapeutic purposes.
- (t) Dispensing a schedule II controlled substance that is an opioid, except as provided in section 32-2532.
- (u) Knowingly making any written or oral false or fraudulent statement in connection with the performance of health care tasks or when applying for privileges or renewing an application for privileges at a health care institution.
- (v) Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.
- (w) Having a certification or license refused, revoked, suspended, limited or restricted by any other licensing jurisdiction for the inability to safely and skillfully perform health care tasks or for unprofessional conduct as defined by that jurisdiction that directly or indirectly corresponds to any act of unprofessional conduct as prescribed by this paragraph.
- (x) Having sanctions including restriction, suspension or removal from practice imposed by an agency of the federal

government.

(y) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate a provision of this chapter.

(z) Using the term "doctor" or the abbreviation "Dr." on a name tag or in a way that leads the public to believe that the physician assistant is licensed to practice as an allopathic or an osteopathic physician in this state.

(aa) Failing to furnish legally requested information to the board or its investigator in a timely manner.

(bb) Failing to allow properly authorized board personnel to examine on demand documents, reports and records of any kind relating to the physician assistant's performance of health care tasks.

(cc) Knowingly making a false or misleading statement on a form required by the board or in written correspondence or attachments furnished to the board.

(dd) Failing to submit to a body fluid examination and other examinations known to detect the presence of alcohol or other drugs pursuant to an agreement with the board or an order of the board.

(ee) Violating a formal order, probation agreement or stipulation issued or entered into by the board or its executive director.

(ff) Except as otherwise required by law, intentionally betraying a professional secret or intentionally violating a privileged communication.

(gg) Allowing the use of the licensee's name in any way to enhance or permit the continuance of the activities of, or maintaining a professional connection with, an illegal practitioner of medicine or the performance of health care tasks by a person who is not licensed pursuant to this chapter.

(hh) Committing false, fraudulent, deceptive or misleading advertising by a physician assistant or the physician assistant's staff or representative.

(ii) Knowingly failing to disclose to a patient on a form that is prescribed by the board and that is dated and signed by the patient or guardian acknowledging that the patient or guardian has read and understands that the licensee has a direct financial interest in a separate diagnostic or treatment agency or in nonroutine goods or services that the patient is being prescribed and if the prescribed treatment, goods or services are available on a competitive basis. This subdivision does not apply to a referral by one physician assistant to another physician assistant or to a doctor of medicine or a doctor of osteopathic medicine within a group working together.

(jj) With the exception of heavy metal poisoning, using chelation therapy in the treatment of arteriosclerosis or as any other form of therapy without adequate informed patient consent or without conforming to generally accepted experimental criteria including protocols, detailed records, periodic analysis of results and periodic review by a medical peer review committee, or without approval by the United States food and drug administration or its successor agency.

(kk) Prescribing, dispensing or administering anabolic or androgenic steroids for other than therapeutic purposes.

(ll) Prescribing, dispensing or furnishing a prescription medication or a prescription-only device as defined in section 32-1901 to a person unless the licensee first conducts a physical examination of that person or has previously established a professional relationship with the person. This subdivision does not apply to:

(i) A physician assistant who provides temporary patient care on behalf of the patient's regular treating licensed health care professional.

(ii) Emergency medical situations as defined in section 41-1831.

(iii) Prescriptions written to prepare a patient for a medical examination.

(iv) Prescriptions written or antimicrobials dispensed to a contact as defined in section 36-661 who is believed to have had significant exposure risk as defined in section 36-661 with another person who has been diagnosed with a communicable disease as defined in section 36-661 by the prescribing or dispensing physician assistant.

(mm) Engaging in sexual conduct with a current patient or with a former patient within six months after the last medical consultation unless the patient was the licensee's spouse at the time of the contact or, immediately preceding the professional relationship, was in a dating or engagement relationship with the licensee. For the purposes of this subdivision, "sexual conduct" includes:

- (i) Engaging in or soliciting sexual relationships, whether consensual or nonconsensual.
- (ii) Making sexual advances, requesting sexual favors or engaging in other verbal conduct or physical contact of a sexual nature with a patient.
- (iii) Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient diagnosis or treatment under current practice standards.
- (nn) Performing health care tasks under a false or assumed name in this state.

32-3251. Definitions

In this chapter, unless the context otherwise requires:

1. "Board" means the board of behavioral health examiners.
2. "Client" means a patient who receives behavioral health services from a person licensed pursuant to this chapter.
3. "Direct client contact" means the performance of therapeutic or clinical functions related to the applicant's professional practice level of psychotherapy that includes diagnosis, assessment and treatment and that may include psychoeducation for mental, emotional and behavioral disorders based primarily on verbal or nonverbal communications and intervention with, and in the presence of, one or more clients.
4. "Equivalent" means comparable in content and quality but not identical.
5. "Indirect client service" means training for, and the performance of, functions of an applicant's professional practice level in preparation for or on behalf of a client for whom direct client contact functions are also performed, including case consultation and receipt of clinical supervision. Indirect client service does not include the provision of psychoeducation.
6. "Letter of concern" means a nondisciplinary written document sent by the board to notify a licensee that, while there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee.
7. "Licensee" means a person who is licensed pursuant to this chapter.
8. "Practice of behavioral health" means the practice of marriage and family therapy, professional counseling, social work and substance abuse counseling pursuant to this chapter.
9. "Practice of marriage and family therapy" means the professional application of family systems theories, principles and techniques to treat interpersonal relationship issues and nervous, mental and emotional disorders that are cognitive, affective or behavioral. The practice of marriage and family therapy includes:
 - (a) Assessment, appraisal and diagnosis.
 - (b) The use of psychotherapy for the purpose of evaluation, diagnosis and treatment of individuals, couples, families and groups.
10. "Practice of professional counseling" means the professional application of mental health, psychological and human development theories, principles and techniques to:
 - (a) Facilitate human development and adjustment throughout the human life span.
 - (b) Assess and facilitate career development.
 - (c) Treat interpersonal relationship issues and nervous, mental and emotional disorders that are cognitive, affective or behavioral.
 - (d) Manage symptoms of mental illness.
 - (e) Assess, appraise, evaluate, diagnose and treat individuals, couples, families and groups through the use of psychotherapy.
11. "Practice of social work" means the professional application of social work theories, principles, methods and techniques to:
 - (a) Treat mental, behavioral and emotional disorders.

(b) Assist individuals, families, groups and communities to enhance or restore the ability to function physically, socially, emotionally, mentally and economically.

(c) Assess, appraise, diagnose, evaluate and treat individuals, couples, families and groups through the use of psychotherapy.

12. "Practice of substance abuse counseling" means the professional application of general counseling theories, principles and techniques as specifically adapted, based on research and clinical experience, to the specialized needs and characteristics of persons who are experiencing substance abuse, chemical dependency and related problems and to the families of those persons. The practice of substance abuse counseling includes the following as they relate to substance abuse and chemical dependency issues:

(a) Assessment, appraisal and diagnosis.

(b) The use of psychotherapy for the purpose of evaluation, diagnosis and treatment of individuals, couples, families and groups.

13. "Psychoeducation" means the education of a client as part of a treatment process that provides the client with information regarding mental health, emotional disorders or behavioral health.

14. "Psychotherapy" means a variety of treatment methods developing out of generally accepted theories about human behavior and development.

15. "Telepractice" means providing behavioral health services through interactive audio, video or electronic communication that occurs between the behavioral health professional and the client, including any electronic communication for evaluation, diagnosis and treatment, including distance counseling, in a secure platform, and that meets the requirements of telemedicine pursuant to section 36-3602.

16. "Unprofessional conduct" includes the following, whether occurring in this state or elsewhere:

(a) Being convicted of a felony. Conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the conviction.

(b) Using fraud or deceit in connection with rendering services as a licensee or in establishing qualifications pursuant to this chapter.

(c) Making any oral or written misrepresentation of a fact:

(i) To secure or attempt to secure the issuance or renewal of a license.

(ii) In any statements provided during an investigation or disciplinary proceeding by the board.

(iii) Regarding the licensee's skills or the value of any treatment provided or to be provided.

(d) Making any false, fraudulent or deceptive statement connected with the practice of behavioral health, including false or misleading advertising by the licensee or the licensee's staff or a representative compensated by the licensee.

(e) Securing or attempting to secure the issuance or renewal of a license by knowingly taking advantage of the mistake of another person or the board.

(f) Engaging in active habitual intemperance in the use of alcohol or active habitual substance abuse.

(g) Using a controlled substance that is not prescribed for use during a prescribed course of treatment.

(h) Obtaining a fee by fraud, deceit or misrepresentation.

(i) Aiding or abetting a person who is not licensed pursuant to this chapter to purport to be a licensed behavioral health professional in this state.

(j) Engaging in conduct that the board determines is gross negligence or repeated negligence in the licensee's profession.

(k) Engaging in any conduct or practice that is contrary to recognized standards of ethics in the behavioral health profession or that constitutes a danger to the health, welfare or safety of a client.

(l) Engaging in any conduct, practice or condition that impairs the ability of the licensee to safely and competently practice the licensee's profession.

(m) Engaging or offering to engage as a licensee in activities that are not congruent with the licensee's professional

education, training or experience.

(n) Failing to comply with or violating, attempting to violate or assisting in or abetting the violation of any provision of this chapter, any rule adopted pursuant to this chapter, any lawful order of the board, or any formal order, consent agreement, term of probation or stipulated agreement issued under this chapter.

(o) Failing to furnish information within a specified time to the board or its investigators or representatives if legally requested by the board.

(p) Failing to conform to minimum practice standards as developed by the board.

(q) Failing or refusing to maintain adequate records of behavioral health services provided to a client.

(r) Providing behavioral health services that are clinically unjustified or unsafe or otherwise engaging in activities as a licensee that are unprofessional by current standards of practice.

(s) Terminating behavioral health services to a client without making an appropriate referral for continuation of care for the client if continuing behavioral health services are indicated.

(t) Disclosing a professional confidence or privileged communication except as may otherwise be required by law or permitted by a legally valid written release.

(u) Failing to allow the board or its investigators on demand to examine and have access to documents, reports and records in any format maintained by the licensee that relate to the licensee's practice of behavioral health.

(v) Engaging in any sexual conduct between a licensee and a client or former client.

(w) Providing behavioral health services to any person with whom the licensee has had sexual contact.

(x) Exploiting a client, former client or supervisee. For the purposes of this subdivision, "exploiting" means taking advantage of a professional relationship with a client, former client or supervisee for the benefit or profit of the licensee.

(y) Engaging in a dual relationship with a client that could impair the licensee's objectivity or professional judgment or create a risk of harm to the client. For the purposes of this subdivision, "dual relationship" means a licensee simultaneously engages in both a professional and nonprofessional relationship with a client that is avoidable and not incidental.

(z) Engaging in physical contact between a licensee and a client if there is a reasonable possibility of physical or psychological harm to the client as a result of that contact.

(aa) Sexually harassing a client, former client, research subject, supervisee or coworker. For the purposes of this subdivision, "sexually harassing" includes sexual advances, sexual solicitation, requests for sexual favors, unwelcome comments or gestures or any other verbal or physical conduct of a sexual nature.

(bb) Harassing, exploiting or retaliating against a client, former client, research subject, supervisee, coworker or witness or a complainant in a disciplinary investigation or proceeding involving a licensee.

(cc) Failing to take reasonable steps to inform potential victims and appropriate authorities if the licensee becomes aware during the course of providing or supervising behavioral health services that a client's condition indicates a clear and imminent danger to the client or others.

(dd) Failing to comply with the laws of the appropriate licensing or credentialing authority to provide behavioral health services by electronic means in all governmental jurisdictions where the client receiving these services resides.

(ee) Giving or receiving a payment, kickback, rebate, bonus or other remuneration for a referral.

(ff) Failing to report in writing to the board information that would cause a reasonable licensee to believe that another licensee is guilty of unprofessional conduct or is physically or mentally unable to provide behavioral health services competently or safely. This duty does not extend to information provided by a licensee that is protected by the behavioral health professional-client privilege unless the information indicates a clear and imminent danger to the client or others or is otherwise subject to mandatory reporting requirements pursuant to state or federal law.

(gg) Failing to follow federal and state laws regarding the storage, use and release of confidential information regarding a client's personal identifiable information or care.

- (hh) Failing to retain records pursuant to section 12-2297.
- (ii) Violating any federal or state law, rule or regulation applicable to the practice of behavioral health.
- (jj) Failing to make client records in the licensee's possession available in a timely manner to another health professional or licensee on receipt of proper authorization to do so from the client, a minor client's parent, the client's legal guardian or the client's authorized representative.
- (kk) Failing to make client records in the licensee's possession promptly available to the client, a minor client's parent, the client's legal guardian or the client's authorized representative on receipt of proper authorization to do so from the client, a minor client's parent, the client's legal guardian or the client's authorized representative.
- (ll) Being the subject of the revocation, suspension, surrender or any other disciplinary sanction of a professional license, certificate or registration or other adverse action related to a professional license, certificate or registration in another jurisdiction or country, including the failure to report the adverse action to the board. The action taken may include refusing, denying, revoking or suspending a license or certificate, the surrendering of a license or certificate, otherwise limiting, restricting or monitoring a licensee or certificate holder or placing a licensee or certificate holder on probation.
- (mm) Engaging in any conduct that results in a sanction imposed by an agency of the federal government that involves restricting, suspending, limiting or removing the licensee's ability to obtain financial remuneration for behavioral health services.
- (nn) Violating the security of any licensure examination materials.
- (oo) Using fraud or deceit in connection with taking or assisting another person in taking a licensure examination.

32-3401. Definitions

In this chapter, unless the context otherwise requires:

1. "Board" means the board of occupational therapy examiners.
2. "Consultation" means the act or procedure of exchanging ideas or information or providing professional advice to another professional or responsible party regarding the provision of occupational therapy services.
3. "Evaluation" means an occupational therapist's assessment of treatment needs within the scope of practice of occupational therapy. Evaluation does not include making a medical diagnosis.
4. "Letter of concern" means a nondisciplinary advisory letter to notify a licensee that, while there is insufficient evidence to support disciplinary action, the licensee should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the board may result in future action against the licensee's license.
5. "Occupational therapist" means a person who is licensed pursuant to this chapter to practice occupational therapy and who is a graduate of an accredited occupational therapy education program, completes the approved fieldwork and passes the examination as required by the board pursuant to section 32-3424.
6. "Occupational therapy" means the use of therapeutic activities or modalities to promote engagement in activities with individuals who are limited by physical or cognitive injury or illness, psychosocial dysfunction, developmental or learning disabilities, sensory processing or modulation deficits or the aging process in order to achieve optimum functional performance, maximize independence, prevent disability and maintain health. Occupational therapy includes evaluation, treatment and consultation based on the client's temporal, spiritual and cultural values and needs.
7. "Occupational therapy assistant" means a person who is licensed pursuant to this chapter, who is a graduate of an accredited occupational therapy assistant education program, who assists in the practice of occupational therapy and who performs delegated procedures commensurate with the person's education and training.
8. "Occupational therapy services" includes the following:
 - (a) Developing an intervention and training plan that is based on the occupational therapist's evaluation of the client's occupational history and experiences, including the client's daily living activities, development, activity demands, values and needs.

(b) Evaluating and facilitating developmental, perceptual-motor, communication, neuromuscular and sensory processing function, psychosocial skills and systemic functioning, including wound, lymphatic and cardiac functioning.

(c) Enhancing functional achievement, prevocational skills and work capabilities through the use of therapeutic activities and modalities that are based on anatomy, physiology and kinesiology, growth and development, disabilities, technology and analysis of human behavioral and occupational performance.

(d) Evaluating, designing, fabricating and training the individual in the use of selective orthotics, prosthetics, adaptive devices, assistive technology and durable medical equipment as appropriate.

(e) Administering and interpreting standardized and nonstandardized tests that are performed within the practice of occupational therapy, including manual muscle, sensory processing, range of motion, cognition, developmental and psychosocial tests.

(f) Assessing and adapting environments for individuals with disabilities or who are at risk for dysfunction.

9. "Supervision" means the giving of instructions by the supervising occupational therapist or the occupational therapy assistant that are adequate to ensure the safety of clients during the provision of occupational therapy services and that take into consideration at least the following factors:

(a) Skill level.

(b) Competency.

(c) Experience.

(d) Work setting demands.

(e) Client population.

10. "Unprofessional conduct" includes the following:

(a) Habitual intemperance in the use of alcohol.

(b) Habitual use of narcotic or hypnotic drugs.

(c) Gross incompetence, repeated incompetence or incompetence resulting in injury to a client.

(d) Having professional connection with or lending the name of the licensee to an unlicensed occupational therapist.

(e) Practicing or offering to practice occupational therapy beyond the scope of the practice of occupational therapy.

(f) Obtaining or attempting to obtain a license by fraud or misrepresentation or assisting a person to obtain or to attempt to obtain a license by fraud or misrepresentation.

(g) Failing to provide supervision according to this chapter and rules adopted pursuant to this chapter.

(h) Making misleading, deceptive, untrue or fraudulent representations in violation of this chapter.

(i) Having been adjudged mentally incompetent by a court of competent jurisdiction.

(j) Knowingly aiding a person who is not licensed in this state and who directly or indirectly performs activities requiring a license.

(k) Failing to report to the board any act or omission of a licensee or applicant or of any other person who violates this chapter.

(l) Engaging in the performance of substandard care by a licensee due to a deliberate or negligent act or failure to act, regardless of whether actual injury to the person receiving occupational therapy services is established.

(m) Failing to refer a client whose condition is beyond the training or ability of the occupational therapist to another professional qualified to provide such service.

(n) Censure of a licensee or refusal, revocation, suspension or restriction of a license to practice occupational therapy by any other state, territory, district or country, unless the applicant or licensee can demonstrate that the disciplinary action is not related to the ability to safely and skillfully practice occupational therapy or to any act of unprofessional conduct prescribed in this paragraph.

- (o) Any conduct or practice that violates recognized standards of ethics of the occupational therapy profession, any conduct or practice that does or might constitute a danger to the health, welfare or safety of the client or the public or any conduct, practice or condition that does or might impair the licensee's ability to safely and skillfully practice occupational therapy.
- (p) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate this chapter.
- (q) Falsely claiming to have performed a professional service, billing for a service not rendered or charging or collecting an excessive fee for services not performed.
- (r) Sexually inappropriate conduct with a client. For the purposes of this subdivision, "sexually inappropriate conduct" includes:
 - (i) Engaging in or soliciting a sexual relationship, whether consensual or nonconsensual, with a current client or with a former client within three months after termination of occupational therapy services.
 - (ii) Making sexual advances, requesting sexual favors or engaging in other verbal conduct or inappropriate physical contact of a sexual nature with a person treated by an occupational therapist or occupational therapy assistant.
 - (iii) Intentionally viewing a completely or partially disrobed client in the course of treatment if the viewing is not related to treatment under current practice standards.
- (s) Knowingly making a false or misleading statement to the board on a license application or renewal form required by the board or any other verbal or written communications directed to the board or its staff.
- (t) Conviction of a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case conviction by a court of competent jurisdiction is conclusive evidence of the commission and the board may take disciplinary action after the time for appeal has lapsed, when judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order. For the purposes of this subdivision, "conviction" means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
- (u) Violating any federal law, state law, rule or regulation directly related to the practice of occupational therapy.
- (v) Engaging in false advertising of occupational therapy services.
- (w) Engaging in the assault or battery of a client.
- (x) Falsifying client documents or reports.
- (y) Failing to document or maintain client treatment records or failing to prepare client reports within thirty days of service or treatment.
- (z) Failing to renew a license while continuing to practice occupational therapy.
- (aa) Signing a blank, undated or unprepared prescription form.
- (bb) Entering into a financial relationship other than a normal billing process that leads to embezzlement or violates recognized ethical standards.
- (cc) Failing to maintain client confidentiality without written consent of the client or unless otherwise required by law.
- (dd) Promoting or providing treatment, intervention or a device or service that is unwarranted for the condition of the client beyond the point of reasonable benefit.

32-3501. Definitions

In this chapter, unless the context otherwise requires:

1. "Board" means the board of respiratory care examiners.
2. "Diagnostic testing" includes obtaining physiologic samples and determining acid-base status and blood gas values from blood samples and pulmonary function measurements.
3. "Licensed respiratory care practitioner" means a respiratory therapist who is licensed pursuant to this chapter.

4. "Medical direction" means direction by a physician who is licensed pursuant to chapter 13 or 17 of this title.
5. "Practice of respiratory care" means direct and indirect respiratory care services that are performed in a clinic, hospital, skilled nursing facility or private dwelling or other place deemed appropriate or necessary by the board in accordance with the prescription or verbal order of a physician and performed under qualified medical direction. These services include:
 - (a) Administering pharmacological, diagnostic and therapeutic agents that are related to respiratory care procedures and necessary to implement a treatment, disease prevention, pulmonary rehabilitative or diagnostic regimen prescribed by a physician.
 - (b) Transcribing and implementing the written or verbal orders of a physician pertaining to the practice of respiratory care and observing and monitoring signs and symptoms, general behavior, general physical responses to respiratory care treatment and diagnostic testing, including a determination of whether these signs, symptoms, reactions, behavior or general responses exhibit abnormal characteristics.
 - (c) Implementing appropriate reporting, referral, respiratory care protocols or changes in treatment based on observed abnormalities and pursuant to a prescription by a physician who is licensed pursuant to chapter 13 or 17 of this title.
 - (d) Initiating emergency procedures pursuant to board rules or as otherwise permitted in this chapter.
 - (e) Respiratory therapy.
 - (f) Inhalation therapy.
 - (g) Therapeutics.
6. "Respiratory therapist" means a person who successfully completes a respiratory therapy training program approved by the board.
7. "Respiratory therapy training program" means a program that is accredited by the commission on accreditation for respiratory care or its successor agency and that is adopted by the board.
8. "Therapeutics" includes the following:
 - (a) Applying and monitoring oxygen therapy.
 - (b) Administering pharmacological agents to the cardiopulmonary systems.
 - (c) Ventilation therapy.
 - (d) Artificial airway care.
 - (e) Bronchial hygiene therapy.
 - (f) Cardiopulmonary resuscitation.
 - (g) Respiratory rehabilitation therapy.
 - (h) Barometric therapy.
 - (i) Assisting physicians licensed pursuant to chapter 13 or 17 of this title with hemodynamic monitoring.
9. "Unprofessional conduct" includes the following:
 - (a) Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude.
 - (b) Habitual intemperance in the use of alcohol.
 - (c) Illegal use of narcotic or hypnotic drugs or substances.
 - (d) Gross incompetence, repeated incompetence or incompetence resulting in injury to a patient.
 - (e) Having professional connection with or lending the name of the licensee to an illegal practitioner of respiratory therapy or any of the other healing arts.
 - (f) Failing to refer a patient whose condition is beyond the training or ability of the respiratory therapist to another professional qualified to provide such service.
 - (g) Immorality or misconduct that tends to discredit the respiratory therapy profession.
 - (h) Having a license refused, revoked or suspended by any other state, territory, district or country, unless it can be

shown that this was not caused by reasons that relate to the person's ability to safely and skillfully practice respiratory therapy or to an act of unprofessional conduct prescribed in this paragraph.

(i) Any conduct or practice that is contrary to recognized standards of ethics of the respiratory therapy profession or any conduct or practice that does or might constitute a danger to the health, welfare or safety of the patient or the public.

(j) Any conduct, practice or condition that does or might impair the person's ability to safely and skillfully practice respiratory therapy.

(k) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate a provision of this chapter.

(l) Failing to report to the board within ten calendar days an incident or incidents that appear to show the existence of a cause for disciplinary action or that a licensed respiratory care practitioner is or may be professionally incompetent or is or may be mentally or physically unable to engage safely in the practice of respiratory care.

36-151. Definitions

In this article, unless the context otherwise requires:

1. "County department" means a county department of health.

2. "Department" means the department of health services.

3. "Home health services" means the items and services enumerated in this paragraph and furnished to a person who is under the care of a physician and surgeon, not including the services of a physician and surgeon. Such items and services may be furnished by a home health agency or by others under arrangements made by such agency, under a plan established and periodically reviewed by such physician and surgeon. Such items and services, except as provided in subdivision (b) of this paragraph, shall be furnished on a visiting basis in a place of residence used as such person's home and shall consist of:

(a) Part-time or intermittent nursing care provided by or under the supervision of a registered professional nurse and either physical, occupational or speech therapy, or, to the extent permitted in department regulations, part-time or intermittent services of a home health aide, and such items and services may further consist of any or all of the following:

(i) Medical social services under the direct supervision of a physician and surgeon.

(ii) Medical supplies, other than drugs and biologicals, and the use of medical appliances, while under such a plan.

(iii) In the case of a home health agency which is affiliated or under common control with a hospital, medical services provided by an intern or resident-in-training of such hospital, under a teaching program of such hospital approved as provided in paragraph 4 of this section.

(b) Any of the items and services enumerated in subdivision (a) of this paragraph, which are provided on an outpatient basis, under arrangements made by the home health agency, at a hospital or extended care facility, or at a rehabilitation center which meets such standards as may be prescribed in regulations, and under one of the following conditions:

(i) The furnishing of such items and services involves the use of equipment of such a nature that the items and services cannot readily be made available to such person in such place of residence.

(ii) Such items and services are furnished at such facility while he is there to receive any such item or service described in item (i) of this subdivision, but not including transportation of such person in connection with any such item or service. Any item or service, if it would not be included under paragraph 4 of this section if furnished to an inpatient of a hospital, shall be excluded.

4. "Inpatient hospital services" means the following items and services, furnished to an inpatient of a hospital and, except as provided in subdivision (c) of this paragraph, by the hospital:

(a) Bed and board.

(b) Such nursing services and other related services, such use of hospital facilities, and such medical social services

as are ordinarily furnished by the hospital for the care and treatment of inpatients, and such drugs, biologicals, supplies, appliances, and equipment, for use in the hospital, as are ordinarily furnished by such hospital for the care and treatment of inpatients.

(c) Such other diagnostic or therapeutic items or services, furnished by the hospital or by others under arrangements with them made by the hospital, as are ordinarily furnished to inpatients either by such hospital or by others under such arrangements, excluding the following:

(i) Medical or surgical services provided by a physician and surgeon, resident or intern.

(ii) The services of a private duty nurse or other private duty attendant. Item (i) of this subdivision shall not apply to services provided in the hospital by an intern or a resident-in-training under a teaching program approved by the council on medical education of the American medical association or, in the case of an osteopathic hospital, approved by the committee on hospitals of the bureau of professional education of the American osteopathic association, or, in the case of services in a hospital or osteopathic hospital by an intern or resident-in-training in the field of dentistry, approved by the council on dental education of the American dental association.

5. "Home health agency" means an agency or organization, or a subdivision of such an agency or organization, which meets all of the following requirements:

(a) Is primarily engaged in providing skilled nursing services and other therapeutic services.

(b) Has policies, established by a group of professional personnel, associated with the agency or organization, including one or more physicians and one or more registered professional nurses, to govern the services referred to in subdivision (a), which it provides, and provides for supervision of such services by a physician or registered professional nurse.

(c) Maintains clinical records on all patients.

6. "Supportive services" or "related supportive services" means services other than home health services which may reasonably be expected to help maintain an individual in his home as an alternative to institutionalization. Such services may include, but not limited to, nutrition counseling, meals services, homemaker services, general maintenance services and transportation services.

36-301. Definitions

In this chapter, unless the context otherwise requires:

1. "Administrative order" means a written decision issued by an administrative law judge or quasi-judicial entity.

2. "Amend" means to make a change, other than a correction, to a registered certificate by adding, deleting or substituting information on that certificate.

3. "Birth" or "live birth" means the complete expulsion or extraction of a product of human conception from its mother, irrespective of the duration of the pregnancy, that shows evidence of life, with or without a cut umbilical cord or an attached placenta, such as breathing, heartbeat, umbilical cord pulsation or definite voluntary muscle movement after expulsion or extraction of the product of human conception.

4. "Certificate" means a record that documents a birth or death.

5. "Certified copy" means a written reproduction of a registered certificate that a local registrar, a deputy local registrar or the state registrar has authenticated as a true and exact written reproduction of a registered certificate.

6. "Correction" means a change made to a registered certificate because of a typographical error, including misspelling and missing or transposed letters or numbers.

7. "Court order" means a written decision issued by:

(a) The superior court, an appellate court or the supreme court or an equivalent court in another state.

(b) A commissioner or judicial hearing officer of the superior court.

(c) A judge of a tribal court in this state.

8. "Current care" means that a health care provider has examined, treated or provided care for a person for a chronic or acute condition within eighteen months preceding that person's death. Current care does not include

services provided in connection with a single event of emergency or urgent care. For the purposes of this paragraph, "treated" includes prescribing medication.

9. "Custody" means legal authority to act on behalf of a child.

10. "Department" means the department of health services.

11. "Electronic" means technology that has electrical, digital, magnetic, wireless, optical or electromagnetic capabilities or technology with similar capabilities.

12. "Evidentiary document" means written information used to prove the fact for which it is presented.

13. "Family member" means:

(a) A person's spouse, natural or adopted offspring, father, mother, grandparent, grandchild to any degree, brother, sister, aunt, uncle or first or second cousin.

(b) The natural or adopted offspring, father, mother, grandparent, grandchild to any degree, brother, sister, aunt, uncle or first or second cousin of the person's spouse.

14. "Fetal death" means the cessation of life before the complete expulsion or extraction of a product of human conception from its mother that is evidenced by the absence of breathing, heartbeat, umbilical cord pulsation or definite voluntary muscle movement after expulsion or extraction.

15. "Final disposition" means the interment, cremation, removal from this state or other disposition of human remains.

16. "Foundling" means:

(a) A newborn infant left with a safe haven provider pursuant to section 13-3623.01.

(b) A child whose father and mother cannot be determined.

17. "Funeral establishment" has the same meaning prescribed in section 32-1301.

18. "Health care institution" has the same meaning prescribed in section 36-401.

19. "Health care provider" means:

(a) A physician licensed pursuant to title 32, chapter 13 or 17.

(b) A doctor of naturopathic medicine licensed pursuant to title 32, chapter 14.

(c) A midwife licensed pursuant to chapter 6, article 7 of this title.

(d) A nurse midwife certified pursuant to title 32, chapter 15.

(e) A nurse practitioner licensed and certified pursuant to title 32, chapter 15.

(f) A physician assistant licensed pursuant to title 32, chapter 25.

(g) A health care provider who is licensed or certified by another state or jurisdiction of the United States and who works in a federal health care facility.

20. "Human remains" means a lifeless human body or parts of a human body that permit a reasonable inference that death occurred.

21. "Issue" means:

(a) To provide a copy of a registered certificate.

(b) An action taken by a court of competent jurisdiction, administrative law judge or quasi-judicial entity.

22. "Legal age" means a person who is at least eighteen years of age or who is emancipated by a court order.

23. "Medical certification of death" means the opinion of the health care provider who signs the certificate of probable or presumed cause of death that complies with rules adopted by the state registrar of vital records and that is based on any of the following that are reasonably available:

(a) Personal examination.

(b) Medical history.

(c) Medical records.

(d) Other reasonable forms of evidence.

24. "Medical examiner" means a medical examiner or alternate medical examiner as defined in section 11-591.

25. "Name" means a designation that identifies a person, including a first name, middle name, last name or suffix.

26. "Natural causes" means those causes that are due solely or nearly entirely to disease or the aging process.

27. "Presumptive death" means a determination by a court that a death has occurred or is presumed to have occurred but the human remains have not been located or recovered.

28. "Register" means to assign an official state number and to incorporate into the state registrar's official records.

29. "Responsible person" means a person listed in section 36-831.

30. "Seal" means to bar from access.

31. "Submit" means to present, physically or electronically, a certificate, evidentiary document or form provided for in this chapter to a local registrar, a deputy local registrar or the state registrar.

32. "System of public health statistics" means the processes and procedures for:

(a) Tabulating, analyzing and publishing public health information derived from vital records data and other sources authorized pursuant to section 36-125.05 or section 36-132, subsection A, paragraph 3.

(b) Performing other activities related to public health information.

33. "System of vital records" means the statewide processes and procedures for:

(a) Electronically or physically collecting, creating, registering, maintaining, copying and preserving vital records.

(b) Preparing and issuing certified and noncertified copies of vital records.

(c) Performing other activities related to vital records.

34. "Vital record" means a registered birth certificate or a registered death certificate.

36-401. Definitions; adult foster care

A. In this chapter, unless the context otherwise requires:

1. "Accredited health care institution" means a health care institution, other than a hospital, that is currently accredited by a nationally recognized accreditation organization.

2. "Accredited hospital" means a hospital that is currently accredited by a nationally recognized organization on hospital accreditation.

3. "Adult day health care facility" means a facility that provides adult day health services during a portion of a continuous twenty-four-hour period for compensation on a regular basis for five or more adults who are not related to the proprietor.

4. "Adult day health services" means a program that provides planned care supervision and activities, personal care, personal living skills training, meals and health monitoring in a group setting during a portion of a continuous twenty-four-hour period. Adult day health services may also include preventive, therapeutic and restorative health-related services that do not include behavioral health services.

5. "Adult foster care home" means a residential setting that provides room and board and adult foster care services for at least one and no more than four adults who are participants in the Arizona long-term care system pursuant to chapter 29, article 2 of this title or contracts for services with the United States department of veterans affairs and in which the sponsor or the manager resides with the residents and integrates the residents who are receiving adult foster care into that person's family.

6. "Adult foster care services" means supervision, assistance with eating, bathing, toileting, dressing, self-medication and other routines of daily living or services authorized by rules adopted pursuant to section 36-405 and section 36-2939, subsection C.

7. "Assisted living center" means an assisted living facility that provides resident rooms or residential units to eleven or more residents.

8. "Assisted living facility" means a residential care institution, including an adult foster care home, that provides or

contracts to provide supervisory care services, personal care services or directed care services on a continuous basis.

9. "Assisted living home" means an assisted living facility that provides resident rooms to ten or fewer residents.

10. "Behavioral health services" means services that pertain to mental health and substance use disorders and that are either:

(a) Performed by or under the supervision of a professional who is licensed pursuant to title 32 and whose scope of practice allows for the provision of these services.

(b) Performed on behalf of patients by behavioral health staff as prescribed by rule.

11. "Construction" means the building, erection, fabrication or installation of a health care institution.

12. "Continuous" means available at all times without cessation, break or interruption.

13. "Controlling person" means a person who:

(a) Through ownership, has the power to vote at least ten percent of the outstanding voting securities.

(b) If the applicant or licensee is a partnership, is the general partner or a limited partner who holds at least ten percent of the voting rights of the partnership.

(c) If the applicant or licensee is a corporation, an association or a limited liability company, is the president, the chief executive officer, the incorporator or any person who owns or controls at least ten percent of the voting securities. For the purposes of this subdivision, corporation does not include nonprofit corporations.

(d) Holds a beneficial interest in ten percent or more of the liabilities of the applicant or the licensee.

14. "Department" means the department of health services.

15. "Directed care services" means programs and services, including supervisory and personal care services, that are provided to persons who are incapable of recognizing danger, summoning assistance, expressing need or making basic care decisions.

16. "Direction" means authoritative policy or procedural guidance for the accomplishment of a function or activity.

17. "Director" means the director of the department of health services.

18. "Facilities" means buildings that are used by a health care institution for providing any of the types of services as defined in this chapter.

19. "Freestanding urgent care center":

(a) Means an outpatient treatment center that, regardless of its posted or advertised name, meets any of the following requirements:

(i) Is open twenty-four hours a day, excluding at its option weekends or certain holidays, but is not licensed as a hospital.

(ii) Claims to provide unscheduled medical services not otherwise routinely available in primary care physician offices.

(iii) By its posted or advertised name, gives the impression to the public that it provides medical care for urgent, immediate or emergency conditions.

(iv) Routinely provides ongoing unscheduled medical services for more than eight consecutive hours for an individual patient.

(b) Does not include the following:

(i) A medical facility that is licensed under a hospital's license and that uses the hospital's medical provider number.

(ii) A qualifying community health center pursuant to section 36-2907.06.

(iii) Any other health care institution licensed pursuant to this chapter.

(iv) A physician's office that offers extended hours or same-day appointments to existing and new patients and that does not meet the requirements of subdivision (a), item (i), (iii) or (iv) of this paragraph.

20. "Governing authority" means the individual, agency, partners, group or corporation, appointed, elected or

otherwise designated, in which the ultimate responsibility and authority for the conduct of the health care institution are vested.

21. "Health care institution" means every place, institution, building or agency, whether organized for profit or not, that provides facilities with medical services, nursing services, behavioral health services, health screening services, other health-related services, supervisory care services, personal care services or directed care services and includes home health agencies as defined in section 36-151, outdoor behavioral health care programs and hospice service agencies. Health care institution does not include a community residential setting as defined in section 36-551.

22. "Health-related services" means services, other than medical, that pertain to general supervision, protective, preventive and personal care services, supervisory care services or directed care services.

23. "Health screening services" means the acquisition, analysis and delivery of health-related data of individuals to aid in the determination of the need for medical services.

24. "Hospice" means a hospice service agency or the provision of hospice services in an inpatient facility.

25. "Hospice service" means a program of palliative and supportive care for terminally ill persons and their families or caregivers.

26. "Hospice service agency" means an agency or organization, or a subdivision of that agency or organization, that is engaged in providing hospice services at the place of residence of its clients.

27. "Inpatient beds" or "resident beds" means accommodations with supporting services, such as food, laundry and housekeeping, for patients or residents who generally stay in excess of twenty-four hours.

28. "Licensed capacity" means the total number of persons for whom the health care institution is authorized by the department to provide services as required pursuant to this chapter if the person is expected to stay in the health care institution for more than twenty-four hours. For a hospital, licensed capacity means only those beds specified on the hospital license.

29. "Medical services" means the services that pertain to medical care and that are performed at the direction of a physician on behalf of patients by physicians, dentists, nurses and other professional and technical personnel.

30. "Modification" means the substantial improvement, enlargement, reduction or alteration of or other change in a health care institution.

31. "Nonproprietary institution" means any health care institution that 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, or that is operated by the state or any political subdivision of the state.

32. "Nursing care institution" means a health care institution that provides inpatient beds or resident beds and nursing services to persons who need continuous nursing services but who do not require hospital care or direct daily care from a physician.

33. "Nursing services" means those services that pertain to the curative, restorative and preventive aspects of nursing care and that are performed at the direction of a physician by or under the supervision of a registered nurse licensed in this state.

34. "Organized medical staff" means a formal organization of physicians, and dentists where appropriate, with the delegated authority and responsibility to maintain proper standards of medical care and to plan for continued betterment of that care.

35. "Outdoor behavioral health care program" means an agency that provides behavioral health services in an outdoor environment as an alternative to behavioral health services that are provided in a health care institution with facilities. Outdoor behavioral health care programs do not include:

(a) Programs, facilities or activities that are operated by a government entity or that are licensed by the department as a child care program pursuant to chapter 7.1 of this title.

(b) Outdoor activities for youth that are designated to be primarily recreational and that are organized by church groups, scouting organizations or similar groups.

(c) Outdoor youth programs licensed by the department of economic security.

36. "Personal care services" means assistance with activities of daily living that can be performed by persons

without professional skills or professional training and includes the coordination or provision of intermittent nursing services and the administration of medications and treatments by a nurse who is licensed pursuant to title 32, chapter 15 or as otherwise provided by law.

37. "Physician" means any person who is licensed pursuant to title 32, chapter 13 or 17.

38. "Recidivism reduction services" means services that are delivered by an adult residential care institution to its residents to encourage lawful behavior and to discourage or prevent residents who are suspected of, charged with or convicted of one or more criminal offenses, or whose mental health and substance use can be reasonably expected to place them at risk for the future threat of prosecution, diversion or incarceration, from engaging in future unlawful behavior.

39. "Recidivism reduction staff" means a person who provides recidivism reduction services.

40. "Residential care institution" means a health care institution other than a hospital or a nursing care institution that provides resident beds or residential units, supervisory care services, personal care services, behavioral health services, directed care services or health-related services for persons who do not need continuous nursing services.

41. "Residential unit" means a private apartment, unless otherwise requested by a resident, that includes a living and sleeping space, kitchen area, private bathroom and storage area.

42. "Respite care services" means services that are provided by a licensed health care institution to persons otherwise cared for in foster homes and in private homes to provide an interval of rest or relief of not more than thirty days to operators of foster homes or to family members.

43. "Substantial compliance" means that the nature or number of violations revealed by any type of inspection or investigation of a health care institution does not pose a direct risk to the life, health or safety of patients or residents.

44. "Supervision" means direct overseeing and inspection of the act of accomplishing a function or activity.

45. "Supervisory care services" means general supervision, including daily awareness of resident functioning and continuing needs, the ability to intervene in a crisis and assistance in the self-administration of prescribed medications.

46. "Temporary license" means a license that is issued by the department to operate a class or subclass of a health care institution at a specific location and that is valid until an initial licensing inspection.

47. "Unscheduled medical services" means medically necessary periodic health care services that are unanticipated or cannot reasonably be anticipated and that require medical evaluation or treatment before the next business day.

B. If there are fewer than four Arizona long-term care system participants receiving adult foster care in an adult foster care home, nonparticipating adults may receive other types of services that are authorized by law to be provided in the adult foster care home as long as the number of adults served, including the Arizona long-term care system participants, does not exceed four.

C. Nursing care services may be provided by the adult foster care licensee if the licensee is a nurse who is licensed pursuant to title 32, chapter 15 and the services are limited to those allowed pursuant to law. The licensee shall keep a record of nursing services rendered.

36-411. Residential care institutions; nursing care institutions; home health agencies; fingerprinting requirements; exemptions; definitions

A. Except as provided in subsections F, G, H and I of this section, as a condition of licensure or continued licensure of a residential care institution, a nursing care institution or a home health agency and as a condition of employment in a residential care institution, a nursing care institution or a home health agency, employees and owners of residential care institutions, nursing care institutions or home health agencies or contracted persons or volunteers who provide medical services, nursing services, behavioral health services, health-related services, home health services or supportive services and who have not been subject to the fingerprinting requirements of a health professional's regulatory board pursuant to title 32 shall have valid fingerprint clearance cards that are issued pursuant to title 41, chapter 12, article 3.1 or shall apply for a fingerprint clearance card within twenty

working days of employment or beginning volunteer work.

B. A health professional who has complied with the fingerprinting requirements of the health professional's regulatory board as a condition of licensure or certification pursuant to title 32 is not required to submit an additional set of fingerprints to the department of public safety pursuant to this section.

C. Owners shall make documented, good faith efforts to:

1. Contact previous employers to obtain information or recommendations that may be relevant to a person's fitness to work in a residential care institution, nursing care institution or home health agency.

2. Verify the current status of a person's fingerprint clearance card.

D. An employee, an owner, a contracted person or a volunteer or a facility on behalf of the employee, the owner, the contracted person or the volunteer shall submit a completed application that is provided by the department of public safety within twenty days after the date the person begins work or volunteer service.

E. Except as provided in subsection F of this section, a residential care institution, nursing care institution or home health agency shall not allow an employee to continue employment or a contracted person to continue to provide medical services, nursing services, behavioral health services, health-related services, home health services or supportive services if the person has been denied a fingerprint clearance card pursuant to title 41, chapter 12, article 3.1 or has been denied approval pursuant to this section before May 7, 2001.

F. An employee or contractor who is eligible pursuant to section 41-1758.07, subsection C to petition the board of fingerprinting for a good cause exception and who provides documentation of having applied for a good cause exception pursuant to section 41-619.55 but who has not yet received a decision is exempt from the fingerprinting requirements of this section if the person provides services to residents or patients while under the direct visual supervision of an owner or employee who has a valid fingerprint clearance card.

G. A residential care institution, nursing care institution or home health agency shall require that an owner or employee who has a valid fingerprint clearance card provide direct visual supervision of a volunteer who provides services to residents or patients unless the volunteer has a valid fingerprint clearance card.

H. Notwithstanding the requirements of section 41-1758.02, subsection B, an employee of a residential care institution, home health agency or nursing care institution, after meeting the fingerprinting and criminal records check requirements of this section, is not required to meet the fingerprint and criminal records check requirements of this section again if that person remains employed by the same employer or changes employment within two years after satisfying the requirements of this section. For the purposes of this subsection, if the employer changes through sale, lease or operation of law, a person is deemed to be employed by the same employer if that person remains employed by the new employer.

I. Notwithstanding the requirements of section 41-1758.02, subsection B, a person who has received approval pursuant to this section before May 7, 2001 and who remains employed by the same employer is not required to apply for a fingerprint clearance card.

J. If a person's employment record contains a six-month or longer time frame during which the person was not employed by any employer, a completed application with a new set of fingerprints shall be submitted to the department of public safety.

K. For the purposes of this section:

1. "Direct visual supervision" means continuous visual oversight of the supervised person that does not require the supervisor to be in a superior organizational role to the person being supervised.

2. "Home health services" has the same meaning prescribed in section 36-151.

3. "Supportive services" has the same meaning prescribed in section 36-151.

36-422. Application for license; notification of proposed change in status; joint licenses; definitions

A. A person who wishes to apply for a license to operate a health care institution pursuant to this chapter shall submit to the department all of the following:

1. An application on a written or electronic form that is prescribed, prepared and furnished by the department that

contains all of the following:

- (a) The name and location of the health care institution.
 - (b) Whether the health care institution is to be operated as a proprietary or nonproprietary institution.
 - (c) The name of the governing authority. The applicant shall be the governing authority having the operative ownership of, or the governmental agency charged with the administration of, the health care institution sought to be licensed. If the applicant is a partnership that is not a limited partnership, the partners shall apply jointly, and the partners are jointly the governing authority for purposes of this article.
 - (d) The name and business or residential address of each controlling person and an affirmation that none of the controlling persons has been denied a license or certificate by a health profession regulatory board pursuant to title 32 or by a state agency pursuant to chapter 6, article 7 or chapter 17 of this title or a license to operate a health care institution in this state or another state or has had a license or certificate issued by a health profession regulatory board pursuant to title 32 or issued by a state agency pursuant to chapter 6, article 7 or chapter 17 of this title or a license to operate a health care institution revoked. If a controlling person has been denied a license or certificate by a health profession regulatory board pursuant to title 32 or by a state agency pursuant to chapter 6, article 7 or chapter 17 of this title or a license to operate a health care institution in this state or another state or has had a health care professional license or a license to operate a health care institution revoked, the controlling person shall include in the application a comprehensive description of the circumstances for the denial or the revocation.
 - (e) The class or subclass of health care institution to be established or operated.
 - (f) The types and extent of the health care services to be provided, including emergency services, community health services and services to indigent patients.
 - (g) The name and qualifications of the chief administrative officer implementing direction in that specific health care institution.
 - (h) Other pertinent information required by the department for the proper administration of this chapter and department rules.
2. The architectural plans and specifications or the department's approval of the architectural plans and specifications required by section 36-421, subsection A.
 3. The applicable application fee.
- B. An application submitted pursuant to this section shall contain the written or electronic signature of:
1. If the applicant is an individual, the owner of the health care institution.
 2. If the applicant is a partnership, limited liability company or corporation, two of the officers of the corporation or managing members of the partnership or limited liability company or the sole member of the limited liability company if it has only one member.
 3. If the applicant is a governmental unit, the head of the governmental unit.
- C. An application for licensure shall be submitted at least sixty but not more than one hundred twenty days before the anticipated date of operation. An application for a substantial compliance survey submitted pursuant to section 36-425, subsection G shall be submitted at least thirty days before the date on which the substantial compliance survey is requested.
- D. If a current licensee intends to terminate the operation of a licensed health care institution or if a change of ownership is planned, the current licensee shall notify the director in writing at least thirty days before the termination of operation or change in ownership is to take place. The current licensee is responsible for preventing any interruption of services required to sustain the life, health and safety of the patients or residents. A new owner shall not begin operating the health care institution until the director issues a license to the new owner.
- E. A licensed health care institution for which operations have not been terminated for more than thirty days may be relicensed pursuant to the codes and standards for architectural plans and specifications that were applicable under its most recent license.
- F. If a person operates a hospital in a county with a population of more than five hundred thousand persons in a setting that includes satellite facilities of the hospital that are located separately from the main hospital building,

the department at the request of the applicant or licensee shall issue a single group license to the hospital and its designated satellite facilities located within one-half mile of the main hospital building if all of the facilities meet or exceed department licensure requirements for the designated facilities. At the request of the applicant or licensee, the department shall also issue a single group license that includes the hospital and not more than ten of its designated satellite facilities that are located farther than one-half mile from the main hospital building if all of these facilities meet or exceed applicable department licensure requirements. Each facility included under a single group license is subject to the department's licensure requirements that are applicable to that category of facility. Subject to compliance with applicable licensure or accreditation requirements, the department shall reissue individual licenses for the facility of a hospital located in separate buildings from the main hospital building when requested by the hospital. This subsection does not apply to nursing care institutions and residential care institutions. The department is not limited in conducting inspections of an accredited health care institution to ensure that the institution meets department licensure requirements. If a person operates a hospital in a county with a population of five hundred thousand persons or less in a setting that includes satellite facilities of the hospital that are located separately from the main hospital building, the department at the request of the applicant or licensee shall issue a single group license to the hospital and its designated satellite facilities located within thirty-five miles of the main hospital building if all of the facilities meet or exceed department licensure requirements for the designated facilities. At the request of the applicant or licensee, the department shall also issue a single group license that includes the hospital and not more than ten of its designated satellite facilities that are located farther than thirty-five miles from the main hospital building if all of these facilities meet or exceed applicable department licensure requirements.

G. If a county with a population of more than one million persons or a special health care district in a county with a population of more than one million persons operates an accredited hospital that includes the hospital's accredited facilities that are located separately from the main hospital building and the accrediting body's standards as applied to all facilities meet or exceed the department's licensure requirements, the department shall issue a single license to the hospital and its facilities if requested to do so by the hospital. If a hospital complies with applicable licensure or accreditation requirements, the department shall reissue individual licenses for each hospital facility that is located in a separate building from the main hospital building if requested to do so by the hospital. This subsection does not limit the department's duty to inspect a health care institution to determine its compliance with department licensure standards. This subsection does not apply to nursing care institutions and residential care institutions.

H. An applicant or licensee must notify the department within thirty days after any change regarding a controlling person and provide the information and affirmation required pursuant to subsection A, paragraph 1, subdivision (d) of this section.

I. This section does not limit the application of federal laws and regulations to an applicant or licensee that is certified as a medicare or an Arizona health care cost containment system provider under federal law.

J. Except for an outpatient treatment center providing dialysis services or abortion procedures, a person wishing to begin operating an outpatient treatment center before a licensing inspection is completed shall submit all of the following:

1. The license application required pursuant to this section.
2. All applicable application and license fees.
3. A written request for a temporary license that includes:

(a) The anticipated date of operation.

(b) An attestation signed by the applicant that the applicant and the facility comply with and will continue to comply with the applicable licensing statutes and rules.

K. Within seven days after the department's receipt of the items required in subsection J of this section, but not before the anticipated operation date submitted pursuant to subsection C of this section, the department shall issue a temporary license that includes:

1. The name of the facility.
2. The name of the licensee.

3. The facility's class or subclass.
 4. The temporary license's effective date.
 5. The location of the licensed premises.
- L. A facility may begin operating on the effective date of the temporary license.
- M. The director may cease the issuance of temporary licenses at any time if the director believes that public health and safety is endangered.
- N. For the purposes of this section:
1. "Accredited" means accredited by a nationally recognized accreditation organization.
 2. "Satellite facility" means an outpatient facility at which the hospital provides outpatient medical services.

36-423. Hemodialysis technicians; minimum requirements; definition

- A. Except as provided in subsection B, beginning on April 1, 2003, a facility that provides hemodialysis treatment shall only use a hemodialysis technician who is certified by a national organization that certifies hemodialysis technicians.
- B. Beginning on April 1, 2003, an employee who provides hemodialysis treatment and who is not certified pursuant to subsection A is a hemodialysis technician trainee. A hemodialysis technician trainee may provide hemodialysis treatment in any facility unless the trainee fails to pass the national certification examination within two years after employment. The department of health services shall establish by rule appropriate clinical practice restrictions for hemodialysis technician trainees. An employee who is employed to provide hemodialysis treatment before April 1, 2003 must meet the requirements of this section on or before April 1, 2006.
- C. A facility that provides hemodialysis treatment must maintain the verification of certification in the hemodialysis technician's personnel file.
- D. For the purposes of this section, "hemodialysis technician" means a person who, under the direct supervision of a physician licensed pursuant to title 32, chapter 13 or 17, or a registered nurse licensed pursuant to title 32, chapter 15, provides assistance in the treatment of patients who receive dialysis treatment for end stage renal disease.

36-439. Definitions

In this article, unless the context otherwise requires:

1. "Associated licensed provider" means one or more licensed outpatient treatment centers or one or more licensed counseling facilities that share common areas pursuant to a written agreement with a collaborating outpatient treatment center and that are liable and responsible for the treatment areas that are used by the respective associated licensed provider pursuant to written policies.
2. "Collaborating outpatient treatment center" means a licensed outpatient treatment center that has a written agreement with one or more outpatient treatment centers or exempt health care providers or licensed counseling facilities that requires the collaborating outpatient treatment center to be liable and responsible pursuant to written policies for all common areas that one or more colocators use.
3. "Colocator" means an exempt health care provider or a governing authority operating as an outpatient treatment center or a licensed counseling facility that may share common areas and nontreatment personnel with another collocator pursuant to an agreement as prescribed in this article.
4. "Common areas":
 - (a) Means the licensed public or nonpublic portions of outpatient treatment center premises that are not used for treatment and that are shared by one or more licensees or exempt health care providers.
 - (b) Includes hallways, entrances, elevators, staircases, restrooms, reception areas, conference areas, employee break rooms, records retention areas and other nontreatment areas of an outpatient treatment center.

5. "Emergency health care services" means treatment for a medical or behavioral health condition, including labor and delivery, that manifests itself by acute symptoms of sufficient severity, including severe pain, such that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in any of the following:

- (a) Placing the patient's health, including mental health, in serious jeopardy.
- (b) Serious impairment to a bodily function of the patient.
- (c) Serious dysfunction of any bodily organ or part of the patient.
- (d) Harm to the patient or others.

6. "Exempt health care provider" means a health care provider who is licensed pursuant to title 32, who holds an active license and whose private office or clinic is exempt from licensure pursuant to section 36-402, subsection A, paragraph 3.

7. "Nontreatment personnel" means employees, agents, students, interns or independent contractors who provide services to an outpatient treatment center collocator that do not entail medical, nursing or behavioral health assessment or treatment.

8. "Treatment areas" means portions of licensed outpatient treatment center premises that are used for the provision of health care assessment and treatment of patients.

36-446. Definitions

In this article, unless the context otherwise requires:

1. "Administrator" or "nursing care institution administrator" means a person who is charged with the general administration of a nursing care institution, whether or not that person has an ownership interest in the institution and whether or not the person's functions and duties are shared with others.
2. "Assisted living facility" has the same meaning prescribed in section 36-401.
3. "Assisted living facility manager" means a person who has responsibility for the administration or management of an assisted living facility, whether or not that person has an ownership interest in the institution and whether or not the person's functions and duties are shared with others.
4. "Assisted living facility training program" includes:
 - (a) Training required for assisted living facility manager certification.
 - (b) Training required by the department for assisted living facility caregivers.
5. "Board" means the board of examiners of nursing care institution administrators and assisted living facility managers.
6. "Department" means the department of health services.
7. "Directed care services" has the same meaning prescribed in section 36-401.
8. "Director" means the director of the department of health services.
9. "Nursing care institution" means an institution or other place, however named, whether for profit or not, including facilities operated by the state or a subdivision of the state, that is advertised, offered, maintained or operated for the express or implied purpose of providing care to persons who need nursing services on a continuing basis but who do not require hospital care or care under the daily direction of a physician. Nursing care institution does not include an institution for the care and treatment of the sick that is operated only for those who rely solely on treatment by prayer or spiritual means in accordance with the tenets of a recognized religious denomination. Nursing care institution also does not include nursing care services that are an integral part of a hospital licensed pursuant to this chapter.
10. "Unprofessional conduct" includes:
 - (a) Dishonesty, fraud, incompetency or gross negligence in the performance of administrative duties.
 - (b) Gross immorality or proselytizing religious views on patients without their consent.

(c) Other abuses of official responsibilities, which may include intimidation or neglect of patients.

36-448.01. Definitions

In this article, unless the context otherwise requires:

1. "Medication-assisted treatment" has the same meaning prescribed in section 32-3201.01.
2. "Pain management clinic":

(a) Means a health care institution or a private office or clinic of a health care provider licensed under title 32 in which a majority of the facility's patients in any month are prescribed opioids, benzodiazepines, barbiturates or carisoprodol, not including for medication-assisted treatment, by a health care provider from the health care institution or private office or clinic for more than ninety days in a twelve-month period.

(b) Does not include a hospital, urgent care center, ambulatory surgical center, hospice facility or nursing care institution.

36-448.51. Definitions

In this article, unless the context otherwise requires:

1. "Recovery care center" means a health care institution or subdivision of a health care institution that provides medical and nursing services limited to recovery care services.
2. "Recovery care services" means postsurgical and postdiagnostic medical and nursing services provided to patients for whom, in the opinion of the attending physician, it is reasonable to expect an uncomplicated recovery. Such patients are not expected to require intensive care services, coronary care services, or critical care services. Recovery care services do not include surgery services, radiology services, pediatric services or obstetrical services.

36-449.01. Definitions

In this article, unless the context otherwise requires:

1. "Abortion" means the use of any means with the intent to terminate a woman's pregnancy for reasons other than to increase the probability of a live birth, to preserve the life or health of the child after a live birth, to terminate an ectopic pregnancy or to remove a dead fetus. Abortion does not include birth control devices or oral contraceptives.
2. "Abortion clinic" means a facility, other than a hospital, in which five or more first trimester abortions in any month or any second or third trimester abortions are performed.
3. "Director" means the director of the department of health services.
4. "Medication abortion" means the use of any medication, drug or other substance that is intended to cause or induce an abortion.
5. "Perform" includes the initial administration of any medication, drug or other substance intended to cause or induce an abortion.
6. "Surgical abortion" has the same meaning prescribed in section 36-2151.
7. "Viable fetus" has the same meaning prescribed in section 36-2301.01.

36-501. Definitions

In this chapter, unless the context otherwise requires:

1. "Administration" means the Arizona health care cost containment system administration.
2. "Admitting officer" means a psychiatrist or other physician or psychiatric and mental health nurse practitioner with experience in performing psychiatric examinations who has been designated as an admitting officer of the evaluation agency by the person in charge of the evaluation agency.
3. "Chief medical officer" means the chief medical officer under the supervision of the superintendent of the state

hospital.

4. "Contraindicated" means that access is reasonably likely to endanger the life or physical safety of the patient or another person.

5. "Court" means the superior court in the county in this state in which the patient resides or was found before screening or emergency admission under this title.

6. "Criminal history" means police reports, lists of prior arrests and convictions, criminal case pleadings and court orders, including a determination that the person has been found incompetent to stand trial pursuant to section 13-4510.

7. "Danger to others" means that the judgment of a person who has a mental disorder is so impaired that the person is unable to understand the person's need for treatment and as a result of the person's mental disorder the person's continued behavior can reasonably be expected, on the basis of competent medical opinion, to result in serious physical harm.

8. "Danger to self":

(a) Means behavior that, as a result of a mental disorder:

(i) Constitutes a danger of inflicting serious physical harm on oneself, including attempted suicide or the serious threat thereof, if the threat is such that, when considered in the light of its context and in light of the individual's previous acts, it is substantially supportive of an expectation that the threat will be carried out.

(ii) Without hospitalization will result in serious physical harm or serious illness to the person.

(b) Does not include behavior that establishes only the condition of having a grave disability.

9. "Department" means the department of health services.

10. "Detention" means the taking into custody of a patient or proposed patient.

11. "Director" means the director of the administration.

12. "Evaluation" means:

(a) A professional multidisciplinary analysis that may include firsthand observations or remote observations by interactive audiovisual media and that is based on data describing the person's identity, biography and medical, psychological and social conditions carried out by a group of persons consisting of not less than the following:

(i) Two licensed physicians, who shall be qualified psychiatrists, if possible, or at least experienced in psychiatric matters, and who shall examine and report their findings independently. The person against whom a petition has been filed shall be notified that the person may select one of the physicians. A psychiatric resident in a training program approved by the American medical association or by the American osteopathic association may examine the person in place of one of the psychiatrists if the resident is supervised in the examination and preparation of the affidavit and testimony in court by a qualified psychiatrist appointed to assist in the resident's training, and if the supervising psychiatrist is available for discussion with the attorneys for all parties and for court appearance and testimony if requested by the court or any of the attorneys.

(ii) Two other individuals, one of whom, if available, shall be a psychologist and in any event a social worker familiar with mental health and human services that may be available placement alternatives appropriate for treatment. An evaluation may be conducted on an inpatient basis, an outpatient basis or a combination of both, and every reasonable attempt shall be made to conduct the evaluation in any language preferred by the person.

(b) A physical examination that is consistent with the existing standards of care and that is performed by one of the evaluating physicians or by or under the supervision of a physician who is licensed pursuant to title 32, chapter 13 or 17 or a registered nurse practitioner who is licensed pursuant to title 32, chapter 15 if the results of that examination are reviewed or augmented by one of the evaluating physicians.

13. "Evaluation agency" means a health care agency that is licensed by the department and that has been approved pursuant to this title, providing those services required of such agency by this chapter.

14. "Family member" means a spouse, parent, adult child, adult sibling or other blood relative of a person undergoing treatment or evaluation pursuant to this chapter.

15. "Grave disability" means a condition evidenced by behavior in which a person, as a result of a mental disorder,

is likely to come to serious physical harm or serious illness because the person is unable to provide for the person's own basic physical needs.

16. "Health care decision maker" has the same meaning prescribed in section 12-2801.

17. "Health care entity" means a health care provider, the department, the administration or a regional behavioral health authority under contract with the administration.

18. "Health care provider" means a health care institution as defined in section 36-401 that is licensed as a behavioral health provider pursuant to department rules or a mental health provider.

19. "Independent evaluator" means a licensed physician, psychiatric and mental health nurse practitioner or psychologist selected by the person to be evaluated or by such person's attorney.

20. "Informed consent" means a voluntary decision following presentation of all facts necessary to form the basis of an intelligent consent by the patient or guardian with no minimizing of known dangers of any procedures.

21. "Least restrictive treatment alternative" means the treatment plan and setting that infringe in the least possible degree with the patient's right to liberty and that are consistent with providing needed treatment in a safe and humane manner.

22. "Licensed physician" means any medical doctor or doctor of osteopathy who is either:

(a) Licensed in this state.

(b) A full-time hospital physician licensed in another state and serving on the staff of a hospital operated or licensed by the United States government.

23. "Medical director of an evaluation agency" means a psychiatrist, or other licensed physician experienced in psychiatric matters, who is designated in writing by the governing body of the agency as the person in charge of the medical services of the agency for the purposes of this chapter and may include the chief medical officer of the state hospital.

24. "Medical director of a mental health treatment agency" means a psychiatrist, or other licensed physician experienced in psychiatric matters, who is designated in writing by the governing body of the agency as the person in charge of the medical services of the agency for the purposes of this chapter and includes the chief medical officer of the state hospital.

25. "Mental disorder" means a substantial disorder of the person's emotional processes, thought, cognition or memory. Mental disorder is distinguished from:

(a) Conditions that are primarily those of drug abuse, alcoholism or intellectual disability, unless, in addition to one or more of these conditions, the person has a mental disorder.

(b) The declining mental abilities that directly accompany impending death.

(c) Character and personality disorders characterized by lifelong and deeply ingrained antisocial behavior patterns, including sexual behaviors that are abnormal and prohibited by statute unless the behavior results from a mental disorder.

26. "Mental health provider" means any physician or provider of mental health or behavioral health services involved in evaluating, caring for, treating or rehabilitating a patient.

27. "Mental health treatment agency" means the state hospital or a health care agency that is licensed by the department and that provides those services that are required of the agency by this chapter.

28. "Outpatient treatment" or "combined inpatient and outpatient treatment" means any treatment program not requiring continuous inpatient hospitalization.

29. "Outpatient treatment plan" means a treatment plan that does not require continuous inpatient hospitalization.

30. "Patient" means any person undergoing examination, evaluation or behavioral or mental health treatment under this chapter.

31. "Peace officers" means sheriffs of counties, constables, marshals and policemen of cities and towns.

32. "Persistent or acute disability" means a severe mental disorder that meets all the following criteria:

(a) If not treated has a substantial probability of causing the person to suffer or continue to suffer severe and abnormal mental, emotional or physical harm that significantly impairs judgment, reason, behavior or capacity to recognize reality.

(b) Substantially impairs the person's capacity to make an informed decision regarding treatment, and this impairment causes the person to be incapable of understanding and expressing an understanding of the advantages and disadvantages of accepting treatment and understanding and expressing an understanding of the alternatives to the particular treatment offered after the advantages, disadvantages and alternatives are explained to that person.

(c) Has a reasonable prospect of being treatable by outpatient, inpatient or combined inpatient and outpatient treatment.

33. "Prepetition screening" means the review of each application requesting court-ordered evaluation, including an investigation of facts alleged in such application, an interview with each applicant and an interview, if possible, with the proposed patient. The purpose of the interview with the proposed patient is to assess the problem, explain the application and, when indicated, attempt to persuade the proposed patient to receive, on a voluntary basis, evaluation or other services.

34. "Prescribed form" means a form established by a court or the rules of the administration in accordance with the laws of this state.

35. "Professional" means a physician who is licensed pursuant to title 32, chapter 13 or 17, a psychologist who is licensed pursuant to title 32, chapter 19.1 or a psychiatric and mental health nurse practitioner who is certified pursuant to title 32, chapter 15.

36. "Proposed patient" means a person for whom an application for evaluation has been made or a petition for court-ordered evaluation has been filed.

37. "Prosecuting agency" means the county attorney, attorney general or city attorney who applied or petitioned for an evaluation or treatment pursuant to this chapter.

38. "Psychiatric and mental health nurse practitioner" means a registered nurse practitioner as defined in section 32-1601 who has completed an adult or family psychiatric and mental health nurse practitioner program and who is certified as an adult or family psychiatric and mental health nurse practitioner by the state board of nursing.

39. "Psychiatrist" means a licensed physician who has completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association.

40. "Psychologist" means a person who is licensed under title 32, chapter 19.1 and who is experienced in the practice of clinical psychology.

41. "Records" means all communications that are recorded in any form or medium and that relate to patient examination, evaluation or behavioral or mental health treatment. Records include medical records that are prepared by a health care provider or other providers. Records do not include:

(a) Materials that are prepared in connection with utilization review, peer review or quality assurance activities, including records that a health care provider prepares pursuant to section 36-441, 36-445, 36-2402 or 36-2917.

(b) Recorded telephone and radio calls to and from a publicly operated emergency dispatch office relating to

42. "Regional behavioral health authority" has the same meaning prescribed in section 36-3401.

43. "Screening agency" means a health care agency that is licensed by the department and that provides those services required of such agency by this chapter.

44. "Social worker" means a person who has completed two years of graduate training in social work in a program approved by the council of social work education and who has experience in mental health.

45. "State hospital" means the Arizona state hospital.

46. "Superintendent" means the superintendent of the state hospital.

36-551. Definitions

In this chapter, unless the context otherwise requires:

1. "Adaptive behavior" means the effectiveness or degree to which the individual meets the standards of personal independence and social responsibility expected of the person's age and cultural group.
2. "Adult developmental home" means a residential setting in a family home in which the care, physical custody and supervision of the adult client are the responsibility, under a twenty-four-hour care model, of the licensee who, in that capacity, is not an employee of the division or of a service provider and the home provides the following services for a group of siblings or up to three adults with developmental disabilities:
 - (a) Room and board.
 - (b) Habilitation.
 - (c) Appropriate personal care.
 - (d) Appropriate supervision.
3. "Adult household member":
 - (a) Means a person who is at least eighteen years of age and who resides in an adult developmental home, child developmental home or other home and community based service setting for at least thirty days or who resides in the household throughout the year for more than a cumulative total of thirty days.
 - (b) Does not include a person who is receiving developmental disabilities services from the department.
4. "Advisory council" means the developmental disabilities advisory council.
5. "Arizona training program facility" means a state-operated institution for clients of the department with developmental disabilities.
6. "Attributable to cognitive disability, epilepsy, cerebral palsy or autism" means that there is a causal relationship between the presence of an impairing condition and the developmental disability.
7. "Autism" means a condition characterized by severe disorders in communication and behavior resulting in limited ability to communicate, understand, learn and participate in social relationships.
8. "Case management" means coordinating the assistance needed by persons with developmental disabilities and their families in order to ensure that persons with developmental disabilities attain their maximum potential for independence, productivity and integration into the community.
9. "Case manager" means a person who coordinates the implementation of the individual program plan of goals, objectives and appropriate services for persons with developmental disabilities.
10. "Cerebral palsy" means a permanently disabling condition resulting from damage to the developing brain that may occur before, after or during birth and that results in loss or impairment of control over voluntary muscles.
11. "Child developmental certified home" means a regular foster home as defined in section 8-501 that is licensed pursuant to section 8-509 and that is certified by the department pursuant to section 36-593.01.
12. "Child developmental home" means a residential setting in a family home in which the care and supervision of the child are the responsibility, under a twenty-four-hour care model, of the licensee who serves as the developmental home provider of the child in the home setting and who, in that capacity, is not an employee of the division or of a service provider and the home provides the following services for a group of siblings or up to three children with developmental disabilities:
 - (a) Room and board.
 - (b) Habilitation.
 - (c) Appropriate personal care.
 - (d) Appropriate supervision.
13. "Client" means a person receiving developmental disabilities services from the department.
14. "Cognitive disability" means a condition that involves subaverage general intellectual functioning, that exists concurrently with deficits in adaptive behavior manifested before the age of eighteen and that is sometimes referred to as intellectual disability.
15. "Community residential setting" means a residential setting in which persons with developmental disabilities live and are provided with appropriate supervision by the service provider responsible for the operation of the

residential setting. Community residential setting includes a child developmental home or an adult developmental home operated or contracted by the department or the department's contracted vendor or a group home operated or contracted by the department.

16. "Consent" means voluntary informed consent. Consent is voluntary if not given as the result of coercion or undue influence. Consent is informed if the person giving the consent has been informed of and comprehends the nature, purpose, consequences, risks and benefits of the alternatives to the procedure, and has been informed and comprehends that withholding or withdrawal of consent will not prejudice the future provision of care and services to the client. In cases of unusual or hazardous treatment procedures performed pursuant to section 36-561, subsection A, experimental research, organ transplantation and nontherapeutic surgery, consent is informed if, in addition to the foregoing, the person giving the consent has been informed of and comprehends the method to be used in the proposed procedure.

17. "Daily habilitation" means habilitation as defined in this section except that the method of payment is for one unit per residential day.

18. "Department" means the department of economic security.

19. "Developmental disability" means either a strongly demonstrated potential that a child under six years of age has a developmental disability or will develop a developmental disability, as determined by a test performed pursuant to section 36-694 or by other appropriate tests, or a severe, chronic disability that:

(a) Is attributable to cognitive disability, cerebral palsy, epilepsy or autism.

(b) Is manifested before the age of eighteen.

(c) Is likely to continue indefinitely.

(d) Results in substantial functional limitations in three or more of the following areas of major life activity:

(i) Self-care.

(ii) Receptive and expressive language.

(iii) Learning.

(iv) Mobility.

(v) Self-direction.

(vi) Capacity for independent living.

(vii) Economic self-sufficiency.

(e) Reflects the need for a combination and sequence of individually planned or coordinated special, interdisciplinary or generic care, treatment or other services that are of lifelong or extended duration.

20. "Director" means the director of the department of economic security.

21. "Division" means the division of developmental disabilities in the department of economic security.

22. "Epilepsy" means a neurological condition characterized by abnormal electrical-chemical discharge in the brain. This discharge is manifested in various forms of physical activities called seizures.

23. "Group home" means a community residential setting for not more than six persons with developmental disabilities that is operated by a service provider under contract with the department and that provides room and board and daily habilitation and other assessed medically necessary services and supports to meet the needs of each person. Group home does not include an adult developmental home, a child developmental home or an intermediate care facility for persons with an intellectual disability.

24. "Guardian" means the person who, under court order, is appointed to fulfill the powers and duties prescribed in section 14-5312. Guardian does not include a guardian pursuant to section 14-5312.01.

25. "Habilitation" means the process by which a person is assisted to acquire and maintain those life skills that enable the person to cope more effectively with personal and environmental demands and to raise the level of the person's physical, mental and social efficiency.

26. "Indigent" means a person with a developmental disability whose estate or parent is unable to bear the full cost of maintaining or providing services for that person in a developmental disabilities program.

27. "Individual program plan" means a written statement of services to be provided to a person with developmental disabilities, including habilitation goals and objectives, that is developed following initial placement evaluation and revised after periodic evaluations.
28. "Intermediate care facility for persons with an intellectual disability" means a facility that primarily provides health and rehabilitative services to persons with developmental disabilities that are above the service level of room and board or supervisory care services or personal care services as defined in section 36-401 but that are less intensive than skilled nursing services.
29. "Large group setting" means a setting that in addition to residential care provides support services such as therapy, recreation and transportation to seven or more persons with developmental disabilities who require intensive supervision.
30. "Least restrictive alternative" means an available program or facility that fosters independent living, that is the least confining for the client's condition and where service and treatment are provided in the least intrusive manner reasonably and humanely appropriate to the individual's needs.
31. "Likely to continue indefinitely" means that the developmental disability has a reasonable likelihood of continuing for a protracted period of time or for life.
32. "Manifested before the age of eighteen" means that the disability must be apparent and have a substantially limiting effect on a person's functioning before the age of eighteen.
33. "Physician" means a person who is licensed to practice pursuant to title 32, chapter 13 or 17.
34. "Placement evaluation" means an interview and evaluation of a person with a developmental disability and a review of the person's prior medical and program histories to determine the appropriate developmental disability programs and services for the person and recommendations for specific program placements for the person.
35. "Psychologist" means a person who is licensed pursuant to title 32, chapter 19.1.
36. "Respite services" means services that provide a short-term or long-term interval of rest or relief to the care provider of a person with a developmental disability.
37. "Responsible person" means the parent or guardian of a minor with a developmental disability, the guardian of an adult with a developmental disability or an adult with a developmental disability who is a client or an applicant for whom no guardian has been appointed.
38. "Service provider" means a person or agency that provides services to clients pursuant to a contract, service agreement or qualified vendor agreement with the division.
39. "State operated service center" means a state owned or leased facility that is operated by the department and that provides temporary residential care and space for child and adult services that include respite care, crisis intervention and diagnostic evaluation.
40. "Subaverage general intellectual functioning" means measured intelligence on standardized psychometric instruments of two or more standard deviations below the mean for the tests used.
41. "Substantial functional limitation" means a limitation so severe that extraordinary assistance from other people, programs, services or mechanical devices is required to assist the person in performing appropriate major life activities.
42. "Supervision" means the process by which the activities of an individual with developmental disabilities are directed, influenced or monitored.

36-661. Definitions

In this article, unless the context otherwise requires:

1. "Acquired immune deficiency syndrome" has the same meaning as defined by the centers for disease control of the United States public health service.
2. "Capacity to consent" means a person's ability, determined without regard to the person's age, to understand and appreciate the nature and consequences of a proposed health care service, treatment or procedure and to make an informed decision concerning that service, treatment or procedure.

3. "Child" means an unemancipated person under eighteen years of age.
4. "Communicable disease" means a contagious, epidemic or infectious disease required to be reported to the local board of health or the department pursuant to chapter 1 of this title and this chapter.
5. "Communicable disease related information" means information regarding a communicable disease in the possession of a person who provides health services or who obtains the information pursuant to the release of communicable disease related information.
6. "Contact" means a spouse or sex partner of a protected person, a person who has shared hypodermic needles or syringes with a protected person or a person otherwise exposed to a protected person with a communicable disease in a manner that poses an epidemiologically significant risk of transmission of that disease.
7. "Department" means the department of health services.
8. "Director" means the director of the department of health services.
9. "First responder" means a law enforcement officer, a firefighter or an ambulance attendant as defined in section 36-2201.
10. "Good Samaritan" means a person who renders emergency care or assistance in good faith and without compensation at the scene of any accident, fire or other life-threatening emergency and who believes that a significant exposure risk occurred while the person rendered care or assistance.
11. "Health care decision maker" has the same meaning prescribed in section 12-2801.
12. "Health care provider" means a physician, nurse or other person involved in providing health services.
13. "Health facility" means a health care institution as defined in section 36-401, a blood bank, blood center, milk bank, sperm bank, organ or tissue bank or clinical laboratory or a health care services organization holding a certificate of authority pursuant to section 20-1054.
14. "Health service" means public or private care, treatment, clinical laboratory tests, counseling or educational service for adults or children and acute, chronic, custodial, residential, outpatient, home or other health care or activities related to the detection, reporting, prevention and control of communicable or preventable diseases.
15. "HIV" means the human immunodeficiency virus.
16. "HIV infection" means infection with the human immunodeficiency virus or a related virus identified as a probable causative agent of acquired immune deficiency syndrome.
17. "HIV-related illness" means an illness that may result from or be associated with HIV infection.
18. "HIV-related information" means information concerning whether a person has had an HIV-related test or has HIV infection, HIV-related illness or acquired immune deficiency syndrome and includes information that identifies or reasonably permits identification of that person or the person's contacts.
19. "HIV-related test" means a laboratory test or series of tests for the virus, components of the virus or antibodies to the virus thought to indicate the presence of HIV infection.
20. "Occupational significant exposure risk" means a significant exposure risk that occurs in the performance of a health care provider's professional duties or a first responder's official duties.
21. "Protected person" means a person who takes an HIV-related test or who has been diagnosed as having HIV infection, acquired immune deficiency syndrome, HIV-related illness or another communicable disease.
22. "Significant exposure risk" means contact with another person in a manner that, if the other person has a communicable disease, poses an epidemiologically significant risk of transmission of that disease as determined by the department.

36-1901. Definitions

In this chapter, unless the context otherwise requires:

1. "Accredited program" means a program leading to the award of a degree in audiology that is accredited by an organization recognized for that purpose by the United States department of education.
2. "Approved training program" means a postsecondary speech-language pathology assistant training program that

is approved by the director.

3. "Assistive listening device or system" means an amplification system that is specifically designed to improve the signal-to-noise ratio for the listener who is hearing impaired, reduce interference from noise in the background and enhance hearing levels at a distance by picking up sound from as close to the source as possible and sending it directly to the ear of the listener, excluding hearing aids.

4. "Audiologist" means a person who engages in the practice of audiology and who meets the requirements prescribed in this chapter.

5. "Audiology" means the nonmedical and nonsurgical application of principles, methods and procedures of measurement, testing, evaluation and prediction that are related to hearing, its disorders and related communication impairments for the purpose of nonmedical diagnosis, prevention, amelioration or modification of these disorders and conditions.

6. "Clinical interaction" means a fieldwork practicum in speech-language pathology that is supervised by a licensed speech-language pathologist.

7. "Department" means the department of health services.

8. "Direct supervision" means the on-site, in-view observation and guidance of a speech-language pathology assistant by a licensed speech-language pathologist while the speech-language pathology assistant performs an assigned clinical activity.

9. "Director" means the director of the department.

10. "Disorders of communication" means an organic or nonorganic condition that impedes the normal process of human communication and includes disorders of speech, articulation, fluency, voice, verbal and written language, auditory comprehension, cognition and communications and oral, pharyngeal and laryngeal sensorimotor competencies.

11. "Disorders of hearing" means an organic or nonorganic condition, whether peripheral or central, that impedes the normal process of human communication and includes disorders of auditory sensitivity, acuity, function or processing.

12. "Hearing aid" means any wearable instrument or device designed for or represented as aiding or improving human hearing or as aiding, improving or compensating for defective human hearing, and any parts, attachments or accessories of the instrument or device, including ear molds, but excluding batteries and cords.

13. "Hearing aid dispenser" means any person who engages in the practice of fitting and dispensing hearing aids.

14. "Indirect supervision" means supervisory activities, other than direct supervision that are performed by a licensed speech-language pathologist and that may include consultation, record review and review and evaluation of audiotaped or videotaped sessions.

15. "Letter of concern" means an advisory letter to notify a licensee that, while there is insufficient evidence to support disciplinary action, the director believes the licensee should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the director may result in action against the licensee.

16. "License" means a license issued by the director under this chapter and includes a temporary license.

17. "Nonmedical diagnosing" means the art or act of identifying a communication disorder from its signs and symptoms. Nonmedical diagnosing does not include diagnosing a medical disease.

18. "Practice of audiology" means:

(a) Rendering or offering to render to a person or persons who have or who are suspected of having disorders of hearing any service in audiology including prevention, identification, evaluation, consultation, habilitation, rehabilitation, instruction and research.

(b) Participating in hearing conservation, hearing aid and assistive listening device evaluation and hearing aid prescription preparation, fitting, dispensing and orientation.

(c) Screening, identifying, assessing, nonmedical diagnosing, preventing and rehabilitating peripheral and central auditory system dysfunctions.

- (d) Providing and interpreting behavioral and physiological measurements of auditory and vestibular functions.
- (e) Selecting, fitting and dispensing assistive listening and alerting devices and other systems and providing training in their use.
- (f) Providing aural rehabilitation and related counseling services to hearing impaired persons and their families.
- (g) Screening speech-language and other factors that affect communication function in order to conduct an audiologic evaluation and an initial identification of persons with other communications disorders and making the appropriate referral.
- (h) Planning, directing, conducting or supervising services.

19. "Practice of fitting and dispensing hearing aids" means the measurement of human hearing by means of an audiometer or by any other means, solely for the purpose of making selections or adaptations of hearing aids, and the fitting, sale and servicing of hearing aids, including assistive listening devices and the making of impressions for ear molds and includes identification, instruction, consultation, rehabilitation and hearing conservation as these relate only to hearing aids and related devices and, at the request of a physician or another licensed health care professional, the making of audiograms for the professional's use in consultation with the hearing impaired. The practice of fitting and dispensing hearing aids does not include formal auditory training programs, lip reading and speech conservation.

20. "Practice of speech-language pathology" means:

- (a) Rendering or offering to render to an individual or groups of individuals who have or are suspected of having disorders of communication service in speech-language pathology including prevention, identification, evaluation, consultation, habilitation, rehabilitation, instruction and research.
- (b) Screening, identifying, assessing, interpreting, nonmedical diagnosing and rehabilitating disorders of speech and language.
- (c) Screening, identifying, assessing, interpreting, nonmedical diagnosing and rehabilitating disorders of oral-pharyngeal functions and related disorders.
- (d) Screening, identifying, assessing, interpreting, nonmedical diagnosing and rehabilitating cognitive and communication disorders.
- (e) Assessing, selecting and developing augmentative and alternative communication systems and providing training in the use of these systems and assistive listening devices.
- (f) Providing aural rehabilitation and related counseling services to hearing impaired persons and their families.
- (g) Enhancing speech-language proficiency and communication effectiveness.
- (h) Screening hearing and other factors for speech-language evaluation and initially identifying persons with other communication disorders and making the appropriate referral.

21. "Regular license" means each type of license issued by the director, except a temporary license.

22. "Sell" or "sale" means a transfer of title or of the right to use by lease, bailment or any other contract, but does not include transfers at wholesale to distributors or dealers.

23. "Speech-language pathology" means the nonmedical and nonsurgical application of principles, methods and procedures of assessment, testing, evaluation and prediction related to speech and language and its disorders and related communication impairments for the nonmedical diagnosis, prevention, amelioration or modification of these disorders and conditions.

24. "Speech-language pathology assistant" means a person who provides services prescribed in section 36-1940.04 and under the direction and supervision of a speech-language pathologist licensed pursuant to this chapter.

25. "Sponsor" means a person who is licensed pursuant to this chapter and who agrees to train or directly supervise a temporary licensee in the same field of practice.

26. "Temporary licensee" means a person who is licensed under this chapter for a specified period of time under the sponsorship of a person licensed pursuant to this chapter.

27. "Unprofessional conduct" means:

- (a) Obtaining any fee or making any sale by fraud or misrepresentation.
- (b) Employing directly or indirectly any suspended or unlicensed person to perform any work covered by this chapter.
- (c) Using, or causing or promoting the use of, any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia or other representation, however disseminated or published, that is misleading, deceiving, improbable or untruthful.
- (d) Advertising for sale a particular model, type or kind of product when purchasers or prospective purchasers responding to the advertisement cannot purchase or are dissuaded from purchasing the advertised model, type or kind if the purpose of the advertisement is to obtain prospects for the sale of a different model, type or kind than that advertised.
- (e) Representing that the professional services or advice of a physician will be used or made available in the selling, fitting, adjustment, maintenance or repair of hearing aids if this is not true, or using the words "doctor", "clinic", "clinical" or like words, abbreviations or symbols while failing to affix the word, term or initials "audiology", "audiologic", "audiologist", "doctor of audiology", "Au.D.", "Ph.D." or "Sc.D."
- (f) Defaming competitors by falsely imputing to them dishonorable conduct, inability to perform contracts or questionable credit standing or by other false representations, or falsely disparaging the products of competitors in any respect, or their business methods, selling prices, values, credit terms, policies or services.
- (g) Displaying competitive products in the licensee's show window, shop or advertising in such manner as to falsely disparage such products.
- (h) Representing falsely that competitors are unreliable.
- (i) Quoting prices of competitive products without disclosing that they are not the current prices, or showing, demonstrating or representing competitive models as being current models when they are not current models.
- (j) Imitating or simulating the trademarks, trade names, brands or labels of competitors with the capacity, tendency or effect of misleading or deceiving purchasers or prospective purchasers.
- (k) Using in the licensee's advertising the name, model name or trademark of a particular manufacturer of hearing aids in such a manner as to imply a relationship with the manufacturer that does not exist, or otherwise to mislead or deceive purchasers or prospective purchasers.
- (l) Using any trade name, corporate name, trademark or other trade designation that has the capacity, tendency or effect of misleading or deceiving purchasers or prospective purchasers as to the name, nature or origin of any product of the industry, or of any material used in the product, or that is false, deceptive or misleading in any other material respect.
- (m) Obtaining information concerning the business of a competitor by bribery of an employee or agent of that competitor, by false or misleading statements or representations, by the impersonation of one in authority, or by any other unfair means.
- (n) Giving directly or indirectly, offering to give, or permitting or causing to be given money or anything of value, except miscellaneous advertising items of nominal value, to any person who advises another in a professional capacity as an inducement to influence that person or have that person influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser, or to influence persons to refrain from dealing in the products of competitors.
- (o) Sharing any profits or sharing any percentage of a licensee's income with any person who advises another in a professional capacity as an inducement to influence that person or have that person influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser or to dissuade persons from dealing in products of competitors.
- (p) Failing to comply with existing federal regulations regarding the fitting and dispensing of a hearing aid.
- (q) Conviction of a felony or a misdemeanor that involves moral turpitude.
- (r) Fraudulently obtaining or attempting to obtain a license or a temporary license for the applicant, the licensee or another person.
- (s) Aiding or abetting unlicensed practice.

- (t) Wilfully making or filing a false audiology, speech-language pathology or hearing aid dispenser evaluation.
- (u) The use of narcotics, alcohol or drugs to the extent that the performance of professional duties is impaired.
- (v) Betraying a professional confidence.
- (w) Any conduct, practice or condition that impairs the ability of the licensee to safely and competently engage in the practice of audiology, speech-language pathology or hearing aid dispensing.
- (x) Providing services or promoting the sale of devices, appliances or products to a person who cannot reasonably be expected to benefit from these services, devices, appliances or products.
- (y) Being disciplined by a licensing or disciplinary authority of any state, territory or district of this country for an act that is grounds for disciplinary action under this chapter.
- (z) Violating any provision of this chapter or failing to comply with rules adopted pursuant to this chapter.
- (aa) Failing to refer an individual for medical evaluation if a condition exists that is amenable to surgical or medical intervention prescribed by the advisory committee and consistent with federal regulations.
- (bb) Practicing in a field or area within that licensee's defined scope of practice in which the licensee has not either been tested, taken a course leading to a degree, received supervised training, taken a continuing education course or had adequate prior experience.
- (cc) Failing to affix the word, term or initials "audiology", "audiologic", "audiologist", "doctor of audiology", "Au.D.", "Ph.D." or "Sc.D." in any sign, written communication or advertising media in which the term "doctor" or the abbreviation "Dr." is used in relation to the audiologist holding a doctoral degree.

36-2201. Definitions

In this chapter, unless the context otherwise requires:

1. "Administrative medical direction" means supervision of emergency medical care technicians by a base hospital medical director, administrative medical director or basic life support medical director. For the purposes of this paragraph, "administrative medical director" means a physician who is licensed pursuant to title 32, chapter 13 or 17 and who provides direction within the emergency medical services and trauma system.
2. "Advanced emergency medical technician" means a person who has been trained in an advanced emergency medical technician program certified by the director or in an equivalent training program and who is certified by the director to render services pursuant to section 36-2205.
3. "Advanced life support" means the level of assessment and care identified in the scope of practice approved by the director for the advanced emergency medical technician, emergency medical technician I-99 and paramedic.
4. "Advanced life support base hospital" means a health care institution that offers general medical and surgical services, that is certified by the director as an advanced life support base hospital and that is affiliated by written agreement with a licensed ambulance service, municipal rescue service, fire department, fire district or health services district for medical direction, evaluation and control of emergency medical care technicians.
5. "Ambulance" means any publicly or privately owned surface, water or air vehicle, including a helicopter, that contains a stretcher and necessary medical equipment and supplies pursuant to section 36-2202 and that is especially designed and constructed or modified and equipped to be used, maintained or operated primarily for the transportation of individuals who are sick, injured or wounded or who require medical monitoring or aid. Ambulance does not include a surface vehicle that is owned and operated by a private sole proprietor, partnership, private corporation or municipal corporation for the emergency transportation and in-transit care of its employees or a vehicle that is operated to accommodate an incapacitated person or person with a disability who does not require medical monitoring, care or treatment during transport and that is not advertised as having medical equipment and supplies or ambulance attendants.
6. "Ambulance attendant" means any of the following:
 - (a) An emergency medical technician, an advanced emergency medical technician, an emergency medical technician I-99 or a paramedic whose primary responsibility is the care of patients in an ambulance and who meets the standards and criteria adopted pursuant to section 36-2204.

- (b) An emergency medical responder who is employed by an ambulance service operating under section 36-2202 and whose primary responsibility is the driving of an ambulance.
 - (c) A physician who is licensed pursuant to title 32, chapter 13 or 17.
 - (d) A professional nurse who is licensed pursuant to title 32, chapter 15 and who meets the state board of nursing criteria to care for patients in the prehospital care system.
 - (e) A professional nurse who is licensed pursuant to title 32, chapter 15 and whose primary responsibility is the care of patients in an ambulance during an interfacility transport.
7. "Ambulance service" means a person who owns and operates one or more ambulances.
 8. "Basic life support" means the level of assessment and care identified in the scope of practice approved by the director for the emergency medical responder and emergency medical technician.
 9. "Bureau" means the bureau of emergency medical services and trauma system in the department.
 10. "Centralized medical direction communications center" means a facility that is housed within a hospital, medical center or trauma center or a freestanding communication center that meets the following criteria:
 - (a) Has the ability to communicate with ambulance services and emergency medical services providers rendering patient care outside of the hospital setting via radio and telephone.
 - (b) Is staffed twenty-four hours a day seven days a week by at least a physician licensed pursuant to title 32, chapter 13 or 17.
 11. "Certificate of necessity" means a certificate that is issued to an ambulance service by the department and that describes the following:
 - (a) Service area.
 - (b) Level of service.
 - (c) Type of service.
 - (d) Hours of operation.
 - (e) Effective date.
 - (f) Expiration date.
 - (g) Legal name and address of the ambulance service.
 - (h) Any limiting or special provisions the director prescribes.
 12. "Council" means the emergency medical services council.
 13. "Department" means the department of health services.
 14. "Director" means the director of the department of health services.
 15. "Emergency medical care technician" means an individual who has been certified by the department as an emergency medical technician, an advanced emergency medical technician, an emergency medical technician I-99 or a paramedic.
 16. "Emergency medical responder" as an ambulance attendant means a person who has been trained in an emergency medical responder program certified by the director or in an equivalent training program and who is certified by the director to render services pursuant to section 36-2205.
 17. "Emergency medical services" means those services required following an accident or an emergency medical situation:
 - (a) For on-site emergency medical care.
 - (b) For the transportation of the sick or injured by a licensed ground or air ambulance.
 - (c) In the use of emergency communications media.
 - (d) In the use of emergency receiving facilities.
 - (e) In administering initial care and preliminary treatment procedures by emergency medical care technicians.
 18. "Emergency medical services provider" means any governmental entity, quasi-governmental entity or

corporation whether public or private that renders emergency medical services in this state.

19. "Emergency medical technician" means a person who has been trained in an emergency medical technician program certified by the director or in an equivalent training program and who is certified by the director as qualified to render services pursuant to section 36-2205.

20. "Emergency receiving facility" means a licensed health care institution that offers emergency medical services, is staffed twenty-four hours a day and has a physician on call.

21. "Fit and proper" means that the director determines that an applicant for a certificate of necessity or a certificate holder has the expertise, integrity, fiscal competence and resources to provide ambulance service in the service area.

22. "Medical record" means any patient record, including clinical records, prehospital care records, medical reports, laboratory reports and statements, any file, film, record or report or oral statements relating to diagnostic findings, treatment or outcome of patients, whether written, electronic or recorded, and any information from which a patient or the patient's family might be identified.

23. "National certification organization" means a national organization that tests and certifies the ability of an emergency medical care technician and whose tests are based on national education standards.

24. "National education standards" means the emergency medical services education standards of the United States department of transportation or other similar emergency medical services education standards developed by that department or its successor agency.

25. "Paramedic" means a person who has been trained in a paramedic program certified by the director or in an equivalent training program and who is certified by the director to render services pursuant to section 36-2205.

26. "Physician" means any person licensed pursuant to title 32, chapter 13 or 17.

27. "Stretcher van" means a vehicle that contains a stretcher and that is operated to accommodate an incapacitated person or person with a disability who does not require medical monitoring, aid, care or treatment during transport.

28. "Suboperation station" means a physical facility or location at which an ambulance service conducts operations for the dispatch of ambulances and personnel and that may be staffed twenty-four hours a day or less as determined by system use.

29. "Trauma center" means any acute care hospital that provides in-house twenty-four hour daily dedicated trauma surgical services that is designated pursuant to section 36-2225.

30. "Trauma registry" means data collected by the department on trauma patients and on the incidence, causes, severity, outcomes and operation of a trauma system and its components.

31. "Trauma system" means an integrated and organized arrangement of health care resources having the specific capability to perform triage, transport and provide care.

32. "Validated testing procedure" means a testing procedure that is inclusive of practical skills, or an attestation of practical skills proficiency on a form developed by the department by the educational training program, identified pursuant to section 36-2204, paragraph 2, that is certified as valid by an organization capable of determining testing procedure and testing content validity and that is recommended by the medical direction commission and the emergency medical services council before the director's approval.

33. "Wheelchair van" means a vehicle that contains or that is designed and constructed or modified to contain a wheelchair and that is operated to accommodate an incapacitated person or person with a disability who does not require medical monitoring, aid, care or treatment during transport.

36-2501. Definitions

A. In this chapter, unless the context otherwise requires:

1. "Board" means the Arizona state board of pharmacy.

2. "Cannabis" means the following substances under whatever names they may be designated:

(a) Marijuana.

(b) All parts of any plant of the genus cannabis, whether growing or not, its seeds, the resin extracted from any part of such plant, and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or resin, but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake or the sterilized seed of such plant which is incapable of germination.

(c) Every compound, manufacture, salt, derivative, mixture or preparation of such resin, tetrahydrocannabinol (T.H.C.), or of such plants from which the resin has not been extracted.

3. "Controlled substance" means a drug, substance or immediate precursor in schedules I through V of article 2 of this chapter.

4. "Department" means the department of public safety.

5. "Drug dependent person" means a person who is using a controlled substance and who is in a state of psychic or physical dependence, or both, arising from the use of that substance on a continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuing basis in order to experience its psychic effects or to avoid the discomfort caused by its absence.

6. "Drug enforcement administration" means the drug enforcement administration of the department of justice of the United States or its successor agency.

7. "Immediate precursor" means a substance which the board has found to be and by rule designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

8. "Narcotic drug" means any of the following whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:

(a) Opium and opiate and any salt, compound, derivation or preparation of opium or opiate.

(b) Any salt, compound, isomer, derivative or preparation which is chemically equivalent or identical with any of the substances referred to in subdivision (a) of this paragraph but not including the isoquinoline alkaloids of opium.

(c) Opium poppy and poppy straw.

(d) Coca leaves and any salt, compound, derivation or preparation of coca leaves including cocaine and its optical isomers and any salt, compound, isomer, derivation or preparation which is chemically equivalent or identical with any of these substances but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(e) Cannabis.

9. "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

10. "Opium poppy" means the plant of the genus papaver, except its seeds.

11. "Poppy straw" means all parts, except the seeds, of the opium poppy after mowing.

12. "Production" means the manufacture, planting, cultivating, growing or harvesting of a controlled substance.

13. "Registrant" means a person registered under the provisions of the federal controlled substances act (P.L. 91-513; 84 Stat. 1242; 21 U.S.C. sec. 801 et seq.).

14. "Schedule I controlled substances" means the controlled substances identified, defined or listed in section 36-2512.

15. "Schedule II controlled substances" means the controlled substances identified, defined or listed in section 36-2513.

16. "Schedule III controlled substances" means the controlled substances identified, defined or listed in section

36-2514.

17. "Schedule IV controlled substances" means the controlled substances identified, defined or listed in section 36-2515.

18. "Schedule V controlled substances" means the controlled substances identified, defined or listed in section 36-2516.

19. "Scientific purpose" means research, teaching or chemical analysis.

20. "State", when applied to a part of the United States, means any state, district, commonwealth, territory or insular possession of the United States and any area subject to the legal authority of the United States of America.

B. Words or phrases in this chapter, if not defined in subsection A of this section, have the definitions given them in title 32, chapter 18, article 1, unless the context otherwise requires.

36-3201. Definitions

In this chapter, unless the context otherwise requires:

1. "Agent" means an adult who has the authority to make health care treatment decisions for another person, referred to as the principal, pursuant to a health care power of attorney.

2. "Artificially administered" means providing food or fluid through a medically invasive procedure.

3. "Attending physician" means a physician who has the primary responsibility for a principal's health care.

4. "Comfort care" means treatment given in an attempt to protect and enhance the quality of life without artificially prolonging that life.

5. "Health care directive" means a document drafted in substantial compliance with this chapter, including a mental health care power of attorney, to deal with a person's future health care decisions.

6. "Health care power of attorney" means a written designation of an agent to make health care decisions that meets the requirements of section 36-3221 and that comes into effect and is durable as provided in section 36-3223, subsection A.

7. "Health care provider" means a natural person who is licensed under title 32, chapter 13, 15, 17 or 25, a hospice as defined in section 36-401 that is licensed under chapter 4 of this title or an organization that is licensed under this title, that renders health care designed to prevent, diagnose or treat illness or injury and that employs persons licensed under title 32, chapter 13, 15, 17 or 25.

8. "Inpatient psychiatric facility" means a hospital that contains an organized psychiatric services unit or a special hospital that is licensed to provide psychiatric services.

9. "Interested person" means the patient, a person listed under section 36-3231, subsection A, a health care provider directly involved in the patient's medical care or an employee of a health care provider.

10. "Living will" means a statement written either by a person who has not written a health care power of attorney or by the principal as an attachment to a health care power of attorney and intended to guide or control the health care treatment decisions that can be made on that person's behalf.

11. "Mental health care power of attorney" means a written designation of an agency to make mental health care decisions that meets the requirements of section 36-3281.

12. "Physician" means a doctor of medicine licensed pursuant to title 32, chapter 13 or doctor of osteopathy licensed pursuant to title 32, chapter 17.

13. "Principal" means a person who is the subject of a health care power of attorney.

14. "Surrogate" means a person authorized to make health care decisions for a patient by a power of attorney, a court order or the provisions of section 36-3231.

36-3601. Definitions

For the purposes of this chapter:

1. "Health care decision maker" has the same meaning prescribed in section 12-2801.
2. "Health care provider" means a person licensed pursuant to title 32, chapter 7, 13, 14, 15, 17, 18, 19.1, 25, 28, 29 or 33.
3. "Telemedicine" means the practice of health care delivery, diagnosis, consultation and treatment and the transfer of medical data through interactive audio, video or data communications that occur in the physical presence of the patient, including audio or video communications sent to a health care provider for diagnostic or treatment consultation.

41-1072. Definitions

In this article, unless the context otherwise requires:

1. "Administrative completeness review time frame" means the number of days from agency receipt of an application for a license until an agency determines that the application contains all components required by statute or rule, including all information required to be submitted by other government agencies. The administrative completeness review time frame does not include the period of time during which an agency provides public notice of the license application or performs a substantive review of the application.
2. "Overall time frame" means the number of days after receipt of an application for a license during which an agency determines whether to grant or deny a license. The overall time frame consists of both the administrative completeness review time frame and the substantive review time frame.
3. "Substantive review time frame" means the number of days after the completion of the administrative completeness review time frame during which an agency determines whether an application or applicant for a license meets all substantive criteria required by statute or rule. Any public notice and hearings required by law shall fall within the substantive review time frame.

41-4001. Definitions

In this chapter, unless the context otherwise requires:

1. "Accessory structure" means the installation, assembly, connection or construction of any one-story habitable room, storage room, patio, porch, garage, carport, awning, skirting, retaining wall, evaporative cooler, refrigeration air conditioning system, solar system or wood decking attached to a new or used manufactured home, mobile home or residential single family factory-built building.
2. "Act" means the national manufactured housing construction and safety standards act of 1974 and title VI of the housing and community development act of 1974 (P.L. 93-383, as amended by P.L. 95-128, 95-557, 96-153 and 96-339).
3. "Alteration" means the replacement, addition, modification or removal of any equipment or installation after the sale by a manufacturer to a dealer or distributor but before the sale by a dealer to a purchaser, which may affect compliance with the standards, construction, fire safety, occupancy, plumbing or heat-producing or electrical system. Alteration does not mean the repair or replacement of a component or appliance requiring plug-in to an electrical receptacle if the replaced item is of the same configuration and rating as the component or appliance being repaired or replaced. Alteration also does not mean the addition of an appliance requiring plug-in to an electrical receptacle if such appliance is not provided with the unit by the manufacturer and the rating of the appliance does not exceed the rating of the receptacle to which such appliance is connected.
4. "Board" means the board of manufactured housing.
5. "Broker" means any person who acts as an agent for the sale or exchange of a used manufactured home or mobile home except as exempted in section 41-4028.
6. "Certificate" means a numbered or serialized label or seal that is issued by the director as certification of compliance with this chapter.
7. "Component" means any part, material or appliance that is built-in as an integral part of the unit during the manufacturing process.
8. "Consumer" means either a purchaser or seller of a unit regulated by this chapter who utilizes the services of a

person licensed by the department.

9. "Consummation of sale" means that a purchaser has received all goods and services that the dealer or broker agreed to provide at the time the contract was entered into, the transfer of title or the filing of an affidavit of affixture, if applicable, to the sale. Consummation of sale does not include warranties.

10. "Dealer" means any person who sells, exchanges, buys, offers or attempts to negotiate or acts as an agent for the sale or exchange of factory-built buildings, manufactured homes or mobile homes except as exempted in section 41-4028. A lease or rental agreement by which the user acquired ownership of the unit with or without additional remuneration is considered a sale under this chapter.

11. "Defect" means any defect in the performance, construction, components or material of a unit that renders the unit or any part of the unit unfit for the ordinary use for which it was intended.

12. "Department" means the Arizona department of housing.

13. "Director" means the director of the department.

14. "Earnest monies" means all monies given by a purchaser or a financial institution to a dealer or broker before consummation of the sale.

15. "Factory-built building":

(a) Means a residential or commercial building that is:

(i) Either wholly or in substantial part manufactured at an off-site location and transported for installation or completion, or both, on-site.

(ii) Constructed in compliance with adopted codes, standards and procedures.

(iii) Installed temporarily or permanently.

(b) Does not include a manufactured home, recreational vehicle, panelized building or domestic or light commercial storage building.

16. "HUD" means the United States department of housing and urban development.

17. "Imminent safety hazard" means an imminent and unreasonable risk of death or severe personal injury.

18. "Installation" means:

(a) Connecting new or used mobile homes, manufactured homes or factory-built buildings to on-site utility terminals or repairing these utility connections.

(b) Placing new or used mobile homes, manufactured homes, accessory structures or factory-built buildings on foundation systems or repairing these foundation systems.

(c) Providing ground anchoring for new or used mobile homes or manufactured homes or repairing the ground anchoring.

19. "Installer" means any person who engages in the business of performing installations of manufactured homes, mobile homes or residential single family factory-built buildings.

20. "Installer of accessory structures" means any person who engages in the business of installing accessory structures.

21. "Listing agreement" means a document that contains the name and address of the seller, the year, manufacturer and serial number of the listed unit, the beginning and ending dates of the time period that the agreement is in force, the name of the lender and lien amount, if applicable, the price the seller is requesting for the unit, the commission to be paid to the licensee and the signatures of the sellers and the licensee who obtains the listing.

22. "Local enforcement agency" means a zoning or building department of a city, town or county or its agents.

23. "Manufactured home" means a structure built in accordance with the act.

24. "Manufacturer" means any person engaged in manufacturing, assembling or reconstructing any unit regulated by this chapter.

25. "Mobile home" means a structure built before June 15, 1976, on a permanent chassis, capable of being transported in one or more sections and designed to be used with or without a permanent foundation as a

dwelling when connected to on-site utilities. Mobile home does not include recreational vehicles and factory-built buildings.

26. "Office" means the office of manufactured housing within the department.

27. "Purchaser" means a person purchasing a unit in good faith from a licensed dealer or broker for purposes other than resale.

28. "Qualifying party" means a person who is an owner, employee, corporate officer or partner of the licensed business and who has active and direct supervision of and responsibility for all operations of that licensed business.

29. "Reconstruction" means construction work performed for the purpose of restoration or modification of a unit by changing or adding structural components or electrical, plumbing or heat or air producing systems.

30. "Recreational vehicle" means a vehicular type unit that is:

(a) A portable camping trailer mounted on wheels and constructed with collapsible partial sidewalls that fold for towing by another vehicle and unfold for camping.

(b) A motor home designed to provide temporary living quarters for recreational, camping or travel use and built on or permanently attached to a self-propelled motor vehicle chassis or on a chassis cab or van that is an integral part of the completed vehicle.

(c) A park trailer built on a single chassis, mounted on wheels and designed to be connected to utilities necessary for operation of installed fixtures and appliances and has a gross trailer area of not less than three hundred twenty square feet and not more than four hundred square feet when it is set up, except that it does not include fifth wheel trailers.

(d) A travel trailer mounted on wheels, designed to provide temporary living quarters for recreational, camping or travel use, of a size or weight that may or may not require special highway movement permits when towed by a motorized vehicle and has a trailer area of less than three hundred twenty square feet. This subdivision includes fifth wheel trailers. If a unit requires a size or weight permit, it shall be manufactured to the standards for park trailers in a 119.5 of the American national standards institute code.

(e) A portable truck camper constructed to provide temporary living quarters for recreational, travel or camping use and consisting of a roof, floor and sides designed to be loaded onto and unloaded from the bed of a pickup truck.

31. "Salesperson" means any person who, for a salary, commission or compensation of any kind, is employed by or acts on behalf of any dealer or broker of manufactured homes, mobile homes or factory-built buildings to sell, exchange, buy, offer or attempt to negotiate or act as an agent for the sale or exchange of an interest in a manufactured home, mobile home or factory-built building.

32. "Seller" means a natural person who enters into a listing agreement with a licensed dealer or broker for the purpose of resale.

33. "Site development" means the development of an area for the installation of the unit's or units' locations, parking, surface drainage, driveways, on-site utility terminals and property lines at a proposed construction site or area.

34. "Statutory agent" means a person who is on file with the corporation commission as the statutory agent.

35. "Title transfer" means a true copy of the application for title transfer that is stamped or validated by the appropriate government agency.

36. "Unit" means a manufactured home, mobile home, factory-built building or accessory structures.

37. "Used unit" means any unit that is regulated by this chapter and that has been sold, bargained, exchanged or given away from a purchaser who first acquired the unit that was titled in the name of such purchaser.

38. "Workmanship" means a minimum standard of construction or installation reflecting a journeyman quality of the work of the various trades.

44-7002. Definitions

In this chapter, unless the context otherwise requires:

1. "Agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations and procedures that are given the effect of agreements under laws otherwise applicable to a particular transaction.
2. "Automated transaction" means a transaction that is conducted or performed, in whole or in part, by electronic means or electronic records and in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract or fulfilling an obligation that is required by the transaction.
3. "Computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.
4. "Contract" means the total legal obligation resulting from the parties' agreement as affected by this chapter and any other applicable law.
5. "Electronic" means relating to technology that has electrical, digital, magnetic, wireless, optical or electromagnetic capabilities or similar capabilities.
6. "Electronic agent" means a computer program or an electronic or other automated means that is used independently to initiate an action or respond to electronic records or performances, in whole or in part, without review or action by an individual.
7. "Electronic record" means a record that is created, generated, sent, communicated, received or stored by electronic means.
8. "Electronic signature" means an electronic sound, symbol or process that is attached to or logically associated with a record and that is executed or adopted by an individual with the intent to sign the record.
9. "Governmental agency" means an executive, legislative or judicial agency, department, board, commission, authority, institution or instrumentality of the federal government or a state or of a county or municipality or other political subdivision of a state.
10. "Information" means data, text, images, sounds, codes, computer programs, software or databases or similar items.
11. "Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying or processing information.
12. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency or public corporation or any other legal or commercial entity.
13. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and that is retrievable in perceivable form.
14. "Security procedure" means a procedure that is employed to verify that an electronic signature, record or performance is that of a specific person or to detect changes or errors in the information in an electronic record. Security procedure includes a procedure that requires the use of algorithms or other codes, identifying words or numbers or encryption, callback or other acknowledgment procedures.
15. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. State includes an Indian tribe or band or Alaskan native village that is recognized by federal law or formally acknowledged by another state.
16. "State agency" means any department, commission, board, institution or other agency of the state that receives, expends or disburses state funds or incurs obligations of the state, including the Arizona board of regents but excluding the universities under the jurisdiction of the Arizona board of regents, the community college districts and the legislative or judicial branches.
17. "Transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial or governmental affairs.

45-101. Definitions

In this title, unless the context otherwise requires:

1. "Appropriator" means the person or persons initiating or perfecting the right to use appropriable water based on state law, or the person's successor or successors in interest.
2. "Department" means the department of water resources.
3. "Director" means the director of water resources, who is also the director of the department.
4. "Effluent" means water that has been collected in a sanitary sewer for subsequent treatment in a facility that is regulated pursuant to title 49, chapter 2. Such water remains effluent until it acquires the characteristics of groundwater or surface water.
5. "Groundwater" means water under the surface of the earth regardless of the geologic structure in which it is standing or moving. Groundwater does not include water flowing in underground streams with ascertainable beds and banks.
6. "Interstate stream" means any stream constituting or flowing along the exterior boundaries of this state, and any tributary originating in another state or foreign country and flowing into or through this state.
7. "Riparian area" means a geographically delineated area with distinct resource values, that is characterized by deep-rooted plant species that depend on having roots in the water table or its capillary zone and that occurs within or adjacent to a natural perennial or intermittent stream channel or within or adjacent to a lake, pond or marsh bed maintained primarily by natural water sources. Riparian area does not include areas in or adjacent to ephemeral stream channels, artificially created stockpounds, man-made storage reservoirs constructed primarily for conservation or regulatory storage, municipal and industrial ponds or man-made water transportation, distribution, off-stream storage and collection systems.
8. "Sanitary sewer" means any pipe or other enclosed conduit that carries, among other substances, any water-carried wastes from the human body from residences, commercial buildings, industrial plants or institutions.
9. "Surface water" means the waters of all sources, flowing in streams, canyons, ravines or other natural channels, or in definite underground channels, whether perennial or intermittent, floodwater, wastewater or surplus water, and of lakes, ponds and springs on the surface. For the purposes of administering this title, surface water is deemed to include central Arizona project water.

46-451. Definitions; program goals

A. In this chapter, unless the context otherwise requires:

1. "Abuse" means:
 - (a) Intentional infliction of physical harm.
 - (b) Injury caused by negligent acts or omissions.
 - (c) Unreasonable confinement.
 - (d) Sexual abuse or sexual assault.
2. "De facto conservator" means any person who takes possession of the estate of a vulnerable adult, without right or lawful authority. A de facto conservator is subject to all of the responsibilities that attach to a legally appointed conservator or trustee.
3. "De facto guardian" means any person who takes possession of the person of a vulnerable adult, without right or lawful authority. A de facto guardian is subject to all of the responsibilities that attach to a legally appointed guardian.
4. "Exploitation" means the illegal or improper use of a vulnerable adult or his resources for another's profit or advantage.
5. "Informed consent" means any of the following:
 - (a) A written expression by the person that the person fully understands the potential risks and benefits of the withdrawal of food, water, medication, medical services, shelter, cooling, heating or other services necessary to

maintain minimum physical or mental health and that the person desires that the services be withdrawn. A written expression is valid only if the person is of sound mind and if the consent is witnessed by at least two individuals who do not benefit by the withdrawal of services.

(b) Consent to withdraw food, water, medication, medical services, shelter, cooling, heating or other services necessary to maintain minimum physical or mental health as permitted by an order of a court of competent jurisdiction.

(c) A declaration made pursuant to title 36, chapter 32.

(d) Consent by another person under a durable power of attorney relating to health care services to withdraw food, water, medication, medical services, shelter, cooling, heating or other services necessary to maintain minimum physical or mental health.

6. "Neglect" means a pattern of conduct without the person's informed consent resulting in deprivation of food, water, medication, medical services, shelter, cooling, heating or other services necessary to maintain minimum physical or mental health.

7. "Protective services" means a program of identifiable and specialized social services that may offer social services appropriate to resolve problems of abuse, exploitation or neglect of a vulnerable adult.

8. "Protective services worker" means a person who has been selected by and trained under the requirements prescribed by the department to provide protective services.

9. "Vulnerable adult" means an individual who is eighteen years of age or older and who is unable to protect himself from abuse, neglect or exploitation by others because of a physical or mental impairment. Vulnerable adult includes an incapacitated person as defined in section 14-5101.

B. Protective services programs shall seek to maintain the adult in his familiar environment by strengthening his capacity for self-maintenance or by providing supportive services.

C. Nothing in this section shall be construed to mean that an adult is abused, neglected or in need of protective services for the sole reason that he relies on treatment from a recognized religious method of healing in lieu of medical treatment.

D. For the purposes of this section, a person is not exploited by a transfer of assets if the transfer is to obtain or maintain eligibility for benefits under title 36, chapter 29 or benefits for supplemental security income, medicare or veterans' administration programs and the transfer of assets is between the person and any of the following:

1. The person's spouse.
2. The person's child with a disability.
3. A trust for the benefit of the person's spouse or child with a disability.

E. A transfer of assets for the purpose of obtaining or maintaining eligibility for benefits under title 36, chapter 29 shall comply with 42 United States Code section 1396p and sections 36-2934 and 36-2934.01.

Links to Codified Rules

R4-6-101. Definitions

The definitions at A.R.S. § 32-3251 apply to this Chapter. Additionally, the following definitions apply to this Chapter, unless otherwise specified:

1. "Applicant" means:
 - a. An individual requesting a license by examination, temporary license, or a license by endorsement by submitting a completed application packet to the Board; or
 - b. A regionally accredited college or university seeking Board approval of an educational program under R4-6-307.
2. "Application packet" means the required documents, forms, fees, and additional information required by the Board of an applicant.
3. "ARC" means an academic review committee established by the Board under A.R.S. § 32-3261(A).

4. "Assessment" means the collection and analysis of information to determine an individual's behavioral health treatment needs.
5. "ASWB" means the Association of Social Work Boards.
6. "Behavioral health entity" means any organization, agency, business, or professional practice, including a for-profit private practice, which provides assessment, diagnosis, and treatment to individuals, groups, or families for behavioral health related issues.
7. "Behavioral health service" means the assessment, diagnosis, or treatment of an individual's behavioral health issue.
8. "CACREP" means the Council for Accreditation of Counseling and Related Educational Programs.
9. "Client record" means collected documentation of the behavioral health services provided to and information gathered regarding a client.
10. "Clinical social work" means social work involving clinical assessment, diagnosis, and treatment of individuals, couples, families, and groups.
11. "Clinical supervision" means direction or oversight provided either face to face or by videoconference or telephone by an individual qualified to evaluate, guide, and direct all behavioral health services provided by a licensee to assist the licensee to develop and improve the necessary knowledge, skills, techniques, and abilities to allow the licensee to engage in the practice of behavioral health ethically, safely, and competently.
12. "Clinical supervisor" means an individual who provides clinical supervision.
13. "COAMFTE" means the Commission on Accreditation for Marriage and Family Therapy Education.
14. "Clock hour" means 60 minutes of instruction, not including breaks or meals.
15. "Contemporaneous" means documentation is made within 10 business days.
16. "Continuing education" means training that provides an understanding of current developments, skills, procedures, or treatments related to the practice of behavioral health, as determined by the Board.
17. "Co-occurring disorder" means a combination of substance use disorder or addiction and a mental or personality disorder.
18. "CORE" means the Council on Rehabilitation Education.
19. "Counseling related coursework" means education that prepares an individual to provide behavioral health services, as determined by the ARC.
20. "CSWE" means Council on Social Work Education.
21. "Date of service" means the postmark date applied by the U.S. Postal Service to materials addressed to an applicant or licensee at the address the applicant or licensee last placed on file in writing with the Board.
22. "Day" means calendar day.
23. "Direct client contact" means, beginning November 1, 2015, the performance of therapeutic or clinical functions related to the applicant's professional practice level of psychotherapy that includes diagnosis, assessment and treatment and that may include psychoeducation for mental, emotional and behavioral disorders based primarily on verbal or nonverbal communications and intervention with, and in the presence of, one or more clients. A.R.S. § 32-3251.
24. "Direct supervision" means responsibility and oversight for all services provided by a supervisee as prescribed in R4-6-211.
25. "Disciplinary action" means any action taken by the Board against a licensee, based on a finding that the licensee engaged in unprofessional conduct, including refusing to renew a license and suspending or revoking a license.
26. "Documentation" means written or electronic supportive evidence.

27. "Educational program" means a degree program in counseling, marriage and family therapy, social work, or substance use or addiction counseling that is:
 - a. Offered by a regionally accredited college or university, and
 - b. Not accredited by an organization or entity recognized by the Board.
28. "Electronic signature" means an electronic sound, symbol, or process that is attached to or logically associated with a record and that is executed or adopted by an individual with the intent to sign the record.
29. "Family member" means a parent, sibling, half-sibling, child, cousin, aunt, uncle, niece, nephew, grandparent, grandchild, and present and former spouse, in-law, stepchild, stepparent, foster parent, or significant other.
30. "Gross negligence" means careless or reckless disregard of established standards of practice or repeated failure to exercise the care that a reasonable practitioner would exercise within the scope of professional practice.
31. "Inactive status" means the Board has granted a licensee the right to suspend behavioral health practice temporarily by postponing license renewal for a maximum of 48 months.
32. "Independent contractor" means a licensed behavioral health professional whose contract to provide services on behalf of a behavioral health entity qualifies for independent contractor status under the codes, rules, and regulations of the Internal Revenue Service of the United States.
33. "Independent practice" means engaging in the practice of marriage and family therapy, professional counseling, social work, or substance abuse counseling without direct supervision.
34. "Indirect client service" means, beginning November 1, 2015, training for, and the performance of, functions of an applicant's professional practice level in preparation for or on behalf of a client for whom direct client contact functions are also performed, including case consultation and receipt of clinical supervision. Indirect client service does not include the provision of psychoeducation. A.R.S. § 32-3251.
35. "Individual clinical supervision" means clinical supervision provided by a clinical supervisor to one supervisee.
36. "Informed consent for treatment" means a written document authorizing treatment of a client that:
 - a. Contains the requirements of R4-6-1101;
 - b. Is dated and signed by the client or the client's legal representative, and
 - c. Beginning on July 1, 2006, is dated and signed by an authorized representative of the behavioral health entity.
37. "Legal representative" means an individual authorized by law to act on a client's behalf.
38. "License" means written authorization issued by the Board that allows an individual to engage in the practice of behavioral health in Arizona.
39. "License period" means the two years between the dates on which the Board issues a license and the license expires.
40. "NASAC" means the National Addiction Studies Accreditation Commission.
41. "Practice of behavioral health" means the practice of marriage and family therapy, professional counseling, social work and substance abuse counseling pursuant to this Chapter. A.R.S. § 32-3251.
42. "Practice of marriage and family therapy" means the professional application of family systems theories, principles and techniques to treat interpersonal relationship issues and nervous, mental and emotional disorders that are cognitive, affective or behavioral. The practice of marriage and family therapy includes:
 - a. Assessment, appraisal and diagnosis.
 - b. The use of psychotherapy for the purpose of evaluation, diagnosis and treatment of

- individuals, couples, families and groups. A.R.S. § 32-3251.
43. "Practice of professional counseling" means the professional application of mental health, psychological and human development theories, principles and techniques to:
- Facilitate human development and adjustment throughout the human life span.
 - Assess and facilitate career development.
 - Treat interpersonal relationship issues and nervous, mental and emotional disorders that are cognitive, affective or behavioral.
 - Manage symptoms of mental illness.
 - Assess, appraise, evaluate, diagnose and treat individuals, couples, families and groups through the use of psychotherapy. A.R.S. § 32-3251.
44. "Practice of social work" means the professional application of social work theories, principles, methods and techniques to:
- Treat mental, behavioral and emotional disorders.
 - Assist individuals, families groups and communities to enhance or restore the ability to function physically, socially, emotionally, mentally and economically.
 - Assess, appraise, diagnose, evaluate and treat individuals, couples, families and groups through the use of psychotherapy. A.R.S. § 32-3251.
45. "Practice of substance abuse counseling" means the professional application of general counseling theories, principles and techniques as specifically adapted, based on research and clinical experience, to the specialized needs and characteristics of persons who are experiencing substance abuse, chemical dependency and related problems and to the families of those persons. The practice of substance abuse counseling includes the following as they relate to substance abuse and chemical dependency issues:
- Assessment, appraisal, and diagnosis.
 - The use of psychotherapy for the purpose of evaluation, diagnosis and treatment of individuals, couples, families and groups. A.R.S. § 32-3251.
46. "Progress note" means contemporaneous documentation of a behavioral health service provided to an individual that is dated and signed or electronically acknowledged by the licensee.
47. "Psychoeducation" means the education of a client as part of a treatment process that provides the client with information regarding mental health, emotional disorders or behavioral health." A.R.S. § 32-3251.
48. "Quorum" means a majority of the members of the Board or an ARC. Vacant positions do not reduce the quorum requirement.
49. "Regionally accredited college or university" means approved by the:
- New England Association of Schools and Colleges,
 - Middle States Commission on Higher Education,
 - North Central Association,
 - Northwest Commission on Colleges and Universities,
 - Southern Association of Colleges and Schools, or
 - Western Association of Schools and Colleges.
50. "Significant other" means an individual whose participation a client considers to be essential to the effective provision of behavioral health services to the client.
51. "Supervised work experience" means practicing clinical social work, marriage and family therapy, professional counseling, or substance abuse counseling for remuneration or on a voluntary basis under direct supervision and while receiving clinical supervision as prescribed in R4-6-212 and Articles

- 4 through 7.
52. "Telepractice" means providing behavioral health services through interactive audio, video or electronic communication that occurs between a behavioral health professional and the client, including any electronic communication for evaluation, diagnosis and treatment, including distance counseling, in a secure platform, and that meets the requirements of telemedicine pursuant to A.R.S. § 36-3602. A.R.S. § 32-3251.
 53. "Treatment" means the application by a licensee of one or more therapeutic practice methods to improve, eliminate, or manage a client's behavioral health issue.
 54. "Treatment goal" means the desired result or outcome of treatment.
 55. "Treatment method" means the specific approach a licensee used to achieve a treatment goal.
 56. "Treatment plan" means a description of the specific behavioral health services that a licensee will provide to a client that is documented in the client record, and meets the requirements found in R4-6-1102.

R9-4-401. Definitions

In this Article, unless otherwise specified:

1. "Accession number" means a unique number, separate from a medical record number, assigned by a hospital's cancer registry to a patient for identification purposes.
2. "Admitted" means the same as in A.A.C. R9-10-201.
3. "Analytic patient" means a patient, who is:
 - a. Diagnosed at a facility, or
 - b. Administered any part of a first course of treatment at the facility.
4. "Basal cell" means a cell of the inner-most layer of the skin.
5. "Behavioral health service agency" means the same as "agency" in A.A.C. R9-20-101.
6. "Business day" means any day of the week other than a Saturday, a Sunday, a legal holiday, or a day on which the Department is authorized or obligated by law or executive order to close.
7. "Calendar day" means any day of the week, including a Saturday or a Sunday.
8. "Calendar year" means January 1 through December 31.
9. "Cancer" means a group of diseases characterized by uncontrolled cell growth and the spread of abnormal cells.
10. "Cancer registry" means a unit within a hospital or clinic that collects, stores, summarizes, distributes, and maintains information specified in R9-4-403 about patients who:
 - a. Are admitted to the hospital;
 - b. Receive diagnostic evaluation at, or cancer-directed treatment from, the hospital or clinic; or
 - c. Show evidence of cancer, carcinoma in situ, or a benign tumor of the central nervous system while receiving treatment from the hospital or clinic.
11. "Carcinoma" means a type of cancer that is characterized as a malignant tumor derived from epithelial tissue.
12. "Carcinoma in situ" means a cancer that is confined to epithelial tissue within the site of origin.
13. "Case report" means an electronic or paper document that includes the information in R9-4-403 for a patient.
14. "Chemotherapy" means the treatment of cancer using specific chemical agents or drugs that are selectively destructive to malignant cells and tissues.
15. "Clinic" means a facility that is not physically connected to or affiliated with a hospital, where a physician, doctor of naturopathic medicine, dentist, or registered nurse practitioner provides cancer

diagnosis, cancer treatment, or both, and that is:

- a. An outpatient treatment center, as defined in A.A.C. R9-10-101,
 - b. An outpatient surgical center, as defined in A.A.C. R9-10-101, or
 - c. An outpatient radiation treatment center.
16. "Clinical evaluation" means an examination of the body of an individual for the presence of disease or injury to the body, and review of any laboratory test results for the individual by a physician, doctor of naturopathic medicine, dentist, or registered nurse practitioner.
 17. "Clinical or pathological" means an analysis of evidence either acquired solely before a first course of treatment was initiated, or acquired both before a first course of treatment, and supplemented or modified by evidence acquired during and subsequent to surgery.
 18. "Code" means a single number or letter, a set of numbers or letters, or a set of both numbers and letters, that represents specific information.
 19. "Cytology" means the microscopic examination of cells.
 20. "Date of first contact" means the day, month, and year a reporting facility first began to provide cancer-related medical services, nursing services, or health-related services, as defined in A.R.S. § 36-401, to a patient.
 21. "Date of last contact" means the day, month, and year that a reporting facility last knew a patient to be alive.
 22. "Designee" means a person assigned by the governing authority of a hospital or clinic or by an individual acting on behalf of the governing authority to gather information for or report to the Department, as specified in R9-4-403 or R9-4-404.
 23. "Discharge" means the same as in A.A.C. R9-10-201.
 24. "Discharge date" means the month, day, and year when a patient is discharged from a hospital.
 25. "Disease progression" means the process of a disease becoming more severe or spreading from one area of a human body to another area of the human body.
 26. "Distant lymph node" means a lymph node that is not in the same general area of a human body as the primary site of a tumor.
 27. "Distant site" means an area of a human body that is not adjacent to or in the same general area of the human body as the primary site of a tumor.
 28. "Doctor of naturopathic medicine" means an individual licensed under A.R.S. Title 32, Chapter 14.
 29. "Electronic" means the same as in A.R.S. § 44-7002.
 30. "First course of treatment" means the initial set of cancer- or non-cancer-directed treatment that is planned when a cancer is diagnosed and administered to the patient before disease progression or recurrence.
 31. "Follow-up report" means an electronic document that includes the information stated in R9-4-404(A)(2) for a patient.
 32. "Governing authority" means the same as in A.R.S. § 36-401.
 33. "Grade" means the degree of resemblance of a tumor to normal tissue, and gives an indication of the severity of the cancer.
 34. "Health care institution" means the same as in A.A.C. R9-10-101.
 35. "Histology" means the microscopic structure of cells, tissues, and organs in relation to their function.
 36. "Inpatient beds" means the same as in A.R.S. § 36-401.
 37. "Laterality" means the side of a paired organ or the side of the body in which the primary site of a tumor is located.
 38. "Licensed capacity" means the same as in A.R.S. § 36-401.

39. "Lymph" means the clear, watery, sometimes faintly yellowish fluid that circulates throughout the lymphatic system.
40. "Lymph node" means any of the small bodies located along lymphatic vessels, particularly at the neck, armpit, and groin, that filter bacteria and foreign particles from lymph.
41. "Lymphatic system" means the organ system that consists of lymph, lymph nodes, and vessels or channels that contain and convey lymph throughout a human body.
42. "Malignant" means an inherent tendency of a tumor to sequentially spread to areas of a human body beyond the site of origin.
43. "Medical record number" means a unique number assigned by a hospital, clinic, physician, doctor of naturopathic medicine, dentist, or registered nurse practitioner to an individual for identification purposes.
44. "Melanocyte" means a skin cell that makes melanin, which is a dark pigment.
45. "Melanoma" means a dark-pigmented, malignant tumor arising from a melanocyte and occurring most commonly in the skin.
46. "Metastasis" means the spread of a cancer from a primary site into a regional site or a distant site.
47. "Narrative description" means a written text describing an act, occurrence, or course of events.
48. "Organ" means a somewhat independent part of a human body, such as a heart or a kidney, that performs a specific function.
49. "Organ system" means one or more organs and associated tissues that perform a specific function, such as the circulatory system.
50. "Outpatient radiation treatment center" means a facility in which a person, licensed as specified in 12 A.A.C. 1, Article 7, provides radiation treatment.
51. "Papillary tumor" means a benign tumor of the skin producing finger-like projections from the skin surface.
52. "Pathology laboratory" means a facility in which human cells or tissues are examined for the purpose of diagnosing cancer and that is licensed under 9 A.A.C. 10, Article 1.
53. "Patient" means an individual who has been diagnosed with a cancer, carcinoma in situ, or benign tumor of the central nervous system, including melanoma, but excluding skin cancer that is:
 - a. Confined to the primary site; or
 - b. Present at regional sites or distant sites, but was diagnosed on or after January 1, 2003.
54. "Primary site" means a specific organ or organ system within a human body where the first cancer tumor originated.
55. "Principal diagnosis" means the primary condition for which an individual is admitted to a hospital or treated by the hospital.
56. "Radiation treatment" means the exposure of a human body to a stream of particles or electromagnetic waves for the purpose of selectively destroying certain cells or tissues.
57. "Reconstructive surgery" means a medical procedure that involves cutting into a body tissue or organ with instruments to repair damage or restore function to, or improve the shape and appearance of a body structure that is missing, defective, damaged, or misshapen by cancer or cancer-directed therapies.
58. "Recurrence" means the reappearance of a tumor after previous removal or treatment of the tumor, after a period in which the patient was believed to be free of cancer.
59. "Reference date" means the date on which the hospital's cancer registry began reporting patient information to the Department.
60. "Regional lymph node" means a lymph node that is in the same general area of a human body as the primary site of a tumor.

61. "Regional site" means an area of a human body that is adjacent to or in the same general area of the human body as the primary site of a tumor.
62. "Registered nurse practitioner" means an individual who meets the definition of registered nurse practitioner in A.R.S. § 32-1601, and is licensed under A.R.S. Title 32, Chapter 15.
63. "Rehabilitation services" means the same as in A.A.C. R9-10-201.
64. "Release" means to transfer care of a patient from a hospital to a physician, a doctor of naturopathic medicine, a registered nurse practitioner, an outpatient treatment center, another hospital, the patient, the patient's parent if the patient is under 18 years of age and unmarried, or the patient's legal guardian.
65. "Reporting facility" means a hospital, clinic, physician, doctor of naturopathic medicine, dentist, or registered nurse practitioner that submits a case report to the Department.
66. "Secondary diagnosis" means all other diagnoses of an individual made after the principal diagnosis.
67. "Sequence number" means a unique number assigned by a cancer registry to a specific cancer within the body of a patient.
68. "Skin cancer" means cancer of any of the following types:
 - a. Papillary tumor;
 - b. Squamous cell;
 - c. Basal cell; or
 - d. Other carcinoma of the skin, where a specific diagnosis has not been determined.
69. "Special hospital" means the same as in A.A.C. R9-10-201.
70. "Squamous cell" means a flat, scale-like skin cell.
71. "Stage group" means a scheme for categorizing a patient, based on the staging classification of the patient's cancer, to enable a physician, doctor of naturopathic medicine, or registered nurse practitioner to provide better treatment and outcome information to the patient.
72. "Staging classification" means the categorizing of a cancer according to the size and spread of a tumor from its primary site, based on an analysis of three basic components:
 - a. The tumor at the primary site,
 - b. Regional lymph nodes, and
 - c. Metastasis.
73. "Subsite" means a specific area within a primary site where a cancer tumor originated.
74. "Substantiate stage" means a narrative describing the stage group of a cancer at the time of diagnosis.
75. "Treatment" means the administration to a patient of medical services, nursing services, or health-related services, as defined in A.R.S. § 36-401, that are intended to relieve illness or injury.
76. "Tumor" means an abnormal growth of tissue resulting from uncontrolled multiplication of cells and serving no physiological function.
77. "Usual industry" means the primary type of activity carried out by the business where a patient was employed for the most number of years of the patient's working life before the diagnosis of cancer.
78. "Usual occupation" means the kind of work performed during the most number of years of a patient's working life before the diagnosis of cancer.
79. "Working life" means that portion of a patient's life during which the patient was employed for a salary or wages.

R9-6-101. Definitions

In this Chapter, unless otherwise specified:

1. "Active tuberculosis" means the same as in A.R.S. § 36-711.
2. "Administrator" means the individual who is the senior leader at a child care establishment, health care institution, correctional facility, school, pharmacy, or shelter.
3. "Agency" means any board, commission, department, office, or other administrative unit of the federal government, the state, or a political subdivision of the state.
4. "Agent" means an organism that may cause a disease, either directly or indirectly.
5. "AIDS" means Acquired Immunodeficiency Syndrome.
6. "Airborne precautions" means, in addition to use of standard precautions:
 - a. Either:
 - i. Placing an individual in a private room with negative air-pressure ventilation, at least six air exchanges per hour, and air either:
 - (1) Exhausted directly to the outside of the building containing the room, or
 - (2) Recirculated through a HEPA filtration system before being returned to the interior of the building containing the room; or
 - ii. If the building in which an individual is located does not have an unoccupied room meeting the specifications in subsection (6)(a)(i):
 - (1) Placing the individual in a private room, with the door to the room kept closed when not being used for entering or leaving the room, until the individual is transferred to a health care institution that has a room meeting the specifications in subsection (6)(a)(i) or to the individual's residence, as medically appropriate; and
 - (2) Ensuring that the individual is wearing a mask covering the individual's nose and mouth; and
 - b. Ensuring the use by other individuals, when entering the room in which the individual is located, of a device that is:
 - i. Designed to protect the wearer against inhalation of an atmosphere that may be harmful to the health of the wearer, and
 - ii. At least as protective as a National Institute for Occupational Safety and Health-approved N-95 respirator.
7. "Approved test for tuberculosis" means a Mantoux skin test or other test for tuberculosis recommended by the Centers for Disease Control and Prevention or the Tuberculosis Control Officer appointed under A.R.S. § 36-714.
8. "Arizona State Laboratory" means the part of the Department authorized by A.R.S. Title 36, Chapter 2, Article 2, and A.R.S. § 36-132(A)(11) that performs serological, microbiological, entomological, and chemical analyses.
9. "Average window period" means the typical time between exposure to an agent and the ability to detect infection with the agent in human blood.
10. "Barrier" means a mask, gown, glove, face shield, face mask, or other membrane or filter to prevent the transmission of infectious agents and protect an individual from exposure to body fluids.
11. "Body fluid" means semen, vaginal secretion, tissue, cerebrospinal fluid, synovial fluid, pleural fluid, peritoneal fluid, pericardial fluid, amniotic fluid, urine, blood, lymph, or saliva.
12. "Carrier" means an infected individual without symptoms who can spread the infection to a susceptible individual.
13. "Case" means an individual:
 - a. With a communicable disease whose condition is documented:

- i. By laboratory results that support the presence of the agent that causes the disease;
 - ii. By a health care provider’s diagnosis based on clinical observation; or
 - iii. By epidemiologic associations with the communicable disease, the agent that causes the disease, or toxic products of the agent;
 - b. Who has experienced diarrhea, nausea, or vomiting as part of an outbreak; or
 - c. Who has experienced a vaccinia-related adverse event.
14. “Case definition” means the disease-specific criteria that must be met for an individual to be classified as a case.
15. “Chief medical officer” means the senior health care provider in a correctional facility or that individual’s designee who is also a health care provider.
16. “Child” means an individual younger than 18 years of age.
17. “Child care establishment” means:
- a. A “child care facility,” as defined in A.R.S. § 36-881;
 - b. A “child care group home,” as defined in A.R.S. § 36-897;
 - c. A child care home registered with the Arizona Department of Education under A.R.S. § 46-321; or
 - d. A child care home certified by the Arizona Department of Economic Security under A.R.S. Title 46, Chapter 7, Article 1.
18. “Clinical signs and symptoms” means evidence of disease or injury that can be observed by a health care provider or can be inferred by the health care provider from a patient’s description of subjective complaints.
19. “Cohort room” means a room housing only individuals infected with the same agent and no other agent.
20. “Communicable disease” means an illness caused by an agent or its toxic products that arises through the transmission of that agent or its products to a susceptible host, either directly or indirectly.
21. “Communicable period” means the time during which an agent may be transmitted directly or indirectly:
- a. From an infected individual to another individual;
 - b. From an infected animal, arthropod, or vehicle to an individual; or
 - c. From an infected individual to an animal.
22. “Confirmatory test” means a laboratory analysis approved by the U.S. Food and Drug Administration to be used after a screening test to diagnose or monitor the progression of HIV infection.
23. “Contact” means an individual who has been exposed to an infectious agent in a manner that may have allowed transmission of the infectious agent to the individual during the communicable period.
24. “Correctional facility” means any place used for the confinement or control of an individual:
- a. Charged with or convicted of an offense,
 - b. Held for extradition, or
 - c. Pursuant to a court order for law enforcement purposes.
25. “Court-ordered subject” means a subject who is required by a court of competent jurisdiction to provide one or more specimens of blood or other body fluids for testing.
26. “Dentist” means an individual licensed under A.R.S. Title 32, Chapter 11, Article 2.
27. “Department” means the Arizona Department of Health Services.
28. “Designated service area” means the same as in R9-18-101.

29. "Diagnosis" means an identification of a disease by an individual authorized by law to make the identification.
30. "Disease" means a condition or disorder that causes the human body to deviate from its normal or healthy state.
31. "Emerging or exotic disease" means:
 - a. A new disease resulting from change in an existing organism;
 - b. A known disease not usually found in the geographic area or population in which it is found;
 - c. A previously unrecognized disease appearing in an area undergoing ecologic transformation; or
 - d. A disease reemerging as a result of a situation such as antimicrobial resistance in a known infectious agent, a breakdown in public health measures, or deliberate release.
32. "Entity" has the same meaning as "person" in A.R.S. § 1-215.
33. "Epidemiologic investigation" means the application of scientific methods to ascertain a diagnosis; identify risk factors for a disease; determine the potential for spreading a disease; institute control measures; and complete forms and reports such as communicable disease, case investigation, and outbreak reports.
34. "Fever" means a temperature of 100.4° F or higher.
35. "Food establishment" has the same meaning as in the document incorporated by reference in A.A.C. R9-8-107.
36. "Food handler" means:
 - a. A paid or volunteer full-time or part-time worker who prepares or serves food or who otherwise touches food in a food establishment; or
 - b. An individual who prepares food for or serves food to a group of two or more individuals in a setting other than a food establishment.
37. "Foodborne" means that food serves as a mode of transmission of an infectious agent.
38. "Guardian" means an individual who is invested with the authority and charged with the duty of caring for an individual by a court of competent jurisdiction.
39. "HBsAg" means hepatitis B surface antigen.
40. "Health care institution" has the same meaning as in A.R.S. § 36-401.
41. "Health care provider" means the same as in A.R.S. § 36-661.
42. "Health education" means supplying to an individual or a group of individuals:
 - a. Information about a communicable disease or options for treatment of a communicable disease, and
 - b. Guidance about methods to reduce the risk that the individual or group of individuals will become infected or infect other individuals.
43. "HIV" means Human Immunodeficiency Virus.
44. "HIV-related test" has the same meaning as in A.R.S. § 36-661.
45. "Infected" or "infection" means when an individual has an agent for a disease in a part of the individual's body where the agent may cause a disease.
46. "Infectious active tuberculosis" means pulmonary or laryngeal active tuberculosis in an individual, which can be transmitted from the infected individual to another individual.
47. "Infectious agent" means an agent that can be transmitted to an individual.
48. "Infant" means a child younger than 12 months of age.
49. "Isolate" means:

- a. To separate an infected individual or animal from others to limit the transmission of infectious agents, or
 - b. A pure strain of an agent obtained from a specimen.
50. "Isolation" means separation, during the communicable period, of an infected individual or animal from others to limit the transmission of infectious agents.
51. "Laboratory report" means a document that:
- a. Is produced by a laboratory that conducts a test or tests on a subject's specimen; and
 - b. Shows the outcome of each test, including personal identifying information about the subject.
52. "Local health agency" means a county health department, a public health services district, a tribal health unit, or a U.S. Public Health Service Indian Health Service Unit.
53. "Local health officer" means an individual who has daily control and supervision of a local health agency or the individual's designee.
54. "Medical evaluation" means an assessment of an individual's health by a physician, physician assistant, or registered nurse practitioner.
55. "Medical examiner" means an individual:
- a. Appointed as a county medical examiner by a county board of supervisors under A.R.S. § 11-592, or
 - b. Employed by a county board of supervisors under A.R.S. § 11-592 to perform the duties of a county medical examiner.
56. "Multi-drug resistant tuberculosis" means active tuberculosis that is caused by bacteria that are not susceptible to the antibiotics isoniazid and rifampin.
57. "Officer in charge" means the individual in the senior leadership position in a correctional facility or that individual's designee.
58. "Outbreak" means an unexpected increase in incidence of a disease, infestation, or sign or symptom of illness.
59. "Parent" means a biological or adoptive mother or father.
60. "Person" has the same meaning as in A.R.S. § 1-215.
61. "Petition" means a formal written application to a court requesting judicial action on a matter.
62. "Pharmacy" has the same meaning as in A.R.S. § 32-1901.
63. "Physician" means an individual licensed as a doctor of:
- a. Allopathic medicine under A.R.S. Title 32, Chapter 13;
 - b. Naturopathic medicine under A.R.S. Title 32, Chapter 14;
 - c. Osteopathic medicine under A.R.S. Title 32, Chapter 17; or
 - d. Homeopathic medicine under A.R.S. Title 32, Chapter 29.
64. "Physician assistant" has the same meaning as in A.R.S. § 32-2501.
65. "Pupil" means a student attending a school.
66. "Quarantine" means the restriction of activities of an individual or animal that has been exposed to a case or carrier of a communicable disease during the communicable period, to prevent transmission of the disease if infection occurs.
67. "Registered nurse practitioner" has the same meaning as in A.R.S. § 32-1601.
68. "Respiratory disease" means a communicable disease with acute onset of fever and symptoms such as cough, sore throat, or shortness of breath.
69. "Risk factor" means an activity or circumstance that increases the chances that an individual will

- become infected with or develop a communicable disease.
70. "School" means:
- a. An "accommodation school," as defined in A.R.S. § 15-101;
 - b. A "charter school," as defined in A.R.S. § 15-101;
 - c. A "private school," as defined in A.R.S. § 15-101;
 - d. A "school," as defined in A.R.S. § 15-101;
 - e. A college or university;
 - f. An institution that offers a "private vocational program," as defined in A.R.S. § 32-3001; or
 - g. An institution that grants a "degree," as defined in A.R.S. § 32-3001, for completion of an educational program of study.
71. "Screening test" means a laboratory analysis approved by the U.S. Food and Drug Administration as an initial test to indicate the possibility that an individual is infected with a communicable disease.
72. "Sexual contact" means vaginal intercourse, anal intercourse, fellatio, cunnilingus, or other deliberate interaction with another individual's genital area for a non-medical or non-hygienic reason.
73. "Shelter" means:
- a. A facility or home that provides "shelter care," as defined in A.R.S. § 8-201;
 - b. A "homeless shelter," as defined in A.R.S. § 16-121; or
 - c. A "shelter for victims of domestic violence," as defined in A.R.S. § 36-3001.
74. "Significant exposure" means the same as in A.R.S. § 32-3207.
75. "Standard precautions" means the use of barriers by an individual to prevent parenteral, mucous membrane, and nonintact skin exposure to body fluids and secretions other than sweat.
76. "Subject" means an individual whose blood or other body fluid has been tested or is to be tested.
77. "Submitting entity" means the same as in A.R.S. § 13-1415.
78. "Suspect case" means an individual whose medical history, signs, or symptoms indicate that the individual:
- a. May have or is developing a communicable disease;
 - b. May have experienced diarrhea, nausea, or vomiting as part of an outbreak; or
 - c. May have experienced a vaccinia-related adverse event.
79. "Syndrome" means a pattern of signs and symptoms characteristic of a disease.
80. "Test" means an analysis performed on blood or other body fluid to evaluate for the presence or absence of a disease.
81. "Test result" means information about the outcome of a laboratory analysis of a subject's specimen and does not include personal identifying information about the subject.
82. "Treatment" means a procedure or method to cure, improve, or palliate an illness or a disease.
83. "Tuberculosis control officer" means the same as in A.R.S. § 36-711.
84. "Vaccine" means a preparation of a weakened or killed agent, a portion of the agent's structure, or a synthetic substitute for a portion of the agent's structure that, upon administration into the body of an individual or animal, stimulates a response in the body to produce or increase immunity to a particular disease.
85. "Vaccinia-related adverse event" means a reaction to the administration of a vaccine against smallpox that requires medical evaluation of the reaction.
86. "Victim" means an individual on whom another individual is alleged to have committed a sexual offense, as defined in A.R.S. § 13-1415.
87. "Viral hemorrhagic fever" means disease characterized by fever and hemorrhaging and caused by a

virus.

88. "Waterborne" means that water serves as a mode of transmission of an infectious agent.
89. "Working day" means the period from 8:00 a.m. to 5:00 p.m. on a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state holiday.

R9-8-101. Definitions

In addition to the terms defined in the material incorporated by reference in R9-8-107, which are designated by all capital letters, the following definitions apply in this Article, unless otherwise specified:

1. "Agency" means any board, commission, department, office, or other administrative unit of the federal government, the state, or a political subdivision of the state.
2. "Applicant" means the following PERSON requesting a LICENSE:
 - a. If an individual, the individual who owns the FOOD ESTABLISHMENT;
 - b. If a corporation, any officer of the corporation;
 - c. If a limited liability company, the designated manager or, if no manager is designated, any member of the limited liability company;
 - d. If a partnership, any two of the partners;
 - e. If a joint venture, any two individuals who signed the joint venture agreement;
 - f. If a trust, the trustee of the trust;
 - g. If a religious or nonprofit organization, the individual in the senior leadership position within the organization.
 - h. If a school district, the superintendent of the district;
 - i. If an agency, the individual in the senior leadership position within the agency; or
 - j. If a county, municipality, or other political subdivision of the state, the individual in the senior leadership position within the county, municipality, or political subdivision.
3. "Department" means the Arizona Department of Health Services.
4. "Developmental disability" means the same as in A.R.S. § 36-551.
5. "FC" means the United States Food and Drug Administration publication, Food Code: 1999 Recommendations of the United States Public Health Service, Food and Drug Administration (1999), as modified and incorporated by reference in R9-8-107.
6. "Incongruous" means inconsistent with the inspection reports of other inspectors or the REGULATORY AUTHORITY as a whole because significantly more or fewer violations of individual CRITICAL ITEMS are documented.
7. "Prepare" means to process commercially for human consumption by manufacturing, packaging, labeling, cooking, or assembling.
8. "Public health control" means a method to prevent transmission of foodborne illness to the CONSUMER.
9. "Remodel" means to change the PHYSICAL FACILITIES or PLUMBING FIXTURES in a FOOD ESTABLISHMENT'S FOOD preparation, storage, or cleaning areas through construction, replacement, or relocation, but does not include the replacement of old EQUIPMENT with new EQUIPMENT of the same type.
10. "Requester" means a PERSON who requests an approval from the REGULATORY AUTHORITY, but who is not an applicant or a LICENSE HOLDER.

R18-5-201. Definitions

"Air induction system" means a system whereby a volume of air is induced into a hollow ducting in a spa

floor, bench, or wall. An air induction system is activated by an air power blower and is separate from the water circulation system.

“Artificial lake” means a man-made lake, lagoon, or basin, lined or unlined, with a surface area equal to or greater than two acres (87,120 square feet), that is used or intended to be used for water contact recreation.

“Backwash” means the process of thoroughly cleaning a filter by the reverse flow of water through the filter.

“Barrier” means a fence, wall, building, or landscaping that obstructs access to a public or semipublic swimming pool or spa.

“Cartridge filter” means a depth, pleated, or surface-type filter component with fixed dimensions that is designed to remove suspended particles from water flowing through the filter.

“Construct” means to build or install a new public or semipublic swimming pool or spa or to enlarge, deepen, or make a major modification to an existing public or semipublic swimming pool or spa.

“Coping” means the cap on a swimming pool or spa wall that provides a finished edge around the swimming pool or spa.

“Cross-connection” means any physical connection or structural arrangement between a potable water system and the piping system for a public or semipublic swimming pool or spa through which it is possible to introduce used water, gas, or any other substance into the potable water system. A bypass arrangement, jumper connection, removable section, swivel or change-over device, or any other temporary or permanent device that may cause backflow is a cross-connection.

“Deck” means a hard surface area immediately adjacent or attached to a swimming pool or spa that is designed for sitting, standing, or walking.

“Deep area” means the portion of a public or semipublic swimming pool that is more than 5 feet in depth.

“Discharge piping” means the portion of the circulation system that carries water from the filter back to the swimming pool or spa.

“Diving area” means the area of a public or semipublic swimming pool that is designated for diving from a diving board, diving platform, or starting block.

“Fill-and-draw swimming pool or spa” means a swimming pool or spa where the principal means of cleaning is the complete removal of the used water and its replacement with potable water.

“Filtration rate” means the rate of water flowing through a filter during the filter cycle expressed in gallons per minute per square foot of effective filter area.

“Flow-through swimming pool or spa” means a swimming pool or spa where new water enters the swimming pool or spa to replace an equal quantity of water that constantly flows out.

“Freeboard” means the vertical wall section of a swimming pool or spa wall between the waterline and the deck.

“Hose bibb” means a faucet with a threaded nozzle to which a hose may be attached.

“Hydrotherapy jet” means a fitting that blends air and water and creates a high-velocity, turbulent stream of air-enriched water for injection into a spa.

“Make-up water” means fresh water used to fill or refill a swimming pool or spa.

“Maximum bathing load” means the design capacity or the maximum number of users that a public or semipublic swimming pool or spa is designed to hold.

“Natural bathing place” means a lake, pond, river, stream, swimming hole, or hot springs which has not been modified by man.

“Operate” means to run, maintain, or otherwise control or direct the functioning of a public or semipublic swimming pool or spa.

“Overflow collection system” means equipment designed to remove water from a swimming pool or spa, including gutters, overflows, surface skimmers, and other surface water collection systems of various designs and

manufacture.

“Potable water” means drinking water.

“Private residential spa” means a spa at a private residence used only by the owner, members of the owner’s family, and invited guests, or a spa that serves a housing group consisting of no more than three living units [for example, duplexes or triplexes].

“Private residential swimming pool” means a swimming pool at a private residence used only by the owner, members of the owner’s family, and invited guests, or a swimming pool that serves a housing group consisting of no more than three living units [for example, duplexes or triplexes].

“Public spa” means a spa that is open to the public with or without a fee, including a spa that is operated by a county, municipality, political subdivision, school district, university, college, or a commercial establishment whose primary business is the operation of a spa.

“Public swimming pool” means a swimming pool that is open to the public with or without a fee, including a swimming pool that is operated by a county, municipality, political subdivision, school district, university, college, or a commercial establishment whose primary business is the operation of a swimming pool.

“Recessed treads” means a series of vertically spaced, preformed stepholes in a swimming pool wall.

“Return inlet” means an aperture or fitting through which filtered water returns to a swimming pool or spa.

“Rope and float line” means a continuous line not less than 3/4 inch in diameter that is supported by buoys and attached to opposite sides of a swimming pool to separate areas of the swimming pool.

“Semi-artificial bathing place” means a natural bathing place that has been modified by man.

“Semipublic spa” means a spa operated for the residents of lodgings such as hotels, motels, resorts, apartments, condominiums, townhouse complexes, trailer courts, mobile home parks, or similar establishments. A semipublic spa includes a spa that is operated by a neighborhood or community association for the residents of the community and their guests and any spa at a country club, health club, camp, or similar establishment where the primary business of the establishment is not the operation of a spa and where the use of the spa is included in the fee for the primary use of the establishment.

“Semipublic swimming pool” means a swimming pool operated for the residents of lodgings such as hotels, motels, resorts, apartments, condominiums, townhouse complexes, trailer courts, mobile home parks, or similar establishments. A semipublic swimming pool includes a swimming pool that is operated by a neighborhood or community association for the residents of the community and their guests and a swimming pool at a country club, health club, camp, or similar establishment where the primary business of the establishment is not the operation of a swimming pool and where the use of the swimming pool is included in the fee for the primary use of the establishment.

“Shallow area” means the portion of a public or semipublic swimming pool that is 5 feet or less in depth.

“Slip-resistant” means a surface that has a static coefficient of friction [wet or dry] of at least 0.50.

“Spa” means an artificial basin, chamber, or tank of irregular or geometric shell design that is intended only for bathing or soaking and that is not drained, cleaned, or refilled for each user. A spa may include features such as hydrotherapy jet circulation, hot water, cold water mineral baths, or an air induction system. Industry terminology for a spa includes “hydrotherapy pool,” “whirlpool,” “hot tub,” and “therapy pool.”

“Special use pool” means a swimming pool intended for competitive aquatic events, aquatic exercise, or lap swimming. A special use pool includes a wave action pool, exit pool for a water slide, swimming pool that is part of an attraction at a water recreation park, water volleyball pool, or a swimming pool with special features used for training and instruction.

“Suction outlet” means the aperture or fitting through which water is withdrawn from a swimming pool or spa.

“Suction piping” means the water circulation system piping that carries water from a swimming pool or spa to the filter.

“Swimming pool” means an artificial basin, chamber, or tank that is designed for swimming or diving.

“Turnover rate” means the number of hours required to circulate a volume of water equal to the capacity of the swimming pool or spa.

“User” means a person who uses a swimming pool, spa, or adjoining deck area.

“Wading pool” means a shallow swimming pool used for bathing and wading by small children.

“Water circulation system” means an arrangement of mechanical equipment connected to a swimming pool or spa by piping in a closed loop that directs water from the swimming pool or spa to the filtration and disinfection equipment and returns the water to the swimming pool or spa.

“Water circulation system components” means the mechanical components that are part of a water circulation system of a swimming pool or spa, including pumps, filters, valves, surface skimmers, ion generators, electrolytic chlorine generators, ozone process equipment, and chemical feeding equipment.

“Water level” means either:

- a. On swimming pools and spas with skimmer systems, the midpoint of the operating range of the skimmers, or
- b. On swimming pools and spas with overflow gutters, the height of the overflow rim of the gutter.

R18-13-302. Definitions

- A. “Approved” means acceptable to the Department.
- B. “Ashes” means residue from the burning of any combustible material.
- C. “Department” means the Department of Environmental Quality or a local health department designated by the Department of Environmental Quality.
- D. “Garbage” means all animal and vegetable wastes resulting from the processing, handling, preparation, cooking, and serving of food or food materials.
- E. “Manure” means animal excreta, including cleanings from barns, stables, corrals, pens, or conveyances used for stabling, transporting, or penning of animals or fowls.
- F. “Person” means the state, a municipality, district or other political subdivision, a cooperative, institution, corporation, company, firm, partnership or individual.
- G. “Refuse” means all putrescible and nonputrescible solid and semisolid wastes, except human excreta, but including garbage, rubbish, ashes, manure, street cleanings, dead animals, abandoned automobiles, and industrial wastes.
- H. “Rubbish” means nonputrescible solid wastes, excluding ashes, consisting of both combustible and noncombustible wastes, such as paper, cardboard, waste metal, tin cans, yard clippings, wood, glass, bedding, crockery and similar materials.

R18-13-1401. Definitions

In addition to the definitions in A.R.S. § 49-701, the following definitions apply in this Article:

1. “Administrative consent order” means a bilateral agreement between the consenting party and the Department. A bilateral agreement is not subject to administrative appeal.
2. “Alternative treatment technology” means a treatment method other than autoclaving or incineration, that achieves the treatment standards described in R18-13-1415.
3. “Approved medical waste facility plan” means the document that has been approved by the Department under A.R.S. § 49-762.04, and that authorizes the operator to accept biohazardous medical waste at its solid waste facility.
4. “Autoclaving,” means using a combination of heat, steam, pressure, and time to achieve sterile conditions.
5. “Biohazardous medical waste” is composed of one or more of the following:

- a. Cultures and stocks: Discarded cultures and stocks generated in the diagnosis, treatment or immunization of a human being or animal or in any research relating to that diagnosis, treatment or immunization, or in the production or testing of biologicals.
 - b. Human blood and blood products: Discarded products and materials containing free-flowing blood or free-flowing blood components.
 - c. Human pathologic wastes: Discarded organs and body parts removed during surgery. Human pathologic wastes do not include the head or spinal column.
 - d. Medical sharps: Discarded sharps used in animal or human patient care, medical research, or clinical laboratories. This includes hypodermic needles; syringes; pipettes; scalpel blades; blood vials; needles attached to tubing; broken and unbroken glassware; and slides and coverslips.
 - e. Research animal wastes: Animal carcasses, body parts, and bedding of animals that have been infected with agents that produce, or may produce, human infection.
6. "Biologicals" means preparations made from living organisms or their products, including vaccines, cultures, or other biological products intended for use in diagnosing, immunizing, or treating humans or animals or in research pertaining to these activities.
 7. "Biological indicator" means a representative microorganism used to evaluate treatment efficacy.
 8. "Blood and blood products" means discarded human blood and any product derived from human blood, including but not limited to blood plasma, platelets, red or white blood corpuscles, and other derived products.
 9. "C.F.R." means the Code of Federal Regulations.
 10. "Chemotherapy waste" means any discarded material that has come in contact with an agent that kills or prevents the reproduction of malignant cells.
 11. "Dedicated vehicle" means a motor vehicle or trailer that is pulled by a motor vehicle used by a transporter for the sole purpose of transporting biohazardous medical waste.
 12. "Discarded drug" means any prescription medicine, over-the-counter medicine, or controlled substance, used in the diagnosis, treatment, or immunization of a human being or animal, that the generator intends to abandon. The term does not include hazardous waste or controlled substances regulated by the United States Drug Enforcement Agency.
 13. "Disposal facility" means a municipal solid waste landfill that has been approved by the Department under A.R.S. § 49-762.04 to accept untreated biohazardous medical waste for disposal.
 14. "Facility plan" has the meaning given to it in A.R.S. § 49-701.
 15. "Free flowing" means liquid that separates readily from any portion of a biohazardous medical waste under ambient temperature and pressure.
 16. "Generator" means a person whose act or process produces biohazardous medical waste, or a discarded drug, or whose act first causes medical waste or a discarded drug to become subject to regulation.
 17. "Hazardous waste" has the meaning prescribed in A.R.S. § 49-921.
 18. "Health care worker" means, with respect to R18-13-1403(B)(5), a person who provides health care services at an off-site location that is none of the following: a residence, a facility where health care is normally provided, or a facility licensed by the Arizona Department of Health Services.
 19. "Improper disposal of biohazardous medical waste" means the disposal by a person of untreated or inadequately treated biohazardous medical waste at any place that is not approved to accept untreated biohazardous medical waste.
 20. "Independent testing laboratory" means a testing laboratory independent of oversight activities by a provider of alternative treatment technology.
 21. "Medical sharps container" means a vessel that is rigid, puncture resistant, leak proof, and equipped

- with a locking cap.
22. "Medical waste," as defined in A.R.S. § 49-701, means "any solid waste which is generated in the diagnosis, treatment or immunization of a human being or animal or in any research relating to that diagnosis, treatment or immunization, or in the production or testing of biologicals, and includes discarded drugs but does not include hazardous waste as defined in A.R.S. § 49-921 other than conditionally exempt small quantity generator waste."
 23. "Medical waste treatment facility" or "treatment facility" means a solid waste facility approved by the Department under A.R.S. § 49-762.04 to accept and treat biohazardous medical waste from off-site generators.
 24. "Multi-purpose vehicle" means any motor vehicle operated by a health care worker, where the general purpose is the non-commercial transporting of people and the hauling of goods and supplies, but not solid waste. A multi-purpose vehicle is limited to hauling biohazardous medical waste generated off site by health workers in providing services. "Off site" for purposes of this definition means a location other than a hospital or clinic.
 25. "Off site" means a location that does not fall within the definition of "on site" contained in A.R.S. § 49-701.
 26. "Packaging" or "properly packaged" means the use of a container or a practice under R18-13-1407.
 27. "Putrescible waste" means waste materials capable of being decomposed rapidly by microorganisms.
 28. "Radioactive material" has the meaning under A.R.S. § 30-651.
 29. "Secure" means to lock out or otherwise restrict access to unauthorized personnel.
 30. "Spill" means either of the following:
 - a. Any release of biohazardous medical waste from its package while in the generator's storage area.
 - b. Any release of biohazardous medical waste from its package or the release of packaged biohazardous medical waste by the transporter at a place or site that is not a medical waste treatment or disposal facility.
 31. "Store" or "storage" means, in addition to the meaning under A.R.S. § 49-701, either of the following:
 - a. The temporary holding of properly packaged biohazardous medical waste by a generator in a designated accumulation area awaiting collection by a transporter.
 - b. The temporary holding of properly packaged biohazardous medical waste by a transporter or a treater at an approved medical waste storage facility or treatment facility.
 32. "Technology provider" means a person that manufactures, or a vendor who supplies alternative medical waste treatment technology.
 33. "Tracking document" means the written instrument that signifies acceptance of biohazardous medical waste by a transporter, or a transfer, storage, treatment, or disposal facility operator.
 34. "Transportation management plan" means the transporter's written plan consisting of both of the following:
 - a. The procedures used by the transporter to minimize the exposure to employees and the general public to biohazardous medical waste throughout the process of collecting, transporting, and handling.
 - b. The emergency procedures used by the transporter for handling spills or accidents.
 35. "Transporter" means a person engaged in the hauling of biohazardous medical waste from the point of generation to a Department-approved storage facility or to a Department-approved treatment or disposal facility.
 36. "Treat" or "treatment" means, with respect to the methods used to render biohazardous medical waste less infectious: incinerating, autoclaving, or using the alternative treatment technologies prescribed in this Article.

37. "Treated medical waste" means biohazardous medical waste that has been treated and that meets the treatment standards of R18-13-1415. Treated medical waste that requires no further processing is considered solid waste.
38. "Treater" means a person, also known as an operator, who receives solid waste facility plan approval for the purpose of operating a medical waste treatment facility to treat biohazardous medical waste that is generated off site.
39. "Treatment certification statement" means the written document provided by either a generator who treats biohazardous medical waste on site or by a treater, to inform a solid waste disposal or recycling facility that biohazardous medical waste has been treated as prescribed in this Article, and therefore is no longer subject to regulation under this Article.
40. "Treatment standards" mean the levels of microbial inactivation, prescribed in R18-13-1415, to be achieved for a specific type of biohazardous medical waste.
41. "Universal biohazard symbol" or "biohazard symbol" means a representation that conforms to the design shown in 29 CFR 1910.145(f)(8)(ii) (Office of the Federal Register, National Archives and Records Administration, July 1, 1998) and which is incorporated by reference in this rule. This incorporation does not include any later amendments or editions. Copies of the incorporated material are available for inspection at the Department of Environmental Quality and the Office of the Secretary of State.
42. "Vehicle not dedicated to the transportation of biohazardous medical waste but which is engaged in commerce" means a motor vehicle or a trailer pulled by a motor vehicle whose primary purpose is the transporting of goods that are not solid waste or biohazardous medical waste and that is used by a transporter for the temporary transportation of biohazardous medical waste.

DEPARTMENT OF HEALTH SERVICES (R19-0601)
Title 9, Chapter 8, Article 1

Amend: R9-8-102



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: June 4, 2019

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

FROM: Council Staff

DATE: May 9, 2019

SUBJECT: ARIZONA DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 8, Article 1, Food and Drink

Amend R9-8-102

This is an expedited rulemaking from the Arizona Department of Health Services (DHS) that seeks to amend rules in Title 9, Chapter 8, Article 1 related to Food and Drink. Specifically, DHS seeks to amend R9-8-102 which relates to the applicability of Article 1.

DHS is amending R9-8-102 to comply with Laws 2018, Ch. 45, which amended A.R.S. § 36-136(I)(4)(g) to exempt cottage food products from public inspection by DHS, designates certain foods as cottage food products, and amends laws related to labeling and registration. Laws 2018, Ch. 45 also amends A.R.S. § 36-136(I)(13) to add that a registered food preparer must renew their registration every three years and provide DHS updated registration information within 30 days of any change. Finally, Laws 2018, Ch. 45, adds A.R.S. § 36-136(Q)(1) which defines a cottage food product.

DHS intends to amend R9-8-102, which due to the passage of Laws 2018, Ch. 45, is now outdated. Specifically, DHS intends to amend R9-8-102 to meet the requirements of Laws 2018, Ch. 45 to add an exemption for cottage food products that are not potentially hazardous "or a time or temperature control for safety food" from the food establishment requirements in 9 A.A.C. 8, Article 1. Additionally DHS intends to amend R9-8-102 to include registration

renewal requirements established by Laws 2018, Ch. 45 and references to the definition of a cottage food product added by Laws 2018, Ch. 45 at A.R.s. § 36-136(Q)(1).

DHS received an exemption from the rulemaking moratorium on January 23, 2019.

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

DHS indicates it is conducting an expedited rulemaking pursuant to A.R.S. § 41-1027(A)(6). Specifically, DHS indicates that the proposed rulemaking does not increase the cost of regulatory compliance, increase a fee or reduce procedural rights of persons regulated, and amends or repeals rules that are outdated, redundant, or otherwise no longer necessary for the operation of state government.

Council staff finds that the rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A).

2. **Are the rules clear, concise, and understandable.**

Yes. Council staff finds the rules to be clear, concise, and understandable.

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

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

4. **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.

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

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

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

Not applicable.

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

Not applicable.

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

supplemental proposals?

DHS indicates that it did not receive any comments in response to this rulemaking.

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

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

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

Not applicable. There are no federal rules applicable to the subject of the rule.

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

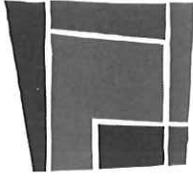
No. The rules do not require a permit.

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

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

13. Conclusion

DHS is conducting an expedited rulemaking pursuant to A.R.S. § 41-1027(A)(6) to amend R9-8-102. Council staff finds that DHS satisfies the criteria under A.R.S. § 41-1027(A)(6) as it amends rules that are outdated given changes to A.R.S. § 36-136 pursuant to Laws 2018, Ch. 45. Furthermore, the proposed amendments do not increase the costs of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. Council staff also finds the rules as amended are clear, concise, understandable, and consistent with legislative intent. Council staff recommends approval of this rulemaking.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

May 9, 2019

Connie Wilhelm, Vice-Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: 9 A.A.C. 8, Article 1 Department of Health Services – Food, Recreation, and Institutional Sanitation

Dear Ms. Wilhelm:

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

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

1. The close of record:
The close of record was April 1, 2019. Submission of the rule is within the 120 days allowed for Final Expedited Rulemaking.
2. Explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A)(6):
The rulemaking amends a rule, which due to the passage of Laws 2018, Ch. 45, is now outdated. The rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. In addition, the rulemaking complies, without material change, with Laws 2018, Ch. 45.
3. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
The rulemaking for 9 A.A.C. 8, Article 1 does not relate to a five-year-review report approved by the Council.
4. A list of all items enclosed:
 - a. Notice of Final Expedited Rulemaking, including the Preamble, Table of Contents, and text of the rule
 - b. Statutory authority
 - c. Current rule

Connie Wilhelm, Vice-Chair
May 9, 2019
Page Two

The Department is requesting that the rules be heard at the Council meeting on June 4, 2019.

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

Sincerely,



Robert Lane
Director's Designee

RL:bg

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

PREAMBLE

- | <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|---|---------------------------------|
| R9-8-102 | Amend |
| <u>2. Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):</u> | |

Authorizing statutes: A.R.S. § 36-136(A)(4) through (7) and (G).

Implementing statutes: A.R.S. §§ 36-136(I)(4)(g), 36-136(I)(13), and 36-136(Q)(1)(a) and (b) as amended by Laws 2018, Ch. 45.

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

The rules are effective the day the Notice of Final Expedited Rulemaking is filed with the Office of the Secretary of State.

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

Notice of Docket Opening: 25 A.A.R. 375, February 15, 2019.

Notice of Proposed Expedited Rulemaking: 25 A.A.R. 675, March 15, 2019

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

Name: Eric Thomas, Office Chief

Address: Arizona Department of Health Services

Division of Public Health Services, Public Health Preparedness

Office of Environmental Health

150 N. 18th Ave., Suite 140

Phoenix, AZ 85007-3248

Telephone: (602) 364-3142

Fax: (602) 364-3146

E-mail: Eric.Thomas@azdhs.gov

or

Name: Robert Lane, Chief

Address: Arizona Department of Health Services

Office of Administrative Counsel and Rules

150 N. 18th Ave., Suite 200

Phoenix, AZ 85007

Telephone: (602) 542-1020

Fax: (602) 364-1150

E-mail: Robert.Lane@azdhs.gov

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

Laws 2018, Ch. 45, requires the Department to add an exemption for cottage food products that is not potentially hazardous "or a time or temperature control for safety food" from the food establishment requirements in 9 A.A.C. 8, Article 1. On January 23, 2019, the Department received an exception approval from the Governor's rulemaking moratorium, established by Executive Order 2019-01 to amend the rules in 9 A.A.C. 8, Article 1. The Department believes amending these rules will eliminate confusion and reduce regulatory burden.

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

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

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

This final expedited rulemaking does not diminish a previous grant of authority of a political subdivision of this state.

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

Under A.R.S. § 41-1055(D)(2), the Department is not required to provide an economic, small business, and consumer impact statement.

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

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

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

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

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

There are no other matters prescribed by statute applicable specifically to the Department or this specific rulemaking.

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

The rule does not require issuance of a general permit.

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

There are no federal rules applicable to the subject of the rule.

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

No such analysis was submitted.

13. Incorporations by reference and their location in the rules:

Not applicable.

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

The rule was not previously made as an emergency rule.

15. The full text of the rule follows:

TITLE 9. HEALTH SERVICES
CHAPTER 8. DEPARTMENT OF HEALTH SERVICES
FOOD, RECREATION, AND INSTITUTIONAL SANITATION
ARTICLE 1. FOOD AND DRINK

Section

R9-8-102. Applicability

ARTICLE 1. FOOD AND DRINK

R9-8-102. Applicability

- A.** Except as provided in subsection (B), this Article applies to any FOOD ESTABLISHMENT.
- B.** This Article does not apply to the following, which are not subject to routine inspection or other regulatory activities by a REGULATORY AUTHORITY:
 - 1. The beneficial use of wildlife meat authorized in A.R.S. § 17-240 and 12 A.A.C. 4, Article 1;
 - 2. Group homes, as defined in A.R.S. § 36-551;
 - 3. Child care group homes, as defined in A.R.S. § 36-897 and licensed under 9 A.A.C. 3;
 - 4. Residential group care facilities, as defined in A.A.C. R6-5-7401 that have 20 or fewer clients;
 - 5. Assisted living homes, as defined in A.R.S. § 36-401(A) and licensed under 9 A.A.C. 10, Article 8;
 - 6. Adult day health care facilities, as defined in A.R.S. § 36-401(A) and licensed under 9 A.A.C. 10, Article 11, that are authorized by the Department to provide services to 15 or fewer participants;
 - 7. Behavioral health residential facilities, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 7, that are authorized by the Department to provide services to 10 or fewer residents;
 - 8. Hospice inpatient facilities, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 6, that are authorized by the Department to provide services for 20 or fewer patients;
 - 9. Substance abuse transitional facilities, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 14, that are authorized by the Department to provide services to 10 or fewer participants;
 - 10. Behavioral health respite homes, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 16;
 - 11. Adult behavioral health therapeutic homes, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 18;
 - 12. Food or drink that is:
 - a. Served at a noncommercial social event, such as a potluck;

- b. Prepared at a cooking school if:
 - i. The cooking school is conducted in the kitchen of an owner-occupied home,
 - ii. Only one meal per day is prepared and served by students of the cooking school,
 - iii. The meal prepared at the cooking school is served to not more than 15 students of the cooking school, and
 - iv. The students of the cooking school are provided with written notice that the food is prepared in a kitchen that is not regulated or inspected by a REGULATORY AUTHORITY;
 - c. Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes;
 - d. Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising, or an employee social event;
 - e. Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut onsite for immediate consumption; or
 - f. Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous;
13. ~~Baked or confectionary goods that are~~ A cottage food product, as defined in A.R.S. § 36-136(O), prepared for commercial purposes that:
- a. ~~Not~~ Is not potentially hazardous as defined in A.R.S. § 36-136(I)(4)(g); or
 - b. Is not a food that requires time and temperature control for safety to limit pathogenic microorganism growth or toxin formation; and
 - ~~b. c.~~ Prepared Is prepared in the kitchen of a ~~private~~ home by a food preparer ~~for commercial purposes by~~ or under the supervision of an individual who:
 - i. ~~has obtained a food handler's card, if issued by the county in which the individual resides;~~ Has a certificate of completion from completing a food handler training course from an accredited program;
 - ii. Maintains an active certification of completion; and
 - iii. If a food preparer, is registered with the Department, as required in A.R.S. § 36-136(I)(4)(g) and specified in subsection (D); and

- e. ~~d.~~ Labeled with Is packaged at the home with an attached label that includes:
 - i. The name, address, and telephone and registration number of the ~~individual~~ food preparer registered with the Department as specified in subsection (D);
 - ii. A list of the ingredients in the ~~baked or confectionary goods~~ cottage food product;
 - iii. The date the cottage food product was prepared; and
 - iv. ~~A~~ The statement; that the baked or confectionary goods are prepared in a private home This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection; and
 - v. If applicable, a statement that the cottage food product was prepared in the home kitchen of a facility for individuals with developmental disabilities.

14. Fruits and vegetables grown in a garden at a public school, as defined in A.R.S. § 15-101, that are washed and cut on-site for immediate consumption.

C. ~~A kitchen in a private home in which baked or confectionary goods are prepared that~~ A food preparer who meets the requirements in ~~A.R.S. § 36-136(I)(4)(g) and (I)(13)~~ and subsection (B)(13) is authorized to prepare an approved source of baked or confectionary goods cottage food products for retail sale commercial purpose.

D. To be exempt from the requirements in this Article, a food preparer identified in subsection (C) shall:

- 1. Complete a food handler training course from an accredited program;
- 2. Register with the Department by submitting:
 - a. An application in a Department-provided format that includes:
 - i. The food preparer's name, address, telephone number, and e-mail address;
 - ii. If the food preparer is supervised, the supervisor's name, address, telephone number, and e-mail address;
 - iii. The address, including the county, of the home where the cottage food product is prepared;
 - iv. Whether the home where the cottage food product is prepared is a facility for developmentally disabled individuals; and

- v. A description of each cottage food product prepared for commercial purposes;
 - b. A copy of the food preparer's certificate of completion for the completed food handler training course;
 - c. If the food preparer is supervised, the supervisor's certificate of completion for the completed food handler training course; and
 - d. An attestation in a Department-provided format that the food preparer:
 - i. Has reviewed Department-provided information on food safety and safe food handling practices;
 - ii. Based on the Department-provided information, believes that the cottage food product prepared for commercial purposes is not potentially hazardous or is not a food that requires time or temperature control for safety to limit pathogenic microorganism growth or toxin formation; and
 - iii. Includes the food preparer's printed name and date.
- 3. Maintain an active certification of completion for the completed food handler training course;
- 4. Renew the registration in subsection (D)(2) every three years;
- 5. Submit any change to the information or documents provided according to subsection (D)(2)(a) through (c) to the Department within 30 calendar days after the change; and
- 6. Display the food preparer's certificate of registration when operating as a temporary food establishment and selling cottage food products.

**ATTACHMENT A
CURRENT RULES**

ARTICLE 1. FOOD AND DRINK

R9-8-102. Applicability

- A.** Except as provided in subsection (B), this Article applies to any FOOD ESTABLISHMENT.
- B.** This Article does not apply to the following, which are not subject to routine inspection or other regulatory activities by a REGULATORY AUTHORITY:
1. The beneficial use of wildlife meat authorized in A.R.S. § 17-240 and 12 A.A.C. 4, Article 1;
 2. Group homes, as defined in A.R.S. § 36-551;
 3. Child care group homes, as defined in A.R.S. § 36-897 and licensed under 9 A.A.C. 3;
 4. Residential group care facilities, as defined in A.A.C. R6-5-7401 that have 20 or fewer clients;
 5. Assisted living homes, as defined in A.R.S. § 36-401(A) and licensed under 9 A.A.C. 10, Article 8;
 6. Adult day health care facilities, as defined in A.R.S. § 36-401(A) and licensed under 9 A.A.C. 10, Article 11, that are authorized by the Department to provide services to 15 or fewer participants;
 7. Behavioral health residential facilities, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 7, that are authorized by the Department to provide services to 10 or fewer residents;
 8. Hospice inpatient facilities, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 6, that are authorized by the Department to provide services for 20 or fewer patients;
 9. Substance abuse transitional facilities, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 14, that are authorized by the Department to provide services to 10 or fewer participants;
 10. Behavioral health respite homes, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 16;
 11. Adult behavioral health therapeutic homes, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 18;
 12. Food or drink that is:
 - a. Served at a noncommercial social event, such as a potluck;
 - b. Prepared at a cooking school if:
 - i. The cooking school is conducted in the kitchen of an owner-occupied home,
 - ii. Only one meal per day is prepared and served by students of the cooking school,
 - iii. The meal prepared at the cooking school is served to not more than 15 students of the cooking school, and
 - iv. The students of the cooking school are provided with written notice that the food is prepared in a kitchen that is not regulated or inspected by a REGULATORY AUTHORITY;
 - c. Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes;
 - d. Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising, or an employee social event;
 - e. Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut onsite for immediate consumption; or
 - f. Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous;
 13. Baked or confectionary goods that are:
 - a. Not potentially hazardous;
 - b. Prepared in the kitchen of a private home for commercial purposes by or under the supervision of an individual who has obtained a food handler's card, if issued by the county in which the individual resides, and is registered with the Department, as required in A.R.S. § 36-136(I)(4)(g); and
 - c. Labeled with:
 - i. The name, address, and telephone number of the individual registered with the Department;
 - ii. A list of the ingredients in the baked or confectionary goods;
 - iii. A statement that the baked or confectionary goods are prepared in a private home; and
 - iv. If applicable, a statement that the baked or confectionary goods are prepared in a facility for individuals with developmental disabilities; and
 14. Fruits and vegetables grown in a garden at a public school, as defined in A.R.S. § 15-101, that are washed and cut on-site for immediate consumption.
- C.** A kitchen in a private home in which baked or confectionary goods are prepared that meets the requirements in A.R.S. § 36-136(I)(4)(g) and (I)(13) and subsection (B)(13) is an approved source of baked or confectionary goods for retail sale.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2). Amended by final rulemaking at 9 A.A.R. 317, effective March 14, 2003 (Supp. 03-1). Amended by final rulemaking at 12 A.A.R. 2768, effective September 9, 2006 (Supp. 06-3). Amended by final rulemaking at 17 A.A.R. 2608, effective February 4, 2012 (Supp. 11-4). Amended by final rulemaking at 24 A.A.R. 1817, with an immediate effective date of June 8, 2018 (Supp. 18-2).

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

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
2. Perform all duties necessary to carry out the functions and responsibilities of the department.
3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.
6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.
7. Prepare sanitary and public health rules.
8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

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

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

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

I. The director, by rule, shall:

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

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

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

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for

the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

- (a) Served at a noncommercial social event such as a potluck.
- (b) Prepared at a cooking school that is conducted in an owner-occupied home.
- (c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.
- (d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.
- (e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.
- (f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.
- (g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.
- (h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.
- (i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment,

process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

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

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

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

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

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

13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the

registration every three years and shall provide to the department updated registration information within thirty days after any change.

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

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

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

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

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

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

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

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

Q. For the purposes of this section:

1. "Cottage food product":

(a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.

(b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

17-240. Disposition of wildlife; devices; unlawful devices; notice of intention to destroy; waiting period; destruction; jurisdiction of recovery actions; disposition of unclaimed property.

A. Wildlife seized under this title may be disposed of in such manner as the commission or the court may prescribe, except that the edible portions shall be given to public institutions or charitable organizations. In consultation with the department of health services and the chief veterinary meat inspector, the commission shall adopt rules for the handling, transportation, processing and storing of game meat given to public institutions and charitable organizations.

B. Devices, excepting firearms, which cannot be used lawfully for the taking of wildlife and being so used at the time seized may be destroyed. Notice of intention to destroy such devices as prescribed in this section must be sent by registered mail to the last known address of the person from whom seized if known and posted in three conspicuous places within the county wherein seized, two of said notices being posted in the customary place for posting public notices about the county courthouse of said county. Such device shall be held by the department for thirty days after such posting and mailing, and if no action is commenced to recover possession of such device within such time, the same shall be summarily destroyed by the department, or if such device shall be held by the court in any such action to have been used for the taking of wildlife, then such device shall be summarily destroyed by the department immediately after the decision of the court has become final. The justice court shall have jurisdiction of any such actions or proceedings commenced to recover the possession of such devices.

C. Devices other than those referred to in subsection B, including firearms seized under this title shall, after final disposition of the case, be returned to the person from whom the device was seized. If the person from whom the device was seized cannot be located or ascertained, the device seized shall be retained by the department at least ninety days after final disposition of the case, and all devices so held by the department may be:

1. Sold annually.

2. Destroyed only if considered a prohibited or defaced weapon, as defined in section 13-3101, except that any seized firearm registered in the national firearms registry and transfer records of the United States treasury department or has been classified as a curio or relic by the United States treasury department shall not be destroyed.

D. If no complaint is filed pursuant to this title, the device shall be returned to the person from whom seized within thirty days from the date seized.

E. A complete report of all wildlife and devices seized by the department showing a description of the items, the person from whom it was seized, if known, and a record of the disposition shall be kept by the department. The money derived from the sale of any devices shall be deposited in the game and fish fund.

36-551. Definitions

(L16, Ch. 286, sec. 6. Eff. until 7/1/19)

In this chapter, unless the context otherwise requires:

1. "Adaptive behavior" means the effectiveness or degree to which the individual meets the standards of personal independence and social responsibility expected of the person's age and cultural group.
2. "Adult developmental home" means a residential setting in a family home in which the care, physical custody and supervision of the adult client are the responsibility, under a twenty-four-hour care model, of the licensee who, in that capacity, is not an employee of the division or of a service provider and the home provides the following services for a group of siblings or up to three adults with developmental disabilities:
 - (a) Room and board.
 - (b) Habilitation.
 - (c) Appropriate personal care.
 - (d) Appropriate supervision.
3. "Adult household member" means a person who is at least eighteen years of age and who resides in an adult developmental home, child developmental home or other home and community based service setting for at least thirty days or who resides in the household throughout the year for more than a cumulative total of thirty days.
4. "Advisory council" means the developmental disabilities advisory council.
5. "Arizona training program facility" means a state-operated institution for clients of the department with developmental disabilities.
6. "Attributable to cognitive disability, epilepsy, cerebral palsy or autism" means that there is a causal relationship between the presence of an impairing condition and the developmental disability.
7. "Autism" means a condition characterized by severe disorders in communication and behavior resulting in limited ability to communicate, understand, learn and participate in social relationships.
8. "Case management" means coordinating the assistance needed by persons with developmental disabilities and their families in order to ensure that persons with developmental disabilities attain their maximum potential for independence, productivity and integration into the community.
9. "Case manager" means a person who coordinates the implementation of the individual program plan of goals, objectives and appropriate services for persons with developmental disabilities.
10. "Cerebral palsy" means a permanently disabling condition resulting from damage to the developing brain that may occur before, after or during birth and that results in loss or impairment of control over voluntary muscles.
11. "Child developmental certified home" means a regular foster home as defined in section 8-501 that is licensed pursuant to section 8-509 and that is certified by the department pursuant to section 36-593.01.

12. "Child developmental home" means a residential setting in a family home in which the care and supervision of the child are the responsibility, under a twenty-four-hour care model, of the licensee who serves as the developmental home provider of the child in the home setting and who, in that capacity, is not an employee of the division or of a service provider and the home provides the following services for a group of siblings or up to three children with developmental disabilities:

- (a) Room and board.
- (b) Habilitation.
- (c) Appropriate personal care.
- (d) Appropriate supervision.

13. "Client" means a person receiving developmental disabilities services from the department.

14. "Cognitive disability" means a condition that involves subaverage general intellectual functioning, that exists concurrently with deficits in adaptive behavior manifested before the age of eighteen and that is sometimes referred to as intellectual disability.

15. "Community residential setting" means a residential setting in which persons with developmental disabilities live and are provided with appropriate supervision by the service provider responsible for the operation of the residential setting. Community residential setting includes a child developmental home or an adult developmental home operated or contracted by the department or the department's contracted vendor or a group home operated or contracted by the department.

16. "Consent" means voluntary informed consent. Consent is voluntary if not given as the result of coercion or undue influence. Consent is informed if the person giving the consent has been informed of and comprehends the nature, purpose, consequences, risks and benefits of the alternatives to the procedure, and has been informed and comprehends that withholding or withdrawal of consent will not prejudice the future provision of care and services to the client. In cases of unusual or hazardous treatment procedures performed pursuant to section 36-561, subsection A, experimental research, organ transplantation and nontherapeutic surgery, consent is informed if, in addition to the foregoing, the person giving the consent has been informed of and comprehends the method to be used in the proposed procedure.

17. "Daily habilitation" means habilitation as defined in this section except that the method of payment is for one unit per residential day.

18. "Department" means the department of economic security.

19. "Developmental disability" means either a strongly demonstrated potential that a child under six years of age has a developmental disability or will develop a developmental disability, as determined by a test performed pursuant to section 36-694 or by other appropriate tests, or a severe, chronic disability that:

- (a) Is attributable to cognitive disability, cerebral palsy, epilepsy or autism.
- (b) Is manifested before the age of eighteen.
- (c) Is likely to continue indefinitely.
- (d) Results in substantial functional limitations in three or more of the following areas of major life activity:
 - (i) Self-care.
 - (ii) Receptive and expressive language.

(iii) Learning.

(iv) Mobility.

(v) Self-direction.

(vi) Capacity for independent living.

(vii) Economic self-sufficiency.

(e) Reflects the need for a combination and sequence of individually planned or coordinated special, interdisciplinary or generic care, treatment or other services that are of lifelong or extended duration.

20. "Director" means the director of the department of economic security.

21. "Division" means the division of developmental disabilities in the department of economic security.

22. "Epilepsy" means a neurological condition characterized by abnormal electrical-chemical discharge in the brain. This discharge is manifested in various forms of physical activities called seizures.

23. "Group home" means a community residential setting for not more than six persons with developmental disabilities that is operated by a service provider under contract with the department and that provides room and board and daily habilitation, and other assessed medically necessary services and supports to meet the needs of each person. Group home does not include an adult developmental home, a child developmental home or an intermediate care facility for persons with an intellectual disability.

24. "Guardian" means the person who, under court order, is appointed to fulfill the powers and duties prescribed in section 14-5312. Guardian does not include a guardian pursuant to section 14-5312.01.

25. "Habilitation" means the process by which a person is assisted to acquire and maintain those life skills that enable the person to cope more effectively with personal and environmental demands and to raise the level of the person's physical, mental and social efficiency.

26. "Indigent" means a person with a developmental disability whose estate or parent is unable to bear the full cost of maintaining or providing services for that person in a developmental disabilities program.

27. "Individual program plan" means a written statement of services to be provided to a person with developmental disabilities, including habilitation goals and objectives, that is developed following initial placement evaluation and revised after periodic evaluations.

28. "Intermediate care facility for persons with an intellectual disability" means a facility that primarily provides health and rehabilitative services to persons with developmental disabilities that are above the service level of room and board or supervisory care services or personal care services as defined in section 36-401 but that are less intensive than skilled nursing services.

29. "Large group setting" means a setting that in addition to residential care provides support services such as therapy, recreation and transportation to seven or more persons with developmental disabilities who require intensive supervision.

30. "Least restrictive alternative" means an available program or facility that fosters independent living, that is the least confining for the client's condition and where service and treatment are provided in the least intrusive manner reasonably and humanely appropriate to the individual's needs.

31. "Likely to continue indefinitely" means that the developmental disability has a reasonable likelihood of continuing for a protracted period of time or for life.

32. "Manifested before the age of eighteen" means that the disability must be apparent and have a substantially limiting effect on a person's functioning before the age of eighteen.
33. "Physician" means a person who is licensed to practice pursuant to title 32, chapter 13 or 17.
34. "Placement evaluation" means an interview and evaluation of a person with a developmental disability and a review of the person's prior medical and program histories to determine the appropriate developmental disability programs and services for the person and recommendations for specific program placements for the person.
35. "Psychologist" means a person who is licensed pursuant to title 32, chapter 19.1.
36. "Respite services" means services that provide a short-term or long-term interval of rest or relief to the care provider of a person with a developmental disability.
37. "Responsible person" means the parent or guardian of a minor with a developmental disability, the guardian of an adult with a developmental disability or an adult with a developmental disability who is a client or an applicant for whom no guardian has been appointed.
38. "Service provider" means a person or agency that provides services to clients pursuant to a contract, service agreement or qualified vendor agreement with the division.
39. "State operated service center" means a state owned or leased facility that is operated by the department and that provides temporary residential care and space for child and adult services that include respite care, crisis intervention and diagnostic evaluation.
40. "Subaverage general intellectual functioning" means measured intelligence on standardized psychometric instruments of two or more standard deviations below the mean for the tests used.
41. "Substantial functional limitation" means a limitation so severe that extraordinary assistance from other people, programs, services or mechanical devices is required to assist the person in performing appropriate major life activities.
42. "Supervision" means the process by which the activities of an individual with developmental disabilities are directed, influenced or monitored.

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In this article, unless the context otherwise requires:

1. "Child care group home" means a residential facility in which child care is regularly provided for compensation for periods of less than twenty-four hours per day for not less than five children but no more than ten children through the age of twelve years.
2. "Department" means the department of health services.
3. "Provider" means the certificate holder or a person the certificate holder designates in writing who, pursuant to applicable statutes and rules, is to be responsible for direct daily supervision, operation and maintenance of the child care group home.
4. "Substantial compliance" means that the nature or number of violations revealed by any type of inspection or investigation of an applicant for certification as a child care group home or a certified child care group home does not pose a direct risk to the life, health or safety of children.

ARTICLE 73. REPEALED & RENUMBERED

Editor's Note: Article 73 was repealed except for Sections R6-5-7307 and R6-5-7308 which were both renumbered, effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7301. Repealed**Historical Note**

Adopted effective January 21, 1985 (Supp. 85-1).
Repealed effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7302. Repealed**Historical Note**

Adopted effective January 21, 1985 (Supp. 85-1).
Repealed effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7303. Repealed**Historical Note**

Adopted effective January 21, 1985 (Supp. 85-1).
Repealed effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7304. Repealed**Historical Note**

Adopted effective January 21, 1985 (Supp. 85-1).
Repealed effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7305. Repealed**Historical Note**

Adopted effective January 21, 1985 (Supp. 85-1).
Repealed effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7306. Repealed**Historical Note**

Adopted effective January 21, 1985 (Supp. 85-1).
Repealed effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7307. Renumbered**Historical Note**

Adopted effective January 21, 1985 (Supp. 85-1). Section R6-5-7307 renumbered to R6-5-7470 and amended effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7308. Renumbered**Historical Note**

Adopted effective January 21, 1985 (Supp. 85-1). Section R6-5-7308 renumbered to R6-5-7471 and amended effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7309. Repealed**Historical Note**

Adopted effective January 21, 1985 (Supp. 85-1).
Repealed effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

ARTICLE 74. LICENSING PROCESS AND LICENSING REQUIREMENTS FOR CHILD WELFARE AGENCIES**OPERATING RESIDENTIAL GROUP CARE FACILITIES AND OUTDOOR EXPERIENCE PROGRAMS****R6-5-7401. Definitions**

In addition to the definitions contained in A.R.S. § 8-501, the following definitions apply in this Article:

1. "Abandonment" has the same meaning ascribed to "abandoned" in A.R.S. § 8-531(1).
2. "Abuse" means the infliction or allowing of physical injury, impairment of bodily function or disfigurement or the infliction of or allowing another person to cause serious emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior and which emotional damage is diagnosed by a medical doctor or psychologist pursuant to § 8-821 and which is caused by the acts or omissions of an individual having care, [physical] custody and control of a child. Abuse includes:
 - (a) Inflicting or allowing sexual abuse pursuant to § 13-1404, sexual conduct with a minor pursuant to § 13-1405, sexual assault pursuant to § 13-1406, molestation of a child pursuant to § 13-1410, commercial sexual exploitation of a minor pursuant to § 13-3552, sexual exploitation of a minor pursuant to § 13-3553, incest pursuant to § 13-3608 or child prostitution pursuant to § 13-3212.
 - (b) Physical injury to a child that results from abuse as described in § 13-3623, subsection C. A.R.S. § 8-201(2).
3. "Accredited" means the approval and recognition of an institution of learning as maintaining those standards requisite for its graduates to gain admission to other institutions of higher learning or to achieve credentials for professional practice. An example of an accrediting body is the North Central Association of Colleges and Universities.
4. "Administrative completeness review time frame" means the number of days from [the Licensing Authority's] receipt of an application for a license until [the Licensing Authority] determines that the application contains all components required by statute or rule, including all information required to be submitted by other government agencies. The administrative completeness review time frame does not include the period of time during which an agency provides public notice of the license application or performs a substantive review of the application. A.R.S. § 41-1072(1).
5. "Adverse action" means suspension or revocation of a license, denial of a renewal license, or making a material change in licensing status.
6. "After-care" means services provided to a child after the child is discharged from a licensee's care and may also include services for the child's family.
7. "Applicant" means a person who submits a written application to the Licensing Authority to become licensed or to renew a license to operate a child welfare agency or a residential group care facility.
8. "Barracks" means a building that:
 - a. Is designed and constructed or remodeled for the specific purpose of housing large numbers of children of the same gender;
 - b. Has wide, open sleeping areas for children, under one roof;
 - c. Is identified and described as a barracks or dormitory in the agency's promotional and organizational materials; and

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- d. Is made known as a barracks or dormitory to placing agencies and persons considering placement of a child.
9. “Behavior management” means the policies, procedures, and techniques a licensee uses to control conduct as prescribed in R6-5-7456.
10. “Child placing agency” means a person or entity that is licensed or authorized to receive children for care, maintenance, or placement in a foster home, because:
- The Department has licensed the person or entity as a child welfare agency pursuant to A.R.S. § 8-505; or
 - It is an entity with statutory authorization to place children.
11. “Child welfare agency” or “agency”
- Means:
 - Any agency or institution maintained by a person, firm, corporation, association, or organization to receive children for care and maintenance or for 24-hour social, emotional, or educational supervised care or who have been adjudicated as a delinquent or dependent child.
 - Any institution that provides care for unmarried mothers and their children.
 - Any agency maintained by the state, or a political subdivision thereof, person, firm, corporation, association, or organization to place children or unmarried mothers in a foster home.
 - Does not include state operated institutions or facilities, detention facilities for children established by law, health care institutions that are licensed by the department of health services pursuant to Title 36, Chapter 4 or private agencies that exclusively provide children with social enrichment or recreational opportunities and that do not use restrictive behavior management techniques. A.R.S. § 8-501(A)(1).
12. “Corrective action” means a specific course of conduct an agency will follow to remedy violations of the licensing requirements prescribed in this Article, within a specified period of time.
13. “Corrective action plan” means a written document describing an agency’s corrective action, as prescribed in R6-5-7418.
14. “CPS” means Child Protective Services, a Department program responsible for investigating reports of child maltreatment.
15. “CPSCR” means the Child Protective Services Central Registry, a computerized database, which CPS maintains according to A.R.S. § 8-804.
16. “De-escalation” means a method of verbal communication or non-verbal signals and actions, or a combination of signals and actions, that interrupt a child’s behavior crisis and calm the child.
17. “Department” or “DES” means the Department of Economic Security.
18. “Developmentally appropriate” means an action that takes into account:
- A child’s age and family background;
 - The predictable changes that occur in a child’s physical, emotional, social, cultural, and cognitive development; and
 - A child’s individual pattern and timing of growth, personality, and learning style.
19. “DHS” means the Department of Health Services.
20. “Direct care staff” means the facility staff who provide primary personal care, guidance, and supervision to children in care.
21. “Discharge plan” means:
- A written description of:
 - A program of action to prepare a child for release from a facility; and
 - After-care;
 - That is developed by a licensee in cooperation with a child’s service team.
22. “Discipline” means a teaching process through which a child learns to develop and maintain the self-control, self-reliance, self-esteem, and orderly conduct necessary to assume responsibilities, make daily living decisions, and live according to accepted levels of social behavior.
23. “Document” means to make and retain a permanent written or electronic record of a fact, event, circumstance, observation, contact, or communication.
24. “Exploitation” means the act of taking advantage of, or to make use of a child selfishly, unethically, or unjustly, for one’s own advantage or profit, in a manner contrary to the best interests of the child, such as having a child panhandle, steal, or perform other illegal activities.
25. “Facility” or “residential group care facility” means a living environment operated by a child welfare agency, where children are in the care of adults unrelated to the children, 24 hours per day.
- “Facility” does not include a program licensed as a behavioral health service agency by the Department of Health Services under A.R.S. § 36-405 and 9 A.A.C. 20.
 - “Facility” does include an outdoor experience program.
 - When used in reference to an outdoor experience program, “facility” means the campsite at which or the mobile equipment in which children are housed.
26. “File” means a place where information is stored through written, electronic, or computerized means.
27. “Foot candles” means a unit of luminous intensity that can be measured with a light meter.
28. “Governing body” means an individual or group of individuals responsible for the policies, activities, and operations of a facility, as prescribed in R6-5-7424.
29. “Individual education plan” or “IEP” means a written document that describes educational goals for a particular child and the services the child needs to attain those goals.
30. “Institution” as used in A.R.S. § 8-501(A)(1) means an entity meeting two or more of the following criteria:
- Solicits charitable contributions;
 - Is organized as a profit or non-profit corporation with a board of directors and officers;
 - Publishes and distributes information or promotional materials about its program or operations;
 - Requires residents to formally apply for residency through use of application forms or other similar paperwork;
 - Operates a structured program of care pursuant to written policies, procedures, guidelines, or rules; or
 - Advertises itself or holds itself out in the community as an institution that provides care or social services.
31. “Institution for Unwed Mothers and Children” means a child welfare agency, as described in A.R.S. § 8-501(A)(1)(a)(ii), that is licensed to care for unmarried mothers who are under age 18 at the time of admission to the agency and the children of those mothers.

32. “License” means a document issued by the Licensing Authority to an individual or non-governmental business, which authorizes the individual or business to operate a child welfare agency in compliance with this Article.
33. “Licensee” means the person or entity holding a license. When used in reference to a duty, task, or obligation, the term “licensee” includes the staff who work at an agency or facility and who are responsible for doing the acts necessary to fulfill the requirements of this Article.
34. “Licensed medical practitioner” means a person who holds a current license as a physician, surgeon, nurse practitioner, or physician’s assistant pursuant to A.R.S. §§ 32-1401 et seq., Medicine and Surgery; A.R.S. §§ 32-1800 et seq., Osteopathic Physicians and Surgeons; A.R.S. §§ 32-2501 et seq., Physician Assistants; and A.R.S. §§ 32-1601 et seq., Nursing and R4-19-501(A)(1), Registered Nurse Practitioner, respectively.
35. “Licensing Authority” means the Department administrative unit that monitors and makes licensing determinations for agencies and facilities, including issuance, denial, suspension, and revocation of a license or operating certificate, and imposition of corrective action.
36. “Licensing representative” means a person employed by the Licensing Authority to investigate and monitor applicants and licensees.
37. “Licensing year” means a one-year time period that begins on the date an agency obtains its initial license to operate, and ends one year later.
38. “Living unit” means a specific grouping of children who are assigned to and share a distinct and common physical space within a facility.
39. “Maltreatment” means abuse, neglect, abandonment, or exploitation, of a child.
40. “Material change in licensing status” means, for the purpose of A.R.S. § 8-506.01,
- Any of the following actions:
 - Denial, suspension, or revocation of an operating certificate;
 - At any time following issuance of an initial license, imposition of provisional license status, in lieu of a regular license as prescribed in R6-5-7419; or
 - A change in a term appearing on the face of a license or operating certificate, including: a.) Geographic area served; b.) Age, number, or gender of children served; or c.) Type of services offered;
 - But does not include the act of placing an agency on a corrective action plan to bring the agency into compliance with licensing requirements as prescribed in R6-5-7418.
41. “Mechanical restraint” means:
- An article, device, or garment that:
 - Restricts a child’s freedom of movement or a portion of a child’s body;
 - Cannot be removed by the child; and
 - Is used for the purpose of limiting the child’s mobility;
 - But does not include an orthopedic, surgical, or medical device that allows a child to heal from a medical condition or to participate in a treatment program.
42. “Medication” means an agent, such as a drug or remedy, used to prevent or treat disease, illness or injury, including both prescribed and over-the-counter agents.
43. “Mobile dwelling” means a structure, such as a trailer or recreational vehicle as defined in A.R.S. § 41-2142(30). Mobile dwelling does not mean a mobile, manufactured, prefabricated, or modular home as defined in A.R.S. § 41-2142(14), (24), or (26).
44. “Neglect” has the same meaning as A.R.S. § 8-201(21).
45. “Non-ambulatory child” means a child who cannot walk due to a physical disability or impairment, rather than as a result of the child’s normal age and developmental level.
46. “Onsite” means located on the physical property operated by the licensee for the purpose of the licensee’s residential program and includes the contiguous area within:
- A single structure;
 - A cluster of structures;
 - A complex containing single or multiple family dwelling units with or without separate entrances for each unit;
 - A campus containing any combination of the residences listed in subsections (a)-(c), as approved by the Licensing Authority.
47. “Operating certificate” means a document that the Licensing Authority issues to a particular facility that is run by an agency holding a license, as prescribed in R6-5-7409.
48. “Outdoor experience program” means a child welfare agency that is located in a cabin or portable structure such as a tent or covered wagon and primarily uses the outdoors to provide recreational and educational experiences in group living, either in a fixed campsite or in a program with an unfixd site, such as a wagon train or wilderness hike.
49. “*Out-of-home placement*” means the placing of a child in the custody of an individual or agency other than with the child’s parent or legal guardian and includes placement in temporary custody pursuant to § 8-821, subsection A or B, voluntary placement pursuant to 8-806 or placement due to dependency actions. A.R.S. § 8-501(A)(7).
50. “*Overall time frame*” means the number of days after receipt of an application for a license during which [the licensing authority] determines whether to grant or deny a license. The overall time frame consists of both the administrative completeness review time frame and the substantive review time frame. A.R.S. § 41-1072(2).
51. Paid staff means:
- A licensee’s paid employees who work at a facility;
 - Any temporary worker or independent contractor the licensee uses as a temporary replacement for an employee who is sick, on leave, or unavailable; and
 - Any independent contractor that the licensee retains to provide children in care with direct services at the facility.
52. “*Parent or parents*” means the natural or adoptive mother or father of a child. A.R.S. § 8-501(A)(8).
53. “Person” means an individual, partnership, joint stock company, business trust, voluntary association, corporation, or other form of business enterprise, including non-profit or governmental organizations.
54. “Personally identifiable information” means any information which, when considered alone, or in combination with other information, identifies, or permits another person to readily identify the person who is the subject of the information, and includes:
- Name, address, and telephone number;
 - Date of birth;
 - Photograph;
 - Fingerprints;

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- e. Physical description;
 - f. School;
 - g. Place of employment; and
 - h. Unique identifying number, including:
 - i. Social Security number;
 - ii. Driver's license number;
 - iii. License number; and
 - iv. Court case number.
55. "Physical restraint" means the use of bodily force to restrict a child's freedom of movement, but does not include holding a child firmly enough to prevent the child from harming himself or herself, or others, but gently enough so that the child is not harmed by being held.
56. "Placing agency or person" means the child placing agency, parent, or guardian, having legal custody of a child and who makes the decision to send the child to reside at a particular agency.
57. "Potentially hazardous food" means a food that is:
 - a. Natural or synthetic and capable of rapid and progressive growth of infectious or toxigenic microorganisms or the growth and production of *Clostridium botulinum*;
 - b. Of animal origin and is raw or has been heated;
 - c. Of plant origin and is heated or consists of raw seed sprouts;
 - d. A cut melon; or
 - e. A garlic and oil mixture.
58. "Program director" means a person who meets the qualifications listed in R6-5-7432(B).
59. "*Relative*" means a grandparent, great grandparent, brother or sister of whole or half blood, aunt, uncle, or first cousin. A.R.S. § 8-501(A)(12).
60. "Residential environment" means a facility building or any portion of a facility building that is used for living, sleeping, counseling, dining, or academic purposes.
61. "Restrictive behavior management" means a form of behavior control that is subject to limitations as prescribed in R6-5-7456(D)-(F).
62. "Safeguard" means to use reasonable and developmentally appropriate measures to minimize the risk of harm to a child in care and to ensure that a child in care will not be harmed by a particular object, substance, or activity. Where a specific method is not otherwise prescribed in this Article, safeguarding may include:
 - a. Locking up a particular substance or item;
 - b. Putting a substance or item beyond the reach of a child who is not mobile;
 - c. Erecting a barrier that prevents a child from reaching a particular place, item, or substance;
 - d. Mandating the use of protective safety devices;
 - e. Providing staff supervision; or
 - f. Providing a young adult with safety information and generalized instruction necessary to promote the safe and appropriate use of potentially dangerous objects.
63. "Seclusion" means placing a child alone in a room with closed, locked doors that cannot be opened from the inside as prohibited by R6-5-7456(C)(6).
64. "Service plan," which is sometimes described as a "case plan," means a goal-oriented, time-limited individualized program of action that:
 - a. Describes the plans for treating and providing services to a child and the child's family, and
 - b. Is developed by a licensee in cooperation with a child's service team.
65. "Service team" means the group of persons listed in R6-5-7441(D)(1) who participate in development and review of a child's service plan and discharge plan.
66. "Shelter care facility" means an agency facility that receives children for temporary out-of-home care, 24 hours per day, when children request care, or are placed in care by a placing agency, a law enforcement agency, a parent, a guardian, or a court.
67. "Significant person" means a person who is important or influential in a child's life and may include a family member or close friend.
68. "Sleeping area" means a single bedroom, or a cluster of two or more bedrooms, located in an adjacent area of a dwelling.
69. "Social worker" means a person with a bachelor's, master's, or doctoral degree in a field of organized work called social work, which is intended to advance the social conditions of a community through provision of counseling, guidance, and assistance, especially in the form of social services to individuals.
70. "Staff" means a licensee's paid staff and unpaid staff.
71. "*Substantive review time frame*" means the number of days after the completion of the administrative completeness review time frame during which [the licensing authority] determines whether an application or applicant for a license meets all substantive criteria required by statute or rule. Any public notice and hearings required by law shall fall within the substantive review time frame. A.R.S. § 41-1072(3).
72. "Swimming pool" means any on-grounds, natural or man-made body of water that is used for the purposes of swimming, recreation, or physical therapy, and includes spas and hot tubs.
73. "Threat" means an expression of intent to hurt, destroy, or take action prohibited by this Article or the licensee's policies, but does not include an expression of intent to impose a planned consequence for misbehavior if the consequence is not prohibited by this Article or the licensee's policies.
74. "Transitional program" means services provided to a child who is being emancipated as an adult, or a person who has reached the age of 18 and is considered an adult as a matter of law, in order to assist the child or person in becoming independent.
75. "Unpaid staff" means a licensee's volunteers, students, and interns who work, train, or assist at a facility.
76. "Unusual incident" means one or more of the events listed in R6-5-7434(C), (D), (E), or (G).
77. "Work day" means 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding Arizona state holidays.
78. "Young adult" means an individual, age 16 to 21, who has been assessed and determined to be appropriate for preparation for adult self-sufficiency. The assessment or determination shall be made by:
 - a. The placing agency, if the young adult is in the care, custody, and control of the state of Arizona;
 - b. A parent or legal guardian of the young adult, if subsection (a) does not apply;
 - c. The licensee, if subsections (a) and (b) do not apply.

Historical Note

Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7401 repealed; new Section R6-5-7401 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2). Amended by emergency rulemaking at 12 A.A.R. 2233, effective June 1, 2006 for 180 days (Supp. 06-2). Emergency renewed at

12 A.A.R. 4732, effective November 28, 2006 for 180 days (Supp. 06-4). Amended by final rulemaking at 13 A.A.R. 2049, effective May 21, 2007 (Supp. 07-2).

R6-5-7402. Request for Initial Application - New Applicant

- A.** A person who wants to operate a residential group care facility shall initiate the licensing process by contacting the Licensing Authority to request an application for a child welfare agency license.
- B.** Upon request, the Licensing Authority shall send the prospective applicant an application package containing:
1. A cover letter outlining the licensing process and requesting a responsive letter of intent,
 2. An application form,
 3. A statement of requirements for licensure, and
 4. A form the applicant can use to obtain city or county zoning clearance.

Historical Note

Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7402 repealed; new Section R6-5-7402 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).

R6-5-7403. Letter of Intent - New Applicant

- A.** The prospective applicant shall prepare a responsive letter of intent to proceed with licensure, and return it to the Licensing Authority. The letter of intent shall include the following information:
1. The applicant's name, address, and telephone and telefacsimile numbers;
 2. The name of the applicant's chief executive officer or administrator, with a description of that person's qualifications to operate the agency;
 3. A description of community or statewide need for the service or program the applicant intends to provide;
 4. A plan for financing the proposed agency during the first year of operation;
 5. A statement that the applicant has conferred with the school district where the facility will be located to advise the district of any special needs that children likely to be in care at the facility may have; and
 6. A description of the proposed agency's program and services, which shall address the following areas, if applicable:
 - a. Any organization from which the applicant will seek accreditation;
 - b. The form of on-campus educational programs the applicant will offer;
 - c. The characteristics of the children the applicant plans to serve;
 - d. The applicant's primary source of referrals;
 - e. The frequency and method by which the applicant will provide or offer psychiatric, psychological, or counseling services;
 - f. Whether the applicant will employ behavioral health practitioners, or contract for behavioral health services; and
 - g. A general description of the number and qualifications of the applicant's professional staff.
- B.** Within 10 work days of receiving a letter of intent, a licensing representative shall contact the applicant.
1. If the Licensing Authority determines that an applicant may require licensure as a behavioral health service agency under A.R.S. § 36-405 and 9 A.A.C. 20, the Licensing Authority shall refer the applicant to the Department of Health Services for evaluation. In determining whether to refer an applicant to DHS, the Licens-

ing Authority shall consider the factors set forth on Appendix 1.

2. For all other applicants, the representative shall schedule an appointment for a licensing consultation. The appointment shall occur within 45 calendar days of the date the Licensing Authority receives the letter of intent, unless the applicant requests a later consultation.
3. If DHS declines to license an applicant as a behavioral health service agency, and refers an applicant to the Department for licensure as a child welfare agency, the applicant shall contact the Licensing Authority to request a licensing consultation. The Licensing Authority shall schedule the consultation within 45 calendar days of the date of the request, unless the applicant requests a later consultation.

Historical Note

Adopted effective May 19, 1977 (Supp. 77-3). Amended subsection (O), paragraph (1) effective January 21, 1985 (Supp. 85-1). Former Section R6-5-7403 repealed; new Section R6-5-7403 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).

R6-5-7404. The Licensing Consultation; Time for Completion of Application

- A.** At the licensing consultation, a licensing representative shall review the licensing application form with the applicant. The licensing representative shall explain the requirements for licensure and shall advise the applicant about:
1. The information and documentation the applicant must provide to complete the application or licensing process, as set forth in R6-5-7405;
 2. The fingerprinting and background checks required by A.R.S. § 46-141 and R6-5-7431;
 3. The need for a DHS health and safety inspection of the agency and each facility, and the process for scheduling the inspection;
 4. The need to obtain a fire inspection and zoning clearance for the each facility;
 5. The need to confer with the local school district to discuss any special educational needs that the children to be served may present;
 6. The timelines for submission of application information; and
 7. The need for the Licensing Authority to conduct a site inspection as prescribed in R6-5-7406.
- B.** No later than 60 days after the licensing consultation, the applicant shall provide the Licensing Authority with a complete application package, as prescribed in R6-5-7405(A).
- C.** If the applicant cannot provide the information within 60 days, the applicant shall contact the Licensing Authority to request an extension of time. The Licensing Authority shall allow an extension for a fixed period of time, which shall not exceed 120 days past the original 60 days.
- D.** If the applicant fails to provide the information within the time periods specified in subsections (B) and (C), the Licensing Authority shall close the applicant's file and send the applicant a written notice of closure. An applicant whose file has been closed shall reapply.
- E.** For an initial application, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) begins when the applicant submits the application form and the required documentation listed in R6-5-7405(A).

Historical Note

Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7404 repealed; new Section R6-5-7404

36-401. Definitions; adult foster care

A. In this chapter, unless the context otherwise requires:

1. "Accredited health care institution" means a health care institution, other than a hospital, that is currently accredited by a nationally recognized accreditation organization.
2. "Accredited hospital" means a hospital that is currently accredited by a nationally recognized organization on hospital accreditation.
3. "Adult day health care facility" means a facility that provides adult day health services during a portion of a continuous twenty-four-hour period for compensation on a regular basis for five or more adults who are not related to the proprietor.
4. "Adult day health services" means a program that provides planned care supervision and activities, personal care, personal living skills training, meals and health monitoring in a group setting during a portion of a continuous twenty-four-hour period. Adult day health services may also include preventive, therapeutic and restorative health-related services that do not include behavioral health services.
5. "Adult foster care home" means a residential setting that provides room and board and adult foster care services for at least one and no more than four adults who are participants in the Arizona long-term care system pursuant to chapter 29, article 2 of this title or contracts for services with the United States department of veterans affairs and in which the sponsor or the manager resides with the residents and integrates the residents who are receiving adult foster care into that person's family.
6. "Adult foster care services" means supervision, assistance with eating, bathing, toileting, dressing, self-medication and other routines of daily living or services authorized by rules adopted pursuant to section 36-405 and section 36-2939, subsection C.
7. "Assisted living center" means an assisted living facility that provides resident rooms or residential units to eleven or more residents.
8. "Assisted living facility" means a residential care institution, including an adult foster care home, that provides or contracts to provide supervisory care services, personal care services or directed care services on a continuous basis.
9. "Assisted living home" means an assisted living facility that provides resident rooms to ten or fewer residents.
10. "Behavioral health services" means services that pertain to mental health and substance use disorders and that are either:
 - (a) Performed by or under the supervision of a professional who is licensed pursuant to title 32 and whose scope of practice allows for the provision of these services.
 - (b) Performed on behalf of patients by behavioral health staff as prescribed by rule.
11. "Construction" means the building, erection, fabrication or installation of a health care institution.
12. "Continuous" means available at all times without cessation, break or interruption.
13. "Controlling person" means a person who:
 - (a) Through ownership, has the power to vote at least ten percent of the outstanding voting securities.
 - (b) If the applicant or licensee is a partnership, is the general partner or a limited partner who holds at least ten percent of the voting rights of the partnership.

(c) If the applicant or licensee is a corporation, an association or a limited liability company, is the president, the chief executive officer, the incorporator or any person who owns or controls at least ten percent of the voting securities. For the purposes of this subdivision, corporation does not include nonprofit corporations.

(d) Holds a beneficial interest in ten percent or more of the liabilities of the applicant or the licensee.

14. "Department" means the department of health services.

15. "Directed care services" means programs and services, including supervisory and personal care services, that are provided to persons who are incapable of recognizing danger, summoning assistance, expressing need or making basic care decisions.

16. "Direction" means authoritative policy or procedural guidance for the accomplishment of a function or activity.

17. "Director" means the director of the department of health services.

18. "Facilities" means buildings that are used by a health care institution for providing any of the types of services as defined in this chapter.

19. "Freestanding urgent care center":

(a) Means an outpatient treatment center that, regardless of its posted or advertised name, meets any of the following requirements:

(i) Is open twenty-four hours a day, excluding at its option weekends or certain holidays, but is not licensed as a hospital.

(ii) Claims to provide unscheduled medical services not otherwise routinely available in primary care physician offices.

(iii) By its posted or advertised name, gives the impression to the public that it provides medical care for urgent, immediate or emergency conditions.

(iv) Routinely provides ongoing unscheduled medical services for more than eight consecutive hours for an individual patient.

(b) Does not include the following:

(i) A medical facility that is licensed under a hospital's license and that uses the hospital's medical provider number.

(ii) A qualifying community health center pursuant to section 36-2907.06.

(iii) Any other health care institution licensed pursuant to this chapter.

(iv) A physician's office that offers extended hours or same-day appointments to existing and new patients and that does not meet the requirements of subdivision (a), item (i), (iii) or (iv) of this paragraph.

20. "Governing authority" means the individual, agency, partners, group or corporation, appointed, elected or otherwise designated, in which the ultimate responsibility and authority for the conduct of the health care institution are vested.

21. "Health care institution" means every place, institution, building or agency, whether organized for profit or not, that provides facilities with medical services, nursing services, behavioral health services, health screening services, other health-related services, supervisory care services, personal care services or directed care services

and includes home health agencies as defined in section 36-151, outdoor behavioral health care programs and hospice service agencies. Health care institution does not include a community residential setting as defined in section 36-551.

22. "Health-related services" means services, other than medical, that pertain to general supervision, protective, preventive and personal care services, supervisory care services or directed care services.

23. "Health screening services" means the acquisition, analysis and delivery of health-related data of individuals to aid in the determination of the need for medical services.

24. "Hospice" means a hospice service agency or the provision of hospice services in an inpatient facility.

25. "Hospice service" means a program of palliative and supportive care for terminally ill persons and their families or caregivers.

26. "Hospice service agency" means an agency or organization, or a subdivision of that agency or organization, that is engaged in providing hospice services at the place of residence of its clients.

27. "Inpatient beds" or "resident beds" means accommodations with supporting services, such as food, laundry and housekeeping, for patients or residents who generally stay in excess of twenty-four hours.

28. "Licensed capacity" means the total number of persons for whom the health care institution is authorized by the department to provide services as required pursuant to this chapter if the person is expected to stay in the health care institution for more than twenty-four hours. For a hospital, licensed capacity means only those beds specified on the hospital license.

29. "Medical services" means the services that pertain to medical care and that are performed at the direction of a physician on behalf of patients by physicians, dentists, nurses and other professional and technical personnel.

30. "Modification" means the substantial improvement, enlargement, reduction or alteration of or other change in a health care institution.

31. "Nonproprietary institution" means any health care institution that 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, or that is operated by the state or any political subdivision of the state.

32. "Nursing care institution" means a health care institution that provides inpatient beds or resident beds and nursing services to persons who need continuous nursing services but who do not require hospital care or direct daily care from a physician.

33. "Nursing services" means those services that pertain to the curative, restorative and preventive aspects of nursing care and that are performed at the direction of a physician by or under the supervision of a registered nurse licensed in this state.

34. "Organized medical staff" means a formal organization of physicians, and dentists where appropriate, with the delegated authority and responsibility to maintain proper standards of medical care and to plan for continued betterment of that care.

35. "Outdoor behavioral health care program" means an agency that provides behavioral health services in an outdoor environment as an alternative to behavioral health services that are provided in a health care institution with facilities. Outdoor behavioral health care programs do not include:

(a) Programs, facilities or activities that are operated by a government entity or that are licensed by the department as a child care program pursuant to chapter 7.1 of this title.

(b) Outdoor activities for youth that are designated to be primarily recreational and that are organized by church groups, scouting organizations or similar groups.

(c) Outdoor youth programs licensed by the department of economic security.

36. "Personal care services" means assistance with activities of daily living that can be performed by persons without professional skills or professional training and includes the coordination or provision of intermittent nursing services and the administration of medications and treatments by a nurse who is licensed pursuant to title 32, chapter 15 or as otherwise provided by law.

37. "Physician" means any person who is licensed pursuant to title 32, chapter 13 or 17.

38. "Recidivism reduction services" means services that are delivered by an adult residential care institution to its residents to encourage lawful behavior and to discourage or prevent residents who are suspected of, charged with or convicted of one or more criminal offenses, or whose mental health and substance use can be reasonably expected to place them at risk for the future threat of prosecution, diversion or incarceration, from engaging in future unlawful behavior.

39. "Recidivism reduction staff" means a person who provides recidivism reduction services.

40. "Residential care institution" means a health care institution other than a hospital or a nursing care institution that provides resident beds or residential units, supervisory care services, personal care services, behavioral health services, directed care services or health-related services for persons who do not need continuous nursing services.

41. "Residential unit" means a private apartment, unless otherwise requested by a resident, that includes a living and sleeping space, kitchen area, private bathroom and storage area.

42. "Respite care services" means services that are provided by a licensed health care institution to persons otherwise cared for in foster homes and in private homes to provide an interval of rest or relief of not more than thirty days to operators of foster homes or to family members.

43. "Substantial compliance" means that the nature or number of violations revealed by any type of inspection or investigation of a health care institution does not pose a direct risk to the life, health or safety of patients or residents.

44. "Supervision" means direct overseeing and inspection of the act of accomplishing a function or activity.

45. "Supervisory care services" means general supervision, including daily awareness of resident functioning and continuing needs, the ability to intervene in a crisis and assistance in the self-administration of prescribed medications.

46. "Temporary license" means a license that is issued by the department to operate a class or subclass of a health care institution at a specific location and that is valid until an initial licensing inspection.

47. "Unscheduled medical services" means medically necessary periodic health care services that are unanticipated or cannot reasonably be anticipated and that require medical evaluation or treatment before the next business day.

B. If there are fewer than four Arizona long-term care system participants receiving adult foster care in an adult foster care home, nonparticipating adults may receive other types of services that are authorized by law to be provided in the adult foster care home as long as the number of adults served, including the Arizona long-term care system participants, does not exceed four.

C. Nursing care services may be provided by the adult foster care licensee if the licensee is a nurse who is licensed pursuant to title 32, chapter 15 and the services are limited to those allowed pursuant to law. The

licensee shall keep a record of nursing services rendered.

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ARTICLE 1. GENERAL

R9-10-101. Definitions

In addition to the definitions in A.R.S. § 36-401(A), the following definitions apply in this Chapter unless otherwise specified:

1. "Abortion clinic" has the same meaning as in A.R.S. § 36-449.01.
2. "Abuse" means:
 - a. The same:
 - i. For an individual 18 years of age or older, as in A.R.S. § 46-451; and
 - ii. For an individual less than 18 years of age, as in A.R.S. § 8-201;
 - b. A pattern of ridiculing or demeaning a patient;
 - c. Making derogatory remarks or verbally harassing a patient; or
 - d. Threatening to inflict physical harm on a patient.
3. "Accredited" has the same meaning as in A.R.S. § 36-422.
4. "Active malignancy" means a cancer for which:
 - a. A patient is undergoing treatment, such as through:
 - i. One or more surgical procedures to remove the cancer;
 - ii. Chemotherapy, as defined in A.A.C. R9-4-401; or
 - iii. Radiation treatment, as defined in A.A.C. R9-4-401;
 - b. There is no treatment; or
 - c. A patient is refusing treatment.
5. "Activities of daily living" means ambulating, bathing, toileting, grooming, eating, and getting in or out of a bed or a chair.
6. "Adjacent" means not intersected by:
 - a. Property owned, operated, or controlled by a person other than the applicant or licensee; or
 - b. A public thoroughfare.
7. "Administrative completeness review time-frame" has the same meaning as in A.R.S. § 41-1072.
8. "Administrative office" means a location used by personnel for recordkeeping and record retention but not for providing medical services, nursing services, or health related services.
9. "Admission" means, after completion of an individual's screening or registration by a health care institution, the individual begins receiving physical health services or behavioral health services and is accepted as a patient of the health care institution.
10. "Adult" has the same meaning as in A.R.S. § 1-215.
11. "Adult behavioral health therapeutic home" means a residence that provides room and board, assists in acquiring daily living skills, coordinates transportation to scheduled appointments, monitors behaviors, assists in the self administration of medication, and provides feedback to a case manager related to behavior for an individual 18 years of age or older based on the individual's behavioral health issue and need for behavioral health services and may provide behavioral health services under the clinical oversight of a behavioral health professional.
12. "Adverse reaction" means an unexpected outcome that threatens the health or safety of a patient as a result of a medical service, nursing service, or health-related service provided to the patient.
13. "Ancillary services" means services other than medical services, nursing services, or health-related services provided to a patient.
14. "Anesthesiologist" means a physician granted clinical privileges to administer anesthesia.
15. "Applicant" means a governing authority requesting:
 - a. Approval of a health care institution's architectural plans and specifications, or
 - b. A health care institution license.
16. "Application packet" means the information, documents, and fees required by the Department for the:
 - a. Approval of a health care institution's modification or construction, or
 - b. Licensing of a health care institution.
17. "Assessment" means an analysis of a patient's need for physical health services or behavioral health services to determine which services a health care institution will provide to the patient.
18. "Assistance in the self-administration of medication" means restricting a patient's access to the patient's medication and providing support to the patient while the patient takes the medication to ensure that the medication is taken as ordered.
19. "Attending physician" means a physician designated by a patient to participate in or coordinate the medical services provided to the patient.
20. "Authenticate" means to establish authorship of a document or an entry in a medical record by:
 - a. A written signature;
 - b. An individual's initials, if the individual's written signature appears on the document or in the medical record;
 - c. A rubber-stamp signature; or
 - d. An electronic signature code.
21. "Authorized service" means specific medical services, nursing services, or health-related services provided by a specific health care institution class or subclass for which the health care institution is required to obtain approval from the Department before providing the medical services, nursing services, or health-related services.
22. "Available" means:
 - a. For an individual, the ability to be contacted and to provide an immediate response by any means possible;
 - b. For equipment and supplies, physically retrievable at a health care institution; and
 - c. For a document, retrievable by a health care institution or accessible according to the applicable time-frames in this Chapter.
23. "Behavioral care":
 - a. Means limited behavioral health services, provided to a patient whose primary admitting diagnosis is related to the patient's need for physical health services, that include:
 - i. Assistance with the patient's psychosocial interactions to manage the patient's behavior that can be performed by an individual without a professional license or certificate including:
 - (1) Direction provided by a behavioral health professional, and
 - (2) Medication ordered by a medical practitioner or behavioral health professional; or
 - ii. Behavioral health services provided by a behavioral health professional on an intermittent basis to address the patient's significant psychological or behavioral response to an identifiable stressor or stressors; and
 - b. Does not include court-ordered behavioral health services.
24. "Behavioral health facility" means a behavioral health inpatient facility, a behavioral health residential facility, a

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- substance abuse transitional facility, a behavioral health specialized transitional facility, an outpatient treatment center that only provides behavioral health services, an adult behavioral health therapeutic home, a behavioral health respite home, or a counseling facility.
25. "Behavioral health inpatient facility" means a health care institution that provides continuous treatment to an individual experiencing a behavioral health issue that causes the individual to:
- Have a limited or reduced ability to meet the individual's basic physical needs;
 - Suffer harm that significantly impairs the individual's judgment, reason, behavior, or capacity to recognize reality;
 - Be a danger to self;
 - Be a danger to others;
 - Be persistently or acutely disabled as defined in A.R.S. § 36-501; or
 - Be gravely disabled.
26. "Behavioral health issue" means an individual's condition related to a mental disorder, a personality disorder, substance abuse, or a significant psychological or behavioral response to an identifiable stressor or stressors.
27. "Behavioral health observation/stabilization services" means crisis services provided, in an outpatient setting, to an individual whose behavior or condition indicates that the individual:
- Requires nursing services,
 - May require medical services, and
 - May be a danger to others or a danger to self.
28. "Behavioral health paraprofessional" means an individual who is not a behavioral health professional who provides, under supervision by a behavioral health professional, the following services to a patient to address the patient's behavioral health issue:
- Services that, if provided in a setting other than a health care institution would be required to be provided by an individual licensed under A.R.S., Title 32, Chapter 33; or
 - Health-related services.
29. "Behavioral health professional" means:
- An individual licensed under A.R.S. Title 32, Chapter 33, whose scope of practice allows the individual to:
 - Independently engage in the practice of behavioral health as defined in A.R.S. § 32-3251; or
 - Except for a licensed substance abuse technician, engage in the practice of behavioral health as defined in A.R.S. § 32-3251 under direct supervision as defined in A.A.C. R4-6-101;
 - A psychiatrist as defined in A.R.S. § 36-501;
 - A psychologist as defined in A.R.S. § 32-2061;
 - A physician;
 - A behavior analyst as defined in A.R.S. § 32-2091;
 - A registered nurse practitioner licensed as an adult psychiatric and mental health nurse; or
 - A registered nurse.
30. "Behavioral health residential facility" means a health care institution that provides treatment to an individual experiencing a behavioral health issue that:
- Limits the individual's ability to be independent, or
 - Causes the individual to require treatment to maintain or enhance independence.
31. "Behavioral health respite home" means a residence where respite care services, which may include assistance in the self-administration of medication, are provided to an individual based on the individual's behavioral health issue and need for behavioral health services.
32. "Behavioral health specialized transitional facility" means a health care institution that provides inpatient behavioral health services and physical health services to an individual determined to be a sexually violent person according to A.R.S. Title 36, Chapter 37.
33. "Behavioral health staff" means a:
- Behavioral health paraprofessional,
 - Behavioral health technician, or
 - Personnel member in a nursing care institution or assisted living facility who provides behavioral care.
34. "Behavioral health technician" means an individual who is not a behavioral health professional who provides, with clinical oversight by a behavioral health professional, the following services to a patient to address the patient's behavioral health issue:
- Services that, if provided in a setting other than a health care institution would be required to be provided by an individual licensed under A.R.S., Title 32, Chapter 33; or
 - Health-related services.
35. "Benzodiazepine" means any one of a class of sedative-hypnotic medications, characterized by a chemical structure that includes a benzene ring linked to a seven-membered ring containing two nitrogen atoms, that are commonly used in the treatment of anxiety.
36. "Biohazardous medical waste" has the same meaning as in A.A.C. R18-13-1401.
37. "Calendar day" means each day, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
38. "Case manager" means an individual assigned by an entity other than a health care institution to coordinate the physical health services or behavioral health services provided to a patient at the health care institution.
39. "Certification" means, in this Article, a written statement that an item or a system complies with the applicable requirements incorporated by reference in A.A.C. R9-1-412.
40. "Certified health physicist" means an individual recognized by the American Board of Health Physics as complying with the health physics criteria and examination requirements established by the American Board of Health Physics.
41. "Change in ownership" means conveyance of the ability to appoint, elect, or otherwise designate a health care institution's governing authority from an owner of the health care institution to another person.
42. "Chief administrative officer" or "administrator" means an individual designated by a governing authority to implement the governing authority's direction in a health care institution.
43. "Clinical laboratory services" means the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or impairment of a human being, or for the assessment of the health of a human being, including procedures to

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- determine, measure, or otherwise describe the presence or absence of various substances or organisms in the body.
44. "Clinical oversight" means:
- Monitoring the behavioral health services provided by a behavioral health technician to ensure that the behavioral health technician is providing the behavioral health services according to the health care institution's policies and procedures,
 - Providing on-going review of a behavioral health technician's skills and knowledge related to the provision of behavioral health services,
 - Providing guidance to improve a behavioral health technician's skills and knowledge related to the provision of behavioral health services, and
 - Recommending training for a behavior health technician to improve the behavioral health technician's skills and knowledge related to the provision of behavioral health services.
45. "Clinical privileges" means authorization to a medical staff member to provide medical services granted by a governing authority or according to medical staff bylaws.
46. "Collaborating health care institution" means a health care institution licensed to provide outpatient behavioral health services that has a written agreement with an adult behavioral health therapeutic home or a behavioral health respite home to:
- Coordinate behavioral health services provided to a resident at the adult behavioral health therapeutic home or a recipient at a behavioral health respite home, and
 - Work with the provider to ensure a resident at the adult behavioral health therapeutic home or a recipient at a behavioral health respite home receives behavioral health services according to the resident's treatment plan.
47. "Communicable disease" has the same meaning as in A.R.S. § 36-661.
48. "Conspicuously posted" means placed:
- At a location that is visible and accessible; and
 - Unless otherwise specified in the rules, within the area where the public enters the premises of a health care institution.
49. "Consultation" means an evaluation of a patient requested by a medical staff member or personnel member.
50. "Contracted services" means medical services, nursing services, health-related services, ancillary services, or environmental services provided according to a documented agreement between a health care institution and the person providing the medical services, nursing services, health-related services, ancillary services, or environmental services.
51. "Contractor" has the same meaning as in A.R.S. § 32-1101.
52. "Controlled substance" has the same meaning as in A.R.S. § 36-2501.
53. "Counseling" has the same meaning as "practice of professional counseling" in A.R.S. § 32-3251.
54. "Counseling facility" means a health care institution that only provides counseling, which may include:
- DUI screening, education, or treatment according to the requirements in 9 A.A.C. 20, Article 1; or
 - Misdemeanor domestic violence offender treatment according to the requirements in 9 A.A.C. 20, Article 2.
55. "Court-ordered evaluation" has the same meaning as "evaluation" in A.R.S. § 36-501.
56. "Court-ordered pre-petition screening" has the same meaning as in A.R.S. § 36-501.
57. "Court-ordered treatment" means treatment provided according to A.R.S. Title 36, Chapter 5.
58. "Crisis services" means immediate and unscheduled behavioral health services provided to a patient to address an acute behavioral health issue affecting the patient.
59. "Current" means up-to-date, extending to the present time.
60. "Daily living skills" means activities necessary for an individual to live independently and include meal preparation, laundry, housecleaning, home maintenance, money management, and appropriate social interactions.
61. "Danger to others" has the same meaning as in A.R.S. § 36-501.
62. "Danger to self" has the same meaning as in A.R.S. § 36-501.
63. "Detoxification services" means behavioral health services and medical services provided to an individual to:
- Reduce or eliminate the individual's dependence on alcohol or other drugs, or
 - Provide treatment for the individual's signs or symptoms of withdrawal from alcohol or other drugs.
64. "Diagnostic procedure" means a method or process performed to determine whether an individual has a medical condition or behavioral health issue.
65. "Dialysis" means the process of removing dissolved substances from a patient's body by diffusion from one fluid compartment to another across a semi-permeable membrane.
66. "Dialysis services" means medical services, nursing services, and health-related services provided to a patient receiving dialysis.
67. "Dialysis station" means a designated treatment area approved by the Department for use by a patient receiving dialysis or dialysis services.
68. "Dialyzer" means an apparatus containing semi-permeable membranes used as a filter to remove wastes and excess fluid from a patient's blood.
69. "Disaster" means an unexpected occurrence that adversely affects a health care institution's ability to provide services.
70. "Discharge" means a documented termination of services to a patient by a health care institution.
71. "Discharge instructions" means documented information relevant to a patient's medical condition or behavioral health issue provided by a health care institution to the patient or the patient's representative at the time of the patient's discharge.
72. "Discharge planning" means a process of establishing goals and objectives for a patient in preparation for the patient's discharge.
73. "Discharge summary" means a documented brief review of services provided to a patient, current patient status, and reasons for the patient's discharge.
74. "Disinfect" means to clean in order to prevent the growth of or to destroy disease-causing microorganisms.
75. "Documentation" or "documented" means information in written, photographic, electronic, or other permanent form.
76. "Drill" means a response to a planned, simulated event.
77. "Drug" has the same meaning as in A.R.S. § 32-1901.
78. "Electronic" has the same meaning as in A.R.S. § 44-7002.

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79. "Electronic signature" has the same meaning as in A.R.S. § 44-7002.
80. "Emergency" means an immediate threat to the life or health of a patient.
81. "Emergency medical services provider" has the same meaning as in A.R.S. § 36-2201.
82. "End-of-life" means that a patient has a documented life expectancy of six months or less.
83. "Environmental services" means activities such as house-keeping, laundry, facility maintenance, or equipment maintenance.
84. "Equipment" means, in this Article, an apparatus, a device, a machine, or a unit that is required to comply with the specifications incorporated by reference in A.A.C. R9-1-412.
85. "Exploitation" has the same meaning as in A.R.S. § 46-451.
86. "Factory-built building" has the same meaning as in A.R.S. § 41-2142.
87. "Family" or "family member" means an individual's spouse, sibling, child, parent, grandparent, or another individual designated by the individual.
88. "Food services" means the storage, preparation, serving, and cleaning up of food intended for consumption in a health care institution.
89. "Garbage" has the same meaning as in A.A.C. R18-13-302.
90. "General consent" means documentation of an agreement from an individual or the individual's representative to receive physical health services to address the individual's medical condition or behavioral health services to address the individual's behavioral health issues.
91. "General hospital" means a subclass of hospital that provides surgical services and emergency services.
92. "Gravely disabled" has the same meaning as in A.R.S. § 36-501.
93. "Hazard" or "hazardous" means a condition or situation where a patient or other individual may suffer physical injury.
94. "Health care directive" has the same meaning as in A.R.S. § 36-3201.
95. "Hemodialysis" means the process for removing wastes and excess fluids from a patient's blood by passing the blood through a dialyzer.
96. "Home health agency" has the same meaning as in A.R.S. § 36-151.
97. "Home health aide" means an individual employed by a home health agency to provide home health services under the direction of a registered nurse or therapist.
98. "Home health aide services" means those tasks that are provided to a patient by a home health aide under the direction of a registered nurse or therapist.
99. "Home health services" has the same meaning as in A.R.S. § 36-151.
100. "Hospice inpatient facility" means a subclass of hospice that provides hospice services to a patient on a continuous basis with the expectation that the patient will remain on the hospice's premises for 24 hours or more.
101. "Hospital" means a class of health care institution that provides, through an organized medical staff, inpatient beds, medical services, continuous nursing services, and diagnosis or treatment to a patient.
102. "Immediate" means without delay.
103. "Incident" means an unexpected occurrence that harms or has the potential to harm a patient, while the patient is:
 - a. On the premises of a health care institution, or
 - b. Not on the premises of a health care institution but directly receiving physical health services or behavioral health services from a personnel member who is providing the physical health services or behavioral health services on behalf of the health care institution.
104. "Infection control" means to identify, prevent, monitor, and minimize infections.
105. "Informed consent" means:
 - a. Advising a patient of a proposed treatment, surgical procedure, psychotropic drug, or diagnostic procedure; alternatives to the treatment, surgical procedure, psychotropic drug, or diagnostic procedure; and associated risks and possible complications; and
 - b. Obtaining documented authorization for the proposed treatment, surgical procedure, psychotropic drug, or diagnostic procedure from the patient or the patient's representative.
106. "In-service education" means organized instruction or information that is related to physical health services or behavioral health services and that is provided to a medical staff member, personnel member, employee, or volunteer.
107. "Interval note" means documentation updating a patient's:
 - a. Medical condition after a medical history and physical examination is performed, or
 - b. Behavioral health issue after an assessment is performed.
108. "Isolation" means the separation, during the communicable period, of infected individuals from others, to limit the transmission of infectious agents.
109. "Leased facility" means a facility occupied or used during a set time period in exchange for compensation.
110. "License" means:
 - a. Written approval issued by the Department to a person to operate a class or subclass of health care institution at a specific location; or
 - b. Written approval issued to an individual to practice a profession in this state.
111. "Licensed occupancy" means the total number of individuals for whom a health care institution is authorized by the Department to provide crisis services in a unit providing behavioral health observation/stabilization services.
112. "Licensee" means an owner approved by the Department to operate a health care institution.
113. "Manage" means to implement policies and procedures established by a governing authority, an administrator, or an individual providing direction to a personnel member.
114. "Medical condition" means the state of a patient's physical or mental health, including the patient's illness, injury, or disease.
115. "Medical director" means a physician who is responsible for the coordination of medical services provided to patients in a health care institution.
116. "Medical history" means an account of a patient's health, including past and present illnesses, diseases, or medical conditions.
117. "Medical practitioner" means a physician, physician assistant, or registered nurse practitioner.
118. "Medical record" has the same meaning as "medical records" in A.R.S. § 12-2291.
119. "Medical staff" means physicians and other individuals licensed pursuant to A.R.S. Title 32 who have clinical privileges at a health care institution.

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120. "Medical staff by-laws" means standards, approved by the medical staff and the governing authority, that provide the framework for the organization, responsibilities, and self-governance of the medical staff.
121. "Medical staff member" means an individual who is part of the medical staff of a health care institution.
122. "Medication" means one of the following used to maintain health or to prevent or treat a medical condition or behavioral health issue:
- Biologicals as defined in A.A.C. R18-13-1401,
 - Prescription medication as defined in A.R.S. § 32-1901, or
 - Nonprescription medication as defined in A.R.S. § 32-1901.
123. "Medication administration" means restricting a patient's access to the patient's medication and providing the medication to the patient or applying the medication to the patient's body, as ordered by a medical practitioner.
124. "Medication error" means:
- The failure to administer an ordered medication;
 - The administration of a medication not ordered; or
 - The administration of a medication:
 - In an incorrect dosage,
 - More than 60 minutes before or after the ordered time of administration unless ordered to do so, or
 - By an incorrect route of administration.
125. "Mental disorder" means the same as in A.R.S. § 36-501.
126. "Mobile clinic" means a movable structure that:
- Is not physically attached to a health care institution's facility;
 - Provides medical services, nursing services, or health related service to an outpatient under the direction of the health care institution's personnel; and
 - Is not intended to remain in one location indefinitely.
127. "Monitor" or "monitoring" means to check systematically on a specific condition or situation.
128. "Neglect" has the same meaning:
- For an individual less than 18 years of age, as in A.R.S. § 8-201; and
 - For an individual 18 years of age or older, as in A.R.S. § 46-451.
129. "Nephrologist" means a physician who is board eligible or board certified in nephrology by a professional credentialing board.
130. "Nurse" has the same meaning as "registered nurse" or "practical nurse" as defined in A.R.S. § 32-1601.
131. "Nursing personnel" means individuals authorized according to A.R.S. § Title 32, Chapter 15 to provide nursing services.
132. "Observation chair" means a physical piece of equipment that:
- Is located in a designated area where behavioral health observation/stabilization services are provided,
 - Allows an individual to fully recline, and
 - Is used by the individual while receiving crisis services.
133. "Occupational therapist" has the same meaning as in A.R.S. § 32-3401.
134. "Occupational therapist assistant" has the same meaning as in A.R.S. § 32-3401.
135. "Ombudsman" means a resident advocate who performs the duties described in A.R.S. § 46-452.02.
136. "On-call" means a time during which an individual is available and required to come to a health care institution when requested by the health care institution.
137. "Opioid" means a controlled substance, as defined in A.R.S. § 36-2501, that meets the definition of "opiate" in A.R.S. § 36-2501.
138. "Opioid antagonist" means a prescription medication, as defined in A.R.S. § 32-1901, that:
- Is approved by the U.S. Department of Health and Human Services, Food and Drug Administration; and
 - When administered, reverses, in whole or in part, the pharmacological effects of an opioid in the body.
139. "Opioid treatment" means providing medical services, nursing services, health-related services, and ancillary services to a patient receiving an opioid agonist treatment medication for opiate addiction.
140. "Opioid agonist treatment medication" means a prescription medication that is approved by the U.S. Food and Drug Administration under 21 U.S.C. § 355 for use in the treatment of opiate addiction.
141. "Order" means instructions to provide
- Physical health services to a patient from a medical practitioner or as otherwise provided by law; or
 - Behavioral health services to a patient from a behavioral health professional.
142. "Orientation" means the initial instruction and information provided to an individual before the individual starts work or volunteer services in a health care institution.
143. "Outing" means a social or recreational activity that:
- Occurs away from the premises,
 - Is not part of a behavioral health inpatient facility's or behavioral health residential facility's daily routine, and
 - Lasts longer than four hours.
144. "Outpatient surgical center" means a class of health care institution that has the facility, staffing, and equipment to provide surgery and anesthesia services to a patient whose recovery, in the opinions of the patient's surgeon and, if an anesthesiologist would be providing anesthesia services to the patient, the anesthesiologist, does not require inpatient care in a hospital.
145. "Outpatient treatment center" means a class of health care institution without inpatient beds that provides physical health services or behavioral health services for the diagnosis and treatment of patients.
146. "Overall time-frame" means the same as in A.R.S. § 41-1072.
147. "Owner" means a person who appoints, elects, or designates a health care institution's governing authority.
148. "Pain management clinic" has the same meaning as in A.R.S. § 36-448.01.
149. "Participant" means a patient receiving physical health services or behavioral health services from an adult day health care facility or a substance abuse transitional facility.
150. "Participant's representative" means the same as "patient's representative" for a participant.
151. "Patient" means an individual receiving physical health services or behavioral health services from a health care institution.
152. "Patient follow-up instructions" means information relevant to a patient's medical condition or behavioral health issue that is provided to the patient, the patient's representative, or a health care institution.
153. "Patient's representative" means:

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- a. A patient's legal guardian;
 - b. If a patient is less than 18 years of age and not an emancipated minor, the patient's parent;
 - c. If a patient is 18 years of age or older or an emancipated minor, an individual acting on behalf of the patient with the written consent of the patient or patient's legal guardian; or
 - d. A surrogate as defined in A.R.S. § 36-3201.
154. "Person" means the same as in A.R.S. § 1-215 and includes a governmental agency.
155. "Personnel member" means, except as defined in specific Articles in this Chapter and excluding a medical staff member, a student, or an intern, an individual providing physical health services or behavioral health services to a patient.
156. "Pest control program" means activities that minimize the presence of insects and vermin in a health care institution to ensure that a patient's health and safety is not at risk.
157. "Pharmacist" has the same meaning as in A.R.S. § 32-1901.
158. "Physical examination" means to observe, test, or inspect an individual's body to evaluate health or determine cause of illness, injury, or disease.
159. "Physical health services" means medical services, nursing services, health-related services, or ancillary services provided to an individual to address the individual's medical condition.
160. "Physical therapist" has the same meaning as in A.R.S. § 32-2001.
161. "Physical therapist assistant" has the same meaning as in A.R.S. § 32-2001.
162. "Physician assistant" has the same meaning as in A.R.S. § 32-2501.
163. "Premises" means property that is designated by an applicant or licensee and licensed by the Department as part of a health care institution where physical health services or behavioral health services are provided to a patient.
164. "Prescribe" means to issue written or electronic instructions to a pharmacist to deliver to the ultimate user, or another individual on the ultimate user's behalf, a specific dose of a specific medication in a specific quantity and route of administration.
165. "Professional credentialing board" means a non-governmental organization that designates individuals who have met or exceeded established standards for experience and competency in a specific field.
166. "Progress note" means documentation by a medical staff member, nurse, or personnel member of:
- a. An observed patient response to a physical health service or behavioral health service provided to the patient,
 - b. A patient's significant change in condition, or
 - c. Observed behavior of a patient related to the patient's medical condition or behavioral health issue.
167. "PRN" means *pro re nata* or given as needed.
168. "Project" means specific construction or modification of a facility stated on an architectural plans and specifications approval application.
169. "Provider" means an individual to whom the Department issues a license to operate an adult behavioral health therapeutic home or a behavioral health respite home in the individual's place of residence.
170. "Provisional license" means the Department's written approval to operate a health care institution issued to an applicant or licensee that is not in substantial compliance with the applicable laws and rules for the health care institution.
171. "Psychotropic medication" means a chemical substance that:
- a. Crosses the blood-brain barrier and acts primarily on the central nervous system where it affects brain function, resulting in alterations in perception, mood, consciousness, cognition, and behavior; and
 - b. Is provided to a patient to address the patient's behavioral health issue.
172. "Quality management program" means ongoing activities designed and implemented by a health care institution to improve the delivery of medical services, nursing services, health-related services, and ancillary services provided by the health care institution.
173. "Recovery care center" has the same meaning as in A.R.S. § 36-448.51.
174. "Referral" means providing an individual with a list of the class or subclass of health care institution or type of health care professional that may be able to provide the behavioral health services or physical health services that the individual may need and may include the name or names of specific health care institutions or health care professionals.
175. "Registered dietitian" means an individual approved to work as a dietitian by the American Dietetic Association's Commission on Dietetic Registration.
176. "Registered nurse" has the same meaning as in A.R.S. § 32-1601.
177. "Registered nurse practitioner" has the same meaning as in A.R.S. § 32-1601.
178. "Regular basis" means at recurring, fixed, or uniform intervals.
179. "Research" means the use of a human subject in the systematic study, observation, or evaluation of factors related to the prevention, assessment, treatment, or understanding of a medical condition or behavioral health issue.
180. "Resident" means an individual living in and receiving physical health services or behavioral health services from a nursing care institution, a behavioral health residential facility, an assisted living facility, or an adult behavioral health therapeutic home.
181. "Resident's representative" means the same as "patient's representative" for a resident.
182. "Respiratory care services" has the same meaning as "practice of respiratory care" as defined in A.R.S. § 32-3501.
183. "Respiratory therapist" has the same meaning as in A.R.S. § 32-3501.
184. "Respite services" means respite care services provided to an individual who is receiving behavioral health services.
185. "Restraint" means any physical or chemical method of restricting a patient's freedom of movement, physical activity, or access to the patient's own body.
186. "Risk" means potential for an adverse outcome.
187. "Room" means space contained by a floor, a ceiling, and walls extending from the floor to the ceiling that has at least one door.
188. "Rural general hospital" means a subclass of hospital having 50 or fewer inpatient beds and located more than 20 surface miles from a general hospital or another rural general hospital that requests to be and is licensed as a rural general hospital rather than a general hospital.

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189. "Satellite facility" has the same meaning as in A.R.S. § 36-422.
190. "Scope of services" means a list of the behavioral health services or physical health services the governing authority of a health care institution has designated as being available to a patient at the health care institution.
191. "Seclusion" means the involuntary solitary confinement of a patient in a room or an area where the patient is prevented from leaving.
192. "Sedative-hypnotic medication" means any one of several classes of drugs that have sleep-inducing, anti-anxiety, anti-convulsant, and muscle-relaxing properties.
193. "Self-administration of medication" means a patient having access to and control of the patient's medication and may include the patient receiving limited support while taking the medication.
194. "Sexual abuse" means the same as in A.R.S. § 13-1404(A).
195. "Sexual assault" means the same as in A.R.S. § 13-1406(A).
196. "Shift" means the beginning and ending time of a continuous work period established by a health care institution's policies and procedures.
197. "Short-acting opioid antagonist" means an opioid antagonist that, when administered, quickly but for a small period of time reverses, in whole or in part, the pharmacological effects of an opioid in the body.
198. "Signature" means:
- A handwritten or stamped representation of an individual's name or a symbol intended to represent an individual's name, or
 - An electronic signature.
199. "Significant change" means an observable deterioration or improvement in a patient's physical, cognitive, behavioral, or functional condition that may require an alteration to the physical health services or behavioral health services provided to the patient.
200. "Speech-language pathologist" means an individual licensed according A.R.S. Title 35, Chapter 17, Article 4 to engage in the practice of speech-language pathology, as defined in A.R.S. § 36-1901.
201. "Special hospital" means a subclass of hospital that:
- Is licensed to provide hospital services within a specific branch of medicine; or
 - Limits admission according to age, gender, type of disease, or medical condition.
202. "Student" means an individual attending an educational institution and working under supervision in a health care institution through an arrangement between the health care institution and the educational institution.
203. "Substance use disorder" means a condition in which the misuse or dependence on alcohol or a drug results in adverse physical, mental, or social effects on an individual.
204. "Substance use risk" means an individual's unique likelihood for addiction, misuse, diversion, or another adverse consequence resulting from the individual being prescribed or receiving treatment with opioids.
205. "Substantial" when used in connection with a modification means:
- A change in a health care institution's licensed capacity, licensed occupancy, or the number of dialysis stations;
 - An addition or deletion of an authorized service;
 - A change in the physical plant, including facilities or equipment, that costs more than \$300,000; or
- A change in the building where a health care institution is located that affects compliance with applicable physical plant codes and standards incorporated by reference in A.A.C. R9-1-412.
206. "Substance abuse" means an individual's misuse of alcohol or other drug or chemical that:
- Alters the individual's behavior or mental functioning;
 - Has the potential to cause the individual to be psychologically or physiologically dependent on alcohol or other drug or chemical; and
 - Impairs, reduces, or destroys the individual's social or economic functioning.
207. "Substance abuse transitional facility" means a class of health care institution that provides behavioral health services to an individual over 18 years of age who is intoxicated or may have a substance abuse problem.
208. "Supportive services" has the same meaning as in A.R.S. § 36-151.
209. "Substantive review time-frame" means the same as in A.R.S. § 41-1072.
210. "Surgical procedure" means the excision or incision of a patient's body for the:
- Correction of a deformity or defect,
 - Repair of an injury, or
 - Diagnosis, amelioration, or cure of disease.
211. "Swimming pool" has the same meaning as "semipublic swimming pool" in A.A.C. R18-5-201.
212. "System" means interrelated, interacting, or interdependent elements that form a whole.
213. "Tapering" means the gradual reduction in the dosage of a medication administered to a patient, often with the intent of eventually discontinuing the use of the medication for the patient.
214. "Tax ID number" means a numeric identifier that a person uses to report financial information to the United States Internal Revenue Service.
215. "Telemedicine" has the same meaning as in A.R.S. § 36-3601.
216. "Therapeutic diet" means foods or the manner in which food is to be prepared that are ordered for a patient.
217. "Therapist" means an occupational therapist, a physical therapist, a respiratory therapist, or a speech-language pathologist.
218. "Time out" means providing a patient a voluntary opportunity to regain self-control in a designated area from which the patient is not physically prevented from leaving.
219. "Transfer" means a health care institution discharging a patient and sending the patient to another licensed health care institution as an inpatient or resident without intending that the patient be returned to the sending health care institution.
220. "Transport" means a licensed health care institution:
- Sending a patient to a receiving licensed health care institution for outpatient services with the intent of the patient returning to the sending licensed health care institution, or
 - Discharging a patient to return to a sending licensed health care institution after the patient received outpatient services from the receiving licensed health care institution.
221. "Treatment" means a procedure or method to cure, improve, or palliate an individual's medical condition or behavioral health issue.

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222. "Treatment plan" means a description of the specific physical health services or behavioral health services that a health care institution anticipates providing to a patient.
223. "Unclassified health care institution" means a health care institution not classified or subclassified in statute or in rule.
224. "Vascular access" means the point on a patient's body where blood lines are connected for hemodialysis.
225. "Volunteer" means an individual authorized by a health care institution to work for the health care institution on a regular basis without compensation from the health care institution and does not include a medical staff member who has clinical privileges at the health care institution.
226. "Working day" means a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state and federal holiday or a statewide furlough day.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by exempt rulemaking at 20 A.A.R. 3535, pursuant to Laws 2014, Ch. 233, § 5; effective January 1, 2015 (Supp. 14-4). Amended by exempt rulemaking at 22 A.A.R. 1035, pursuant to Laws 2015, Ch. 158, § 3; effective May 1, 2016 (Supp. 16-2). Amended by final rulemaking at 24 A.A.R. 3020, effective January 1, 2019 (Supp. 18-4).

R9-10-102. Health Care Institution Classes and Subclasses; Requirements

- A. A person may apply for a license as a health care institution class or subclass in A.R.S. Title 36, Chapter 4 or this Chapter, or one of the following classes or subclasses:
1. General hospital,
 2. Rural general hospital,
 3. Special hospital,
 4. Behavioral health inpatient facility,
 5. Nursing care institution,
 6. Recovery care center,
 7. Hospice inpatient facility,
 8. Hospice service agency,
 9. Behavioral health residential facility,
 10. Assisted living center,
 11. Assisted living home,
 12. Adult foster care home,
 13. Outpatient surgical center,
 14. Outpatient treatment center,
 15. Abortion clinic,
 16. Adult day health care facility,
 17. Home health agency,
 18. Substance abuse transitional facility,
 19. Behavioral health specialized transitional facility,
 20. Counseling facility,
 21. Adult behavioral health therapeutic home,
 22. Behavioral health respite home,
 23. Unclassified health care institution, or
 24. Pain management clinic.
- B. A person shall apply for a license for the class or subclass that authorizes the provision of the highest level of physical care services or behavioral health services the proposed health care institution plans to provide. The Department shall review the proposed health care institution's scope of services to determine whether the requested health care institution class or subclass is appropriate.

- C. A health care institution shall comply with the requirements in Article 17 of this Chapter if:
1. There are no specific rules in another Article of this Chapter for the health care institution's class or subclass, or
 2. The Department determines that the health care institution is an unclassified health care institution.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 24 A.A.R. 3020, effective January 1, 2019 (Supp. 18-4).

R9-10-103. Licensing Exceptions

- A. A health care institution license is required for each health care institution facility except:
1. A facility exempt from licensing under A.R.S. § 36-402, or
 2. A health care institution's administrative office.
- B. The Department does not require a separate health care institution license for:
1. A satellite facility of a hospital under A.R.S. § 36-422(F);
 2. An accredited facility of an accredited hospital under A.R.S. § 36-422(G);
 3. A facility operated by a licensed health care institution that is:
 - a. Adjacent to and contiguous with the licensed health care institution premises; or
 - b. Not adjacent to or contiguous with the licensed health care institution but connected to the licensed health care institution facility by an all-weather enclosure and:
 - i. Owned by the health care institution, or
 - ii. Leased by the health care institution with exclusive rights of possession;
 4. A mobile clinic operated by a licensed health care institution; or
 5. A facility located on grounds that are not adjacent to or contiguous with the health care institution premises where only ancillary services are provided to a patient of the health care institution.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-104. Approval of Architectural Plans and Specifications

- A. For approval of architectural plans and specifications for the construction or modification of a health care institution that is required by this Chapter to comply with any of the physical plant codes and standards incorporated by reference in A.A.C. R9-1-412, an applicant shall submit to the Department an application packet including:
1. An application in a format provided by the Department that contains:
 - a. For construction of a new health care institution:

15-101. Definitions

In this title, unless the context otherwise requires:

1. "Accommodation school" means either:

(a) A school that is operated through the county board of supervisors and the county school superintendent and that the county school superintendent administers to serve a military reservation or territory that is not included within the boundaries of a school district.

(b) A school that provides educational services to homeless children or alternative education programs as provided in section 15-308, subsection B.

(c) A school that is established to serve a military reservation, the boundaries of which are coterminous with the boundaries of the military reservation on which the school is located.

2. "Assessed valuation" means the valuation derived by applying the applicable percentage as provided in title 42, chapter 15, article 1 to the full cash value or limited property value, whichever is applicable, of the property.

3. "Charter holder" means a person that enters into a charter with the state board for charter schools. For the purposes of this paragraph, "person" means an individual, partnership, corporation, association or public or private organization of any kind.

4. "Charter school" means a public school established by contract with the state board of education, the state board for charter schools, a university under the jurisdiction of the Arizona board of regents, a community college district or a group of community college districts pursuant to article 8 of this chapter to provide learning that will improve pupil achievement.

5. "Child with a disability" means a child with a disability as defined in section 15-761.

6. "Class A bonds" means general obligation bonds approved by a vote of the qualified electors of a school district at an election held on or before December 31, 1998.

7. "Class B bonds" means general obligation bonds approved by a vote of the qualified electors of a school district at an election held from and after December 31, 1998.

8. "Competency" means a demonstrated ability in a skill at a specified performance level.

9. "Course" means organized subject matter in which instruction is offered within a given period of time and for which credit toward promotion, graduation or certification is usually given. A course consists of knowledge selected from a subject for instructional purposes in the schools.

10. "Course of study" means a list of required and optional subjects to be taught in the schools.

11. "Dual enrollment course" means a college-level course that is conducted on the campus of a high school or on the campus of a career technical education district, that is applicable to an established community college academic degree or certificate program and that is transferable to a university under the jurisdiction of the Arizona board of regents. A dual enrollment course that is applicable to a community college occupational degree or certificate program may be transferable to a university under the jurisdiction of the Arizona board of regents.

12. "Elementary grades" means kindergarten programs and grades one through eight.

13. "Fiscal year" means the year beginning July 1 and ending June 30.

14. "Governing board" means a body organized for the government and management of the schools within a school district or a county school superintendent in the conduct of an accommodation school.
15. "Lease" means an agreement for conveyance and possession of real or personal property.
16. "Limited property value" means the value determined pursuant to title 42, chapter 13, article 7. Limited property value shall be used as the basis for assessing, fixing, determining and levying primary property taxes.
17. "Nontest" means not relating to knowledge or skills in reading, writing, mathematics, social studies, science or any other course.
18. "Parent" means the natural or adoptive parent of a child or a person who has custody of a child.
19. "Person who has custody" means a parent or legal guardian of a child, a person to whom custody of the child has been given by order of a court or a person who stands in loco parentis to the child.
20. "Primary property taxes" means all ad valorem taxes except for secondary property taxes.
21. "Private school" means a nonpublic institution where instruction is imparted.
22. "School" or "public school" means any public institution established for the purposes of offering instruction to pupils in programs for preschool children with disabilities, kindergarten programs or any combination of elementary grades or secondary grades one through twelve.
23. "School district" means a political subdivision of this state with geographic boundaries organized for the purpose of the administration, support and maintenance of the public schools or an accommodation school.
24. "Secondary grades" means grades nine through twelve.
25. "Secondary property taxes" means ad valorem taxes used to pay the principal of and the interest and redemption charges on any bonded indebtedness or other lawful long-term obligation issued or incurred for a specific purpose by a school district or a community college district and amounts levied pursuant to an election to exceed a budget, expenditure or tax limitation.
26. "Subject" means a division or field of organized knowledge, such as English or mathematics, or a selection from an organized body of knowledge for a course or teaching unit, such as the English novel or elementary algebra.



ARIZONA DEPARTMENT OF HEALTH SERVICES

January 22, 2019

Ms. Christina Corieri
Health and Human Services Policy Advisor
Office of Governor Douglas A. Ducey
1700 West Washington
Phoenix, Arizona 85007

Dear Ms. Corieri:

Pursuant to the rulemaking moratorium established by Executive Order 2019-01 (Moratorium), the Arizona Department of Health Services (Department) requests an exception from the Moratorium to comply with Laws 2018, Ch. 45, and revise rules in Arizona Administrative Code (A.A.C.) Title 9, Chapter 8, Article 1, Food and Drink.

Laws 2018, Ch. 45, amends A.R.S. § 36-136(I)(4)(g) to exempt cottage food products from public inspection by the Department; designates certain foods as cottage food products; and amends laws related to labeling and registration. Laws 2018, Ch. 45, amends A.R.S. § 36-136 (I)(13) to add that a registered food preparer must renew their registration every three years and provide to the Department updated registration information within 30 days of any change. Laws, 2018, Ch. 45, adds A.R.S. § 36-136(Q)(1) which defines a cottage food product.

With approval to proceed, the Department intends to amend the rules by expedited rulemaking to comply with new statutory requirements, reduce regulatory burden by removing obsolete requirements, and update outdated language that will improve the clarity and effectiveness of the rules. The Department believes the rulemaking meets the criteria for expedited rulemaking because the changes to be made: will not increase the cost of regulatory compliance beyond costs imposed by the statutory changes; will not increase a fee or reduce procedural rights of persons regulated; and will amend the rules, which due to Laws 2018 Ch. 45, are now outdated.

If you have any questions or would like to further discuss this request, please contact me at (602) 542-1140.

Sincerely,

Cara M. Christ, MD
Director

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



Brittany Green <brittany.green@azdhs.gov>

Fwd: ADHS Rulemaking Exception Request: Cottage Foods

2 messages

Robert Lane <robert.lane@azdhs.gov>

Wed, Jan 23, 2019 at 9:42 AM

To: Brittany Green <brittany.green@azdhs.gov>, Teresa Koehler <teresa.koehler@azdhs.gov>

----- Forwarded message -----

From: **Cara Christ** <cara.christ@azdhs.gov>

Date: Wed, Jan 23, 2019 at 9:38 AM

Subject: ADHS Rulemaking Exception Request: Cottage Foods

To: ccorieri@az.gov <ccorieri@az.gov>

Cc: Robert Lane <Robert.Lane@azdhs.gov>, Colby Bower <colby.bower@azdhs.gov>

Good morning, Christina!

In accordance with Executive Order 2019-01, I'm writing to convey a request for an exception from the rulemaking moratorium.

Attached is a letter for:

Revising Food and Drink Rules, 9 A.A.C. 8, Article 1- request expedited rulemaking to comply with Laws 2018, Ch. 45 that amends:

- A.R.S. § 36-136(I)(4)(g) exempting cottage food products from public inspection by the Department; designating certain foods as cottage food products; and clarifying labeling and certificate registration requirements; and
- A.R.S. § 36-136(I)(13) which requires a registered food preparer to renew their registration every three years and provide the Department updated registration information within 30 days of any change.
- Amending these rules will not increase the cost of regulatory compliance or increase fees.

These changes will comply with statutory requirements, reduce the regulatory burden, and add clarity and effectiveness to the rules by removing obsolete requirements and updating outdated language.

If you have any questions, please let us know. Thank you.

Have a great day! 😊

Cara

Cara Christ, MD, MS

Director

Arizona Department of Health Services

150 North 18th Avenue, Suite 500, Phoenix, AZ 85007

Direct 602-542-1140

Email cara.christ@azdhs.gov*Health and Wellness for all Arizonans*

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--

Robert Lane

Chief

Administrative Counsel and Rules

Arizona Department of Health Services

150 N. 18th Ave., Suite 200, Phoenix, AZ 85007

Direct 602-542-1513

Fax 602-364-1150

Email Robert.Lane@azdhs.gov*Health and Wellness for all Arizonans*

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 **190115 exception letter - cottage foods.pdf**
261K

Robert Lane <robert.lane@azdhs.gov>

Wed, Jan 23, 2019 at 10:55 AM

To: Brittany Green <brittany.green@azdhs.gov>, Teresa Koehler <teresa.koehler@azdhs.gov>

----- Forwarded message -----

From: **Christina Corieri** <ccorieri@az.gov>

Date: Wed, Jan 23, 2019 at 10:45 AM

Subject: Re: ADHS Rulemaking Exception Request: Cottage Foods

To: Cara Christ <cara.christ@azdhs.gov>Cc: Robert Lane <Robert.Lane@azdhs.gov>, Colby Bower <colby.bower@azdhs.gov>

Director Christ,

The Governor's office has approved your rule making requested related to cottage foods. Please proceed with the rule making process.

Christina

On Wed, Jan 23, 2019 at 9:38 AM Cara Christ <cara.christ@azdhs.gov> wrote:

Good morning, Christina!

In accordance with Executive Order 2019-01, I'm writing to convey a request for an exception from the rulemaking moratorium.

Attached is a letter for:

Revising Food and Drink Rules, 9 A.A.C. 8, Article 1- request expedited rulemaking to comply with Laws 2018, Ch. 45 that amends:

- A.R.S. § 36-136(I)(4)(g) exempting cottage food products from public inspection by the Department; designating certain foods as cottage food products; and clarifying labeling and certificate registration requirements; and
- A.R.S. § 36-136(I)(13) which requires a registered food preparer to renew their registration every three years and provide the Department updated registration information within 30 days of any change.

- Amending these rules will not increase the cost of regulatory compliance or increase fees.

These changes will comply with statutory requirements, reduce the regulatory burden, and add clarity and effectiveness to the rules by removing obsolete requirements and updating outdated language.

If you have any questions, please let us know. Thank you.

Have a great day! 😊

Cara

Cara Christ, MD, MS

Director

Arizona Department of Health Services

150 North 18th Avenue, Suite 500, Phoenix, AZ 85007

Direct 602-542-1140

Email cara.christ@azdhs.gov

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--

Christina Corieri

Senior Policy Advisor

Office of the Arizona Governor

1700 W. Washington Street

Phoenix, AZ 85007

O: (602)542-3394

E: ccorieri@az.gov

 Seal_Copper_Transparent

--

Robert Lane

Chief

Administrative Counsel and Rules

Arizona Department of Health Services

150 N. 18th Ave., Suite 200, [Phoenix, AZ 85007](#)

Direct 602-542-1513

Fax 602-364-1150

Email Robert.Lane@azdhs.gov

Health and Wellness for all Arizonans

[Quoted text hidden]



image001.png
22K



GRRC - ADOA <grrc@azdoa.gov>

Notice of Proposed Expedited Rulemaking for 9 A.A.C. 8 Article 1

5 messages

Robert Lane <robert.lane@azdhs.gov>

Thu, Feb 21, 2019 at 9:04 AM

To: "MBRAUN@AZLEG.GOV" <mbraun@azleg.gov>, Russell Bowers <rbowers@azleg.gov>, Karen Fann <kfann@azleg.gov>, "GRRC@AZDOA.GOV" <grrc@azdoa.gov>

Cc: Brittany Green <brittany.green@azdhs.gov>, Teresa Koehler <teresa.koehler@azdhs.gov>

Pursuant to A.R.S. § 41-1027(B), the Arizona Department of Health Services (Department) is providing a copy of the Notice of Proposed Expedited Rulemaking for rules in Arizona Administrative Code, Title 9, Chapter 8, Food and Drink, that the Department intends to file with the Office of the Secretary of State for publication in the *Arizona Administrative Register*.

If you have any questions or would like to further discuss this notification, please feel free to contact me at (602) 542-1020.

--

Robert Lane

Chief

Administrative Counsel and Rules

Arizona Department of Health Services

150 N. 18th Ave., Suite 200, Phoenix, AZ 85007

Direct 602-542-1513

Fax 602-364-1150

Email Robert.Lane@azdhs.gov*Health and Wellness for all Arizonans*

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 **9 AAC 8 Art 1 NPER (1).rtf**
116K

grrc@azdoa.gov <grrc@azdoa.gov>

Thu, Feb 21, 2019 at 9:10 AM

To: robert.lane@azdhs.gov, robert.lane@azdhs.gov

Your message

To: robert.lane@azdhs.gov

Subject: Notice of Proposed Expedited Rulemaking for 9 A.A.C. 8 Article 1

Sent: 2/21/19, 9:04:07 AM MST

was read on 2/21/19, 9:10:15 AM MST

GRRC - ADOA <grrc@azdoa.gov>
To: Robert Lane <robert.lane@azdhs.gov>

Thu, Feb 21, 2019 at 9:46 AM

Hi Rob,

In reference to this submission, please also submit a cover letter consistent with the requirements in R1-6-202(A) as soon as possible.

https://apps.azsos.gov/public_services/Title_01/1-06.pdf

Thank you.

Krishna

[Quoted text hidden]

Robert Lane <robert.lane@azdhs.gov>
To: GRRC - ADOA <grrc@azdoa.gov>

Thu, Feb 21, 2019 at 9:53 AM

My understanding is that what you reference is for a Notice of Final. What we sent over was the Notice of Proposed. Let me know if you disagree. Thanks.

Rob

[Quoted text hidden]

[Quoted text hidden]

GRRC - ADOA <grrc@azdoa.gov>
To: Robert Lane <robert.lane@azdhs.gov>

Thu, Feb 21, 2019 at 11:35 AM

Hi Rob,

Yes, you are correct about that - sorry. The cover letter needs to be submitted when you submit the Notice of Final Expedited Rulemaking to GRRC. However, please let me know after you file with SOS so I can post the Notice of Proposed Expedited Rulemaking on GRRC's website under R1-6-203.

Thanks.

Krishna

[Quoted text hidden]

GOVERNOR'S REGULATORY REVIEW COUNCIL (F19-0607)
Title 1, Chapter 6, All Articles



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 4, 2019

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

FROM: Council Staff

DATE: May 10, 2019

SUBJECT: **Governor's Regulatory Review Council (GRRC)**
Title 1, Chapter 6, Governor's Regulatory Review Council

The Five-Year-Review Report (5YRR) from the Governor's Regulatory Review Council (GRRC) relates to rules in Title 1, Chapter 6, the rules cover the following:

- **Article 1: General Rules of Procedure**
- **Article 2: Rulemaking Procedures**
- **Article 3: Five-Year Review Reports**
- **Article 5: Appeals and Petitions**

The last time a 5YRR was approved for these rules was in July 2009. In that report, GRCC indicated it would complete a rulemaking by December 2012 to amend 16 of the 17 rules in Title 1, Chapter 6. GRRC submitted a rulemaking on that 5YRR in June 2013.

Proposed Action

The Governor's Regulatory Review Council proposes to take no action regarding these rules.

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

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

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

Stakeholders include the Council and agencies and members of the public who interact with or submit documents to the Council. There has been no change in the economic, small business, and consumer impact of these rules between now and the last time GRRC conducted a rulemaking for these rules in 2018. The rulemaking applies to all state agencies subject to Council review, currently estimated at 100 agencies. The Council stated that the economic impact of the rulemaking was expected to be minimal for all stakeholders.

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

The Council has determined that the probable benefits of the rules outweigh any probable costs and that the rules impose the least burden and costs to regulated persons and agencies.

4. **Has the agency received any written criticisms of the rules over the last five years?**

Yes. The Council indicates it received three written comments during a 2017 rulemaking. The Council adequately responded to those comments.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. The Council indicates that the rules are clear, concise, understandable, effective, and consistent with other rules and statutes.

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

Yes. The Council indicates that the rules are enforced as written.

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

Not applicable. There is no corresponding federal law.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

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

9. **Conclusion**

The Council proposes to take no action on these rules. GRCC staff recommends approval of this report.

Douglas A. Ducey
Governor



Elizabeth Thorson
Interim Director

ARIZONA DEPARTMENT OF ADMINISTRATION

Governor's Regulatory Review Council
100 NORTH FIFTEENTH AVENUE • SUITE 305
PHOENIX, ARIZONA 85007
(602) 542-2058

April 15, 2019

VIA EMAIL: grrc@azdoa.gov
Nicole Sornsins, Chair
Governor's Regulatory Review Council
100 N. 15th Ave., Ste 305
Phoenix, AZ 85007

RE: Five Year Review Report for A.A.C. Title 1, Chapter 6

Dear Ms. Sornsins:

Enclosed is the Governor's Regulatory Review Council's Five-Year Review Report on A.A.C. Title 1, Chapter 6, Governor's Regulatory Review Council (GRRC). Included with the report are copies of the authorizing statutes and current rules.

Council staff reviewed all of the rules in these articles, and does not intend for any GRRC rule to expire under A.R.S. § 41-1056(J).

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

If you have any questions about this report, please contact Council staff at (602) 542-2058 or at grrc@azdoa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Krishna R. Jhaveri".

Krishna R. Jhaveri, Esq.
Council Staff Attorney

A handwritten signature in black ink, appearing to read "Simon Larscheidt".

Simon Larscheidt, Esq.
Council Staff Attorney

Governor’s Regulatory Review Council (GRRC)
Five-Year-Review Report for Governor’s Regulatory Review Council
Due: April 30, 2019
Submitted: April 15, 2019

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. 41-1051(E)

Specific Statutory Authority: A.R.S. 41-1001.01 (A)(6), 41-1023, 41-1027, 41-1033, 41-1052, 41-1053, 41-1055, 41-1056

2. The objective of each rule:

Rule	Objective
R1-6-101	This rule defines terms related to the rulemaking process and the Governor’s Regulatory Review Council (GRRC).
R1-6-102	This rule describes the requirements and procedures for Council Meetings.
R1-6-103	This rule describes the procedures for submitting a petition to the Council under A.R.S. 41-1033(A) to challenge a Council rule or to request a review of an existing Council practice or substantive policy statement alleged to constitute a rule.
R1-6-104	This rule addresses requests under A.R.S. 41-1008(E) to extend the two year period during which a fee established or increased by an exempt rulemaking is effective.
R1-6-105	This rule was added in via regular rulemaking in 2018. It addresses public comments submitted to GRRC and requires agencies to submit electronic copies of any written public comment to GRRC within 10 business days of receipt.
R1-6-201	This rule describes the procedures and requirements for submitting a regular rulemaking to GRRC.
R1-6-202	This rule describes the procedures and requirements for submitting an expedited rulemaking to GRRC.
R1-6-203	This rule describes the requirements for delivering a Notice of Proposed Expedited Rulemaking and posting requirements for GRRC and the agency submitting the rulemaking.
R1-6-204	This rule describes the process for submitting an approved regular or expedited rule to the Council office that the Council approved with changes.
R1-6-205	This rule states the requirements for an agency to file an approved regular or expedited rule with the Office of the Secretary of State. It also states the requirements for filing an approved regular or expedited rule subject to the agency making changes as directed by the Council.
R1-6-206	This rule describes the process by which the Council may vote to return a preamble; table of contents; rule; or economic, small business, and consumer impact statement if any does not meet the standards proscribed by A.R.S. § 41-1052(D) through (G) and resubmission of a revised preamble; table of contents; rule; or economic, small business, and consumer impact statement by the agency to the Council.
R1-6-301	This rule describes the process and requirements for submitting a five-year review report for consideration by the Council.
R1-6-302	This rule describes the process for an agency to request a five-year review report be rescheduled by the Council Chair under A.R.S. § 41-1056(H).
R1-6-303	This rule describes the process for an agency to obtain an extension to submit a five-year review report from the Council.

R1-6-305	This rule describes the process by which the Council may vote to return a five-year review report if the report does not meet the standards in A.R.S. § 41-1056(A) and submission of a revised five-year review report by the agency to the Council.
R1-6-401	This rule defines which statutory petitions or appeals fall under Article 4.
R1-6-402	This rule describes the process and requirements for filing an Article 4 petition or appeal with the Council and deadlines for the affected agency's response to the petition, the Council's choice to consider the petition or appeal, and written notice of the Council's decision.
R1-6-403	This rule describes additional requirements for appeals of delegation agreements filed with the Council pursuant to A.R.S. § 41-1081(F).
R1-6-404	This rule describes additional requirements for appeals of final decisions by agencies on petitions regarding the economic, small business, and consumer impact of a rule filed with the Council pursuant to A.R.S. § 41-1056.01.

3. **Are the rules effective in achieving their objectives?** Yes X No

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation

4. **Are the rules consistent with other rules and statutes?** Yes X No

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation

5. **Are the rules enforced as written?** Yes X No

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.

Rule	Explanation

6. **Are the rules clear, concise, and understandable?** Yes X No

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation

7. **Has the agency received written criticisms of the rules within the last five years?** Yes X No

GRRC conducted rulemakings for its rules in 2018, 2017, and 2013. It did not receive any comments during the 2018 and 2013 rulemakings. However, during the 2017 rulemaking, it received three written comments which are described below. GRRC adequately responded to those comments when conducting the rulemaking.

If yes, please fill out the table below:

Commenter	Comment	Agency’s Response
Paul Swietek, Arizona Department of Public Safety (DPS)	The Commenter thanked GRRC for transitioning to electronic filing of documents. (1) The Commenter stated that GRRC does not have any stamped receipt documents for submissions. (2) The Commenter raised concerns about how electronic submissions would comply with the date for submission of documents required under R1-1-601(A) or other statutory requirements. The commenter recommended that the rules should be revised to specify that GRRC should provide an electronic receipt for submissions. The commenter further recommended creation of a generic email address for agencies to submit documents.	GRRC staff indicated that under A.R.S. 41-1024(B)(1), time limits for submission are satisfied at the time of submission, whether in electronic or paper form, rather than receipt. Therefore, an agency’s rulemaking record only needs to include proof that it made a timely submission to the Council. GRRC staff stated it would look into creating a generic GRRC email account to receive submissions.
Jane McVay, Arizona Department of Transportation (ADOT)	The commenter made three points: (1) the title of R1-6-103 refer to Council Rulemaking and Council Rule. This should be changed to “agency” as it is defined in the Administrative Procedure Act (APA). (2) The commenter noted that the new rule R1-6-201(B)(4) would require the agency to submit a copy of the current version of the rules in all rulemakings. Previously, Agencies only had to submit a copy of the existing rule only if any subsections are designated as “no change.” This is an added burden on agencies which increases the size of documents submitted to GRRC. (3) R1-6-203(A), (D)(6): the language in this proposed rule does not contain guidance to agencies on how receipt of comments by GRRC will be communicated to agencies.	GRRC staff responded to these comments as follows: (1) R1-6-103 relates only to the Council’s rules, substantive policy statements, and practices. The rule does not apply to agencies generally. The term “Council rule” in R1-6-103(A) has been changed in the NFR to “rule promulgated by the Council” to clarify that distinction. (2) The Council understands this concern. The language requiring an agency to submit a copy of the existing rule only if any subsections in the existing rule that was amended were designated as “no change” has been restored in the NFR. (3) The Council understands the commenter’s concerns. Language from R1-6-203(A) requiring Council staff to notify an agency of any written comments GRRC receives has been restored in the NFR.
Jeanne Hann, Arizona Rules LLC	The commenter thanked GRRC for transitioning to electronic filing. The commenter stated that she believes R1-6-301(A)(2) exceeds GRRC’s statutory authority under ARS 41-1056(A)(1), which only refers to a rule’s objective. There is no	GRRC staff responded to these comments as follows: (1) GRRC appreciates the commenter’s support. (2) The proposed R1-6-301(A)(2) does not exceed GRRC’s statutory authority. The term “purpose” in this context is used to provide clarity

	reference to a rule's purpose in this statute. The commenter questioned why the requirement to state a rule's purpose in a five year review report (5YRR) is in this proposed rule. Last, the commenter questioned why the time for an automatic extension of a 5YRR is being shortened	regarding one aspect of a rule's objective that agencies should focus their attention on. (3) GRRC understand's the commenter's concerns. The 120-day period for an automatic extension for a 5YRR has been restored in the NFR.
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8. Economic, small business, and consumer impact comparison:

There has been no change in the economic, small business, and consumer impact of these rules between now and the last time GRRC conducted a rulemaking for these rules in 2018 and which became effective in October 2018.

At the time of the 2018 rulemaking, GRRC noted that it estimated the economic impact of the rulemaking to be minimal (less than \$1000) for all stakeholders. State agencies may face minimal costs from providing copies of public comments to the Council office and responses to public comments to the commenter and the Council. The removal of unnecessary provisions from Sections 201, 202, and 301 may provide a minimal beneficial economic impact to state agencies. The rulemaking will apply to all state agencies subject to Council review, currently estimated at 100 agencies.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ___ No ___
 ___X___

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

The last time a Five Year Review Report (5YRR) was approved for these rules was in July 2009. In that report, GRRC staff indicated that it would complete a rulemaking by December 2012 to amend 16 of the 17 rules in Title 1, Chapter 6. GRRC conducted a rulemaking based on that 5YRR in June 2013.

GRRC had a 5YRR due in December 2013 which was rescheduled for five (5) years to December 2018. By letter dated December 31, 2018, GRRC took a one time 120-day extension to submit the 5YRR. Thus, the 5YRR is due on or before April 30, 2019.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

GRRC has determined that the probable benefits of the rules outweigh any probable costs and that the rules impose the least burden and costs to regulated persons and agencies.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No ___
 ___X___

Not applicable. There is no corresponding federal law.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

These rules do not require the issuance of a permit.

14. Proposed course of action

GRRC proposes to take no action regarding these rules.

Arizona Administrative CODE

1 A.A.C. 6 Supp. 18-4

www.azsos.gov

This Chapter contains rule Sections that were filed to be codified in the Arizona Administrative Code between the dates of October 1, 2018 through December 31, 2018

Title 1



TITLE 1. RULES AND THE RULEMAKING PROCESS

CHAPTER 6. GOVERNOR’S REGULATORY REVIEW COUNCIL

The table of contents on the first page contains quick links to the referenced page numbers in this Chapter. Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

Sections, Parts, Exhibits, Tables or Appendices codified in this supplement. The list provided contains quick links to the updated rules.

R1-6-101.	Definitions	3	R1-6-302.	Rescheduling a Five-year Review Report	8
R1-6-105.	Public Comments	4	R1-6-303.	Extension of the Due Date for a Five-year Review Report	8
R1-6-201.	Submitting a Regular Rule	5	R1-6-401.	Applicability	9
R1-6-202.	Submitting an Expedited Rule	6			
R1-6-301.	Submitting a Five-year Review Report	7			

Questions about these rules? Contact:

Department: Governor's Regulatory Review Council
 Address: 100 N. 15th Ave #305
 Phoenix, AZ 85007
 Telephone: (602) 542-2058
 Website: www.grrc.az.gov

The release of this Chapter in Supp. 18-4 replaces Supp. 17-3, 11 pages

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into titles. Titles are divided into chapters. A chapter includes state agency rules. Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each chapter.

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2018 is cited as Supp. 18-1.

Please note: The Office publishes by chapter, not by individual rule section. Therefore there might be only a few sections codified in each chapter released in a supplement. Historical notes at the end of a section provide an effective date and information when a rule was last updated.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate chapters of the *Administrative Code* in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, www.azleg.gov. An agency’s authority

note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in a chapter can be found at the Secretary of State’s website, under Services-> Legislative Filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at www.azsos.gov/rules, click on the *Administrative Register* link.

Editor’s notes at the beginning of a chapter provide information about rulemaking sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

EXEMPTIONS AND PAPER COLOR

At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

PERSONAL USE/COMMERCIAL USE

This chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1, R1-1-113.

Rhonda Paschal, managing rules editor, assisted with the editing of this chapter.



Administrative Rules Division
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TITLE 1. RULES AND THE RULEMAKING PROCESS

CHAPTER 6. GOVERNOR'S REGULATORY REVIEW COUNCIL

(Authority: A.R.S. § 41-1051)

ARTICLE 1. GENERAL RULES OF PROCEDURE

Article 1, consisting of Sections R1-6-101 through R1-6-106 and R1-6-108, adopted effective May 25, 1995 (Supp. 95-2).

Article 1, consisting of Sections R1-6-102 three R1-6-109, repealed effective May 25, 1995 (Supp. 95-2).

Article 1 consisting of Sections R1-6-102 through R1-6-109 adopted effective December 16, 1987.

Table listing sections R1-6-101 through R1-6-115 with their respective page numbers and descriptions.

ARTICLE 2. RULEMAKING PROCEDURES

Article 2, consisting of Section R1-6-201, repealed by final rulemaking; new Article 2, consisting of Sections R1-6-201 to R1-6-207 made by final rulemaking effective October 5, 2013 (Supp. 13-3).

Article 2, consisting of Section R1-6-201, adopted effective May 25, 1995 (Supp. 95-2).

Article 2, consisting of Sections R1-6-202 three R1-6-206, repealed effective May 25, 1995 (Supp. 95-2).

Article 2, consisting of Section R1-6-201, adopted effective May 25, 1995 (Supp. 95-2).

Article 2, consisting of Sections R1-6-202 through R1-6-206, repealed effective May 25, 1995 (Supp. 95-2).

Article 2 consisting of Sections R1-6-202 through R1-6-206 adopted effective March 16, 1988.

Table listing sections R1-6-201 through R1-6-207 with their respective page numbers and descriptions.

ARTICLE 3. FIVE-YEAR REVIEW REPORTS

Article 3, consisting of Sections R1-6-301 and R1-6-302 repealed by final rulemaking; new Article 3, consisting of Sections R1-6-301 to R1-6-305 made by final rulemaking effective October 5, 2013 (Supp. 13-3).

Article 3, consisting of Section R1-6-301, adopted effective April 3, 1996 (Supp. 96-2).

Table listing sections R1-6-301 through R1-6-305 with their respective page numbers and descriptions.

ARTICLE 4. APPEALS AND PETITIONS

Article 4, consisting of Section R1-6-401, repealed by final rulemaking; new Article 4, consisting of Section R1-6-401, made by final rulemaking effective October 5, 2013 (Supp. 13-3).

Article 4, consisting of Section R1-6-401, adopted effective April 3, 1996 (Supp. 96-2).

Table listing sections R1-6-401 through R1-6-404 with their respective page numbers and descriptions.

ARTICLE 5. REPEALED

Article 5, consisting of Sections R1-6-501 and R1-6-502, repealed by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3).

Article 5, consisting of Section R1-6-501, repealed by final rulemaking; new Article 5, consisting of Sections R1-6-501 and R1-6-502, made by final rulemaking, effective October 5, 2013 (Supp. 13-3).

Article 5, consisting of Section R1-6-501, made at 17 A.A.R. 1410, effective September 5, 2011 (Supp. 11-3).

Table listing sections R1-6-501 and R1-6-502 with their respective page numbers and descriptions.

ARTICLE 6. REPEALED

Article 6, consisting of Section R1-6-601, repealed by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3).

Article 6, consisting of Section R1-6-601, made by final rulemaking, effective October 5, 2013 (Supp. 13-3).

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Section		
R1-6-601.	Repealed	10

ARTICLE 7. REPEALED

Article 7, consisting of Section R1-6-701, repealed by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3).

Article 7, consisting of Section R1-6-701, made by final rulemaking, effective October 5, 2013 (Supp. 13-3).

Section		
R1-6-701.	Repealed	10

ARTICLE 8. REPEALED

Article 8, consisting of Sections R1-6-801 and R1-6-802, repealed by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3).

Article 8, consisting of Sections R1-6-801 and R1-6-802, made by final rulemaking, effective October 5, 2013 (Supp. 13-3).

Section		
R1-6-801.	Repealed	10
R1-6-802.	Repealed	10

CHAPTER 6. GOVERNOR'S REGULATORY REVIEW COUNCIL

ARTICLE 1. GENERAL RULES OF PROCEDURE**R1-6-101. Definitions**

- A.** The definitions in A.R.S. § 41-1001 apply to this Chapter.
- B.** In this Chapter:
1. "Agency head" means the chief officer of an agency or another person directly or indirectly purporting to act on behalf or under the authority of the agency head.
 2. "Chair" means the chairperson of the Council or the chairperson's designee.
 3. "Electronic copy" means a document submitted or filed by e-mail or other electronic means.
 4. "Expedited rule" means a rule made according to the procedures in A.R.S. §§ 41-1027 and 41-1053.
 5. "Five-year Review Report" means a report submitted to the Council according to the procedures in A.R.S. § 41-1056 or 41-1095.
 6. "Open Meeting Law" means A.R.S. Title 38, Chapter 3, Article 3.1.
 7. "Public Comment" means a written comment or criticism submitted to an agency that relates in whole or in part to a proposed rule or an existing rule, or a comment made at an oral proceeding held in accordance with A.R.S. § 41-1023.
 8. "Regular rule" means a rule made according to the procedures in A.R.S. §§ 41-1021 through 41-1024 and 41-1052.

Historical Note

Adopted effective May 25, 1995 (Supp. 95-2). Amended effective April 3, 1996 (Supp. 96-2). Former Section R1-6-101 renumbered to R1-6-102; new Section R1-6-101 adopted by final rulemaking at 6 A.A.R. 8, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 5538, effective December 2, 2003 (Supp. 03-4). Amended by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Amended by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 3095, effective October 9, 2018 (Supp. 18-4).

R1-6-102. Meetings

- A.** The Chair, in consultation with the Council, shall set monthly meeting dates of the Council and a schedule containing submission deadlines based on those meeting dates for each calendar year by the preceding September 15 and shall post notice of each monthly meeting according to the Open Meeting Law.
- B.** The Chair or Council may schedule a special meeting to consider any matter it may consider at a regularly scheduled monthly meeting. The Council shall post notice of a special meeting according to the Open Meeting Law at least 24 hours before the special meeting.
- C.** The Council may recess a regularly scheduled monthly or special meeting to a later date if, before recessing, the Chair gives notice of the date and time of the resumption of the meeting and posts a notice of resumption of the meeting according to the Open Meeting Law.
- D.** The Chair may temporarily adjourn or recess a regularly scheduled monthly or special meeting on the meeting day in an effort to ensure that a quorum of the Council is present.
- E.** For the purpose of responding to questions from the Council, a representative of an agency shall appear at a Council meeting at which the agency has been notified that its rule or five-year review report is on the agenda for consideration.

Historical Note

Adopted effective December 16, 1987 (Supp. 87-4). Section repealed, new Section adopted effective May 25,

1995 (Supp. 95-2). Amended effective April 3, 1996 (Supp. 96-2). Former Section R1-6-102 renumbered to R1-6-103; new Section R1-6-102 renumbered from R1-6-101 and amended by final rulemaking at 6 A.A.R. 8, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 17 A.A.R. 1410, effective September 5, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Amended by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3).

R1-6-103. Submitting a Petition for Council Rulemaking or Review

- A.** A person may petition the Council under A.R.S. § 41-1033(A) for a:
1. Rulemaking action relating to a rule promulgated by the Council, including making a new rule or amending or repealing an existing rule; or
 2. Review of an existing Council practice or substantive policy statement alleged to constitute a rule.
- B.** To act under A.R.S. § 41-1033(A) and this Section, a person shall submit to the Council office one electronic copy of a petition, in the form of a letter signed by the person submitting the petition, that includes the following information:
1. Name, mailing address, e-mail address, and telephone number of the person submitting the petition;
 2. Name of any person represented by the person submitting the petition; and
 3. If the petition is for rulemaking action:
 - a. A statement of the rulemaking action sought, including the *Arizona Administrative Code* citation of all existing rules, and the specific language of a new rule or rule amendment; and
 - b. Reasons for the rulemaking action, including an explanation of why an existing rule is inadequate, unreasonable, unduly burdensome, or unlawful;
 4. If the petition is for a review of an existing practice or substantive policy statement:
 - a. Subject matter of the existing practice or substantive policy statement, and
 - b. Reasons why the existing practice or substantive policy statement constitutes a rule.
- C.** The petition shall not exceed five double-spaced pages and shall be in a clear and legible typeface.
- D.** A person may submit supporting information with a petition, including:
1. Statistical data; and
 2. A list of other persons likely to be affected by the rulemaking action or the review, with an explanation of the likely effects.
- E.** The Council shall send a letter in response to the petition no later than 60 calendar days after the date the Council receives the petition.

Historical Note

Adopted effective December 16, 1987 (Supp. 87-4). Section repealed, new Section adopted effective May 25, 1995 (Supp. 95-2). Amended effective April 3, 1996 (Supp. 96-2). Former Section R1-6-103 renumbered to R1-6-104; new Section R1-6-103 renumbered from R1-6-102 and amended by final rulemaking at 6 A.A.R. 8, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 17 A.A.R. 1410, effective September 5, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Amended by final rulemaking at 23 A.A.R. 2265, effective

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tive August 9, 2017 (Supp. 17-3).

(Supp. 18-4).

R1-6-104. A.R.S. § 41-1008(E) Extension Requests

- A.** Under A.R.S. § 41-1008(E), an agency may file a written request for an extension of the two-year period during which a fee established or increased by exempt rulemaking is effective.
- B.** The agency shall file a request, in the form of a letter signed by the agency head, at least 40 days before expiration of the two-year period so that the request may be considered at a regularly scheduled Council meeting. The agency representative filing a request shall submit to the Council office one electronic copy of the request. The request shall contain:
1. The name, mailing address, e-mail address, and telephone number of the agency and the agency representative filing the request;
 2. The statutory authority under which the request is allowed;
 3. The length of the extension sought;
 4. The reasons why the two-year period should be extended; and
 5. Other supporting information, such as statistical data or a description of persons likely to be adversely affected if the request is denied, if applicable.
- C.** The request shall not exceed five double-spaced pages and shall be in a clear and legible typeface.
- D.** The Council shall schedule consideration of the request for a Council meeting as soon as practicable after receipt of the agency's request.
- E.** Within seven calendar days after the Council's decision on the request, the Chair shall provide written notification of the Council's decision to the affected agency head, including the reasons for and date of the decision.

Historical Note

Adopted effective December 16, 1987 (Supp. 87-4). Section repealed, new Section adopted effective May 25, 1995 (Supp. 95-2). Amended effective April 3, 1996 (Supp. 96-2). Former Section R1-6-104 renumbered to R1-6-108; new Section R1-6-104 renumbered from R1-6-103 and amended by final rulemaking at 6 A.A.R. 8, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 5538, effective December 2, 2003 (Supp. 03-4). Amended by final rulemaking at 17 A.A.R. 1410, effective September 5, 2011 (Supp. 11-3). R1-6-104 renumbered to R1-6-201; new Section R1-6-104 renumbered from R1-6-110 and amended by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Amended by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3).

R1-6-105. Public Comments

Within 10 business days of receipt, an agency shall submit to the Council office one electronic copy of any written public comment received by the agency.

Historical Note

Adopted effective December 16, 1987 (Supp. 87-4). Section repealed, new Section adopted effective May 25, 1995 (Supp. 95-2). Amended effective April 3, 1996 (Supp. 96-2). Former Section R1-6-105 renumbered to R1-6-109; new Section R1-6-105 adopted by final rulemaking at 6 A.A.R. 8, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 5538, effective December 2, 2003 (Supp. 03-4). Repealed by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). New Section made by final rulemaking at 24 A.A.R. 3095, effective October 9, 2018

R1-6-106. Repealed**Historical Note**

Adopted effective December 16, 1987 (Supp. 87-4). Section repealed, new Section adopted effective May 25, 1995 (Supp. 95-2). Former Section R1-6-106 renumbered to R1-6-110; new Section R1-6-106 adopted by final rulemaking at 6 A.A.R. 8, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 5538, effective December 2, 2003 (Supp. 03-4). Amended by final rulemaking at 17 A.A.R. 1410, effective September 5, 2011 (Supp. 11-3). Repealed by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3).

R1-6-107. Renumbered**Historical Note**

Adopted effective December 16, 1987 (Supp. 87-4). Repealed effective May 25, 1995 (Supp. 95-2). New Section adopted effective April 3, 1996 (Supp. 96-2). Former Section R1-6-107 renumbered to R1-6-111; new Section R1-6-107 adopted by final rulemaking at 6 A.A.R. 8, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 5538, effective December 2, 2003 (Supp. 03-4). Amended by final rulemaking at 17 A.A.R. 1410, effective September 5, 2011 (Supp. 11-3). Section R1-6-107 renumbered to R1-6-204 by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3).

R1-6-108. Renumbered**Historical Note**

Adopted effective December 16, 1987 (Supp. 87-4). Section repealed, new Section adopted effective May 25, 1995 (Supp. 95-2). Amended effective April 3, 1996 (Supp. 96-2). Former Section R1-6-108 renumbered to R1-6-112; new Section R1-6-108 renumbered from R1-6-104 and amended by final rulemaking at 6 A.A.R. 8, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 5538, effective December 2, 2003 (Supp. 03-4). Amended by final rulemaking at 17 A.A.R. 1410, effective September 5, 2011 (Supp. 11-3). Section R1-6-108 renumbered to R1-6-205 by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3).

R1-6-109. Renumbered**Historical Note**

Adopted effective December 16, 1987 (Supp. 87-4). Repealed effective May 25, 1995 (Supp. 95-2). New Section R1-6-109 renumbered from R1-6-105 and amended by final rulemaking at 6 A.A.R. 8, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 5538, effective December 2, 2003 (Supp. 03-4). Amended by final rulemaking at 17 A.A.R. 1410, effective September 5, 2011 (Supp. 11-3). Section R1-6-109 renumbered to R1-6-206 by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3).

R1-6-110. Renumbered**Historical Note**

New Section R1-6-110 renumbered from R1-6-106 and amended by final rulemaking at 6 A.A.R. 8, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 17 A.A.R. 1410, effective September 5,

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2011 (Supp. 11-3). Section R1-6-110 renumbered to R1-6-104 by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013; clerical error of not showing renumbering in Supp. 13-3 corrected in Supp. 17-3.

R1-6-111. Renumbered**Historical Note**

New Section R1-6-111 renumbered from R1-6-107 and amended by final rulemaking at 6 A.A.R. 8, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 5538, effective December 2, 2003 (Supp. 03-4). Former R1-6-111 renumbered to R1-6-112; new R1-6-111 renumbered from R1-1-112 and amended by final rulemaking at 17 A.A.R. 1410, effective September 5, 2011 (Supp. 11-3). Section R1-6-111 renumbered to R1-6-301 by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3).

R1-6-112. Renumbered**Historical Note**

New Section R1-6-112 renumbered from R1-6-108 and amended by final rulemaking at 6 A.A.R. 8, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 5538, effective December 2, 2003 (Supp. 03-4). Former R1-6-112 renumbered to R1-6-111; new R1-6-112 renumbered from R1-1-111 and amended by final rulemaking at 17 A.A.R. 1410, effective September 5, 2011 (Supp. 11-3). Section R1-6-112 renumbered to R1-6-203 by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3).

R1-6-113. Renumbered**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 8, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 5538, effective December 2, 2003 (Supp. 03-4). Amended by final rulemaking at 17 A.A.R. 1410, effective September 5, 2011 (Supp. 11-3). Section R1-6-113 renumbered to R1-6-302 by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3).

R1-6-114. Renumbered**Historical Note**

New Section made by final rulemaking at 17 A.A.R. 1410, effective September 5, 2011 (Supp. 11-3). Section R1-6-114 renumbered to R1-6-303 by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3).

R1-6-115. Renumbered**Historical Note**

New Section made by final rulemaking at 17 A.A.R. 1410, effective September 5, 2011 (Supp. 11-3). R1-6-115 renumbered to R1-6-304 by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3).

ARTICLE 2. RULEMAKING PROCEDURES**R1-6-201. Submitting a Regular Rule**

A. To submit a regular rule for consideration by the Council, an agency shall submit to the Council office one electronic copy of each rulemaking document that follows, prepared in the manner required by this subsection and the rules of the Office of the Secretary of State:

1. A request for approval, in the form of a cover letter signed by the agency head. The cover letter shall specify:
 - a. The close of record date;

- b. Whether the rulemaking activity relates to a five-year review report and, if applicable, the date the report was approved by the Council;
- c. Whether the rule establishes a new fee and, if it does, citation of the statute expressly authorizing the new fee;
- d. Whether the rule contains a fee increase;
- e. Whether an immediate effective date is requested for the rule under A.R.S. § 41-1032;
- f. A certification that the preamble discloses a reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rule;
- g. If one or more full-time employees are necessary to implement and enforce the rule, a certification that the preparer of the economic, small business, and consumer impact statement has notified the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule; and
- h. A list of all documents enclosed.

2. A Notice of Final Rulemaking, including the preamble, table of contents for the rulemaking, and text of each rule;
 3. An economic, small business, and consumer impact statement that contains the information required by A.R.S. § 41-1055;
 4. The written comments received by the agency concerning the proposed rule and a written record, transcript, or minutes of any testimony received if the agency maintains a written record, transcript, or minutes;
 5. Any analysis 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;
 6. Material incorporated by reference, if any;
 7. The general and specific statutes authorizing the rule, including relevant statutory definitions; and
 8. If a term is defined in the rule by referring to another rule or a statute other than the general and specific statutes authorizing the rule, the statute or other rule referred to in the definition.
- B. After a rule is placed on a Council agenda, Council staff shall review the rule for compliance with the requirements of A.R.S. §§ 41-1021 through 41-1024 and 41-1052 and this Chapter and may ask questions or suggest changes to the agency. If the agency revises any rulemaking document in response to a question or suggested change, the agency shall submit one electronic copy of the revised rulemaking document to the Council for review.
- C. After a rule is placed on a Council agenda, an agency may have the rule moved to the agenda of a later meeting by having the agency head send a written notice to the Chair that includes the date of the later meeting. If the agency makes a subsequent request that the rule be moved, the Chair may grant or deny the request at the Chair's discretion.
- D. Council staff shall notify the agency of any written comments received by the Council related to an agency's rulemaking.
- E. If it is necessary for a rule to be heard at more than one Council meeting, the agency shall submit any revised documents for the later meeting, consistent with this Section.
- F. An agency shall respond to any public comment received in accordance with A.R.S. § 41-1023. An agency shall provide a copy of its response to the commenter and the Council office.

Historical Note

Adopted effective May 25, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.A. 8, effective December 8,

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1999 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 5538, effective December 2, 2003 (Supp. 03-4). R1-6-201 renumbered to R1-6-401; new Section R1-6-201 renumbered from R1-6-104 and amended by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Amended by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 3095, effective October 9, 2018 (Supp. 18-4).

R1-6-202. Submitting an Expedited Rule

- A.** To submit an expedited rule for consideration by the Council, an agency shall submit to the Council office one electronic copy of each rulemaking document that follows, prepared in the manner required by this subsection and the rules of the Office of the Secretary of State:
1. A request for approval, in the form of a cover letter signed by the agency head. The cover letter shall specify:
 - a. The close of record date;
 - b. An explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A);
 - c. Whether the rulemaking activity relates to a five-year review report and, if applicable, the date the report was approved by the Council;
 - d. A certification that the preamble discloses a reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rule; and
 - e. A list of all documents enclosed.
 2. A Notice of Final Expedited Rulemaking, including the preamble, table of contents for the rulemaking, and text of each rule;
 3. The written comments, including objections that the rulemaking does not meet the criteria in A.R.S. § 41-1027(A), received by the agency or contained in a notice concerning the proposed rule;
 4. Any analysis 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;
 5. Material incorporated by reference, if any;
 6. For a statute declared unconstitutional, the court's decision;
 7. The general and specific statutes authorizing the rule, including relevant statutory definitions;
 8. If a term is defined in the rule by referring to another rule or a statute other than the general and specific statutes authorizing the rule, the statute or other rule referred to in the definition.
- B.** After a rule is placed on a Council agenda, Council staff shall review the rule for compliance with the requirements of A.R.S. §§ 41-1027, 41-1053, and this Chapter and may ask questions or suggest changes to the agency. If the agency revises any rulemaking document in response to a question or suggested change, the agency shall submit one electronic copy of the revised rulemaking document to the Council for review.
- C.** After a rule is placed on a Council agenda, an agency may have the rule moved to the agenda of a later meeting by having the agency head send a written notice to the Chair that includes the date of the later meeting. If the agency makes a subsequent request that the rule be moved, the Chair may grant or deny the request at the Chair's discretion.
- D.** An agency shall respond to any public comment received in accordance with A.R.S. § 41-1023. An agency shall provide a copy of the response to the commenter and an electronic copy to the Council office.

Historical Note

Adopted effective March 16, 1988 (Supp. 88-1). Repealed effective May 25, 1995 (Supp. 95-2). New Section made by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Amended by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 3095, effective October 9, 2018 (Supp. 18-4).

R1-6-203. Delivering a Notice of Proposed Expedited Rulemaking

- A.** Under A.R.S. § 41-1027(B), before filing a Notice of Proposed Expedited Rulemaking with the Office of the Secretary of State, an agency is required to submit an electronic copy of the Notice of Proposed Expedited Rulemaking to the Council.
- B.** Upon filing a Notice of Proposed Expedited Rulemaking with the Office of the Secretary of State, the agency shall:
1. Post the Notice of Proposed Expedited Rulemaking on its website as soon as practicable; and
 2. Notify Council staff of the filing as soon as practicable. Upon receipt of this notice, Council staff shall post the Notice of Proposed Expedited Rulemaking on the Council's website as soon as practicable.
- C.** For the purposes of submitting a final expedited rule for consideration by the Council in accordance with R1-6-202, if the agency and the Council post the Notice of Proposed Expedited Rulemaking on their respective websites on different dates, the Council shall consider the 30-day public comment window established in A.R.S. § 41-1027(C) to have opened on the date of the agency's posting.

Historical Note

Adopted effective March 16, 1988 (Supp. 88-1). Repealed effective May 25, 1995 (Supp. 95-2). New Section R1-6-203 renumbered from R1-6-112 and amended by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Amended by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3).

R1-6-204. Submitting an Approved Regular or Expedited Rule with Changes

- A.** If a final regular or expedited rule is approved by the Council with changes, an agency shall submit to the Council office within 14 calendar days after Council approval, unless a later date is arranged under subsection (B), one electronic copy of each rulemaking document that follows, prepared in the manner required by this Chapter and the rules of the Office of the Secretary of State:
1. A letter identifying each change made at the direction of the Council; and
 2. The following rulemaking documents:
 - a. A notice of Final Rulemaking or Notice of Final Expedited Rulemaking, as applicable; and
 - b. An economic, small business, and consumer impact statement, if applicable.
- B.** If an agency is unable to submit an approved regular rule or expedited rule to the Council office within the time specified in subsection (A), the agency shall contact the Council office in writing and arrange to submit the approved rule at a later date.

Historical Note

Adopted effective March 16, 1988 (Supp. 88-1). Repealed effective May 25, 1995 (Supp. 95-2). New Section R1-6-204 renumbered from R1-6-107 and amended by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Amended by final rulemaking at 23

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A.A.R. 2265, effective August 9, 2017 (Supp. 17-3).

R1-6-205. Filing a Regular or Expedited Rule Approved by the Council

- A.** If the Council approves a final regular or expedited rule as submitted, an agency shall file the final regular or expedited rule according to the rules of the Office of the Secretary of State.
- B.** If the Council approves a final regular or expedited rule subject to the agency making changes as directed by the Council, and the agency submits the rulemaking documents required by R1-6-204:
1. Council staff shall verify whether each change required by the Council was made.
 2. Once Council staff notifies the agency that the verification process is complete, the agency shall file the final regular or expedited rule according to the rules of the Office of the Secretary of State.
 3. If an agency submits a revised preamble; table of contents; rule; or economic, small business, and consumer impact statement that does not contain the exact words approved by the Council, Council staff shall notify the agency and require that the items be submitted as approved or schedule the matter for reconsideration by the Council.
- C.** Except as specified in subsection (B), an agency shall not make any change to a preamble; table of contents; rule; economic, small business, and consumer impact statement; or materials incorporated by reference after Council approval.

Historical Note

Adopted effective March 16, 1988 (Supp. 88-1).
 Repealed effective May 25, 1995 (Supp. 95-2). New Section R1-6-205 renumbered from R1-6-108 and amended by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Amended by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3).

R1-6-206. Returned Rules

The Council may vote to return a preamble; table of contents; rule; or economic, small business, and consumer impact statement under A.R.S. § 41-1052(C), after identifying the manner in which the returned portion does not meet the standards at A.R.S. § 41-1052(D) through (G).

1. The Council may schedule a date for resubmission in consultation with the agency representative.
2. An agency shall resubmit the notice, with a revised preamble; table of contents; rule; or economic, small business, and consumer impact statement to the Council, and attach to each resubmitted document a letter that:
 - a. Identifies all changes made in response to the Council's explanation for the returned portion,
 - b. Explains how the changes ensure that the document meets the standards at A.R.S. § 41-1052(D) through (G), and
 - c. If applicable, shows that the resubmitted rule is not substantially different from the proposed rule under the standards in A.R.S. § 41-1025.
3. In accordance with R1-6-102, an agency representative shall appear at the Council meeting at which the resubmitted notice, with a revised preamble, table of contents, or rule, or economic, small business, and consumer impact statement is to be considered for legal action.

Historical Note

Adopted effective March 16, 1988 (Supp. 88-1).
 Repealed effective May 25, 1995 (Supp. 95-2). New Section R1-6-206 renumbered from R1-6-109 and amended

by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Amended by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3).

R1-6-207. Repealed**Historical Note**

New Section R1-6-207 made by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3).
 Section repealed by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3).

ARTICLE 3. FIVE-YEAR REVIEW REPORTS**R1-6-301. Submitting a Five-year Review Report**

- A.** To submit a five-year review report for consideration by the Council, an agency shall submit to the Council office one electronic copy of the cover letter signed by the agency head and the five-year review report required by A.R.S. § 41-1056. The agency shall concisely analyze and provide the following information in the five-year review report in the following order for each rule:
1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules;
 2. Objective of the rule, including the purpose for the existence of the rule;
 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached;
 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;
 5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement;
 6. Clarity, conciseness, and understandability of the rule;
 7. Summary of any written criticism of the rule received by the agency within the five years immediately preceding the five-year review report. An agency shall respond to any written criticism and shall provide a copy of its response to 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;
 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;
 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report;
 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective;
 12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law;
 13. For a rule adopted after July 29, 2010, that requires issuance of a regulatory permit, license or agency authorization

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- tion, whether the rule complies with A.R.S. § 41-1037; and
14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.
- B.** In addition to the documents required in subsection (A), an agency shall submit one electronic copy of the cover letter. The cover letter shall provide the following information:
1. A person to contact for information regarding the report,
 2. Any rule that is not reviewed with the intention that the rule will expire under A.R.S. § 41-1056(J),
 3. Any rule that is not reviewed because the Council rescheduled the review of an article under A.R.S. § 41-1056(H), and
 4. The certification that the agency is in compliance with A.R.S. § 41-1091.
- C.** After a five-year review report is placed on a Council agenda, Council staff shall review the report for compliance with the requirements of A.R.S. § 41-1056 and this Chapter and may ask questions or suggest changes to the agency. If the agency revises any document in response to a question or suggested change, the agency shall submit one electronic copy of the revised document to the Council for review.
- D.** After a five-year review report is placed on a Council agenda, an agency may have the report moved to the agenda of a later meeting by having the agency head submit one electronic copy of a written notice to Council staff that includes the date of the later meeting. If the agency makes a subsequent request to have a five-year review report moved, the Chair may grant or deny the request at the Chair's discretion.

Historical Note

Adopted effective April 3, 1996 (Supp. 96-2). Former Section R1-6-301 renumbered to R1-6-302; new Section R1-6-301 adopted by final rulemaking at 6 A.A.R. 8, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 5538, effective December 2, 2003 (Supp. 03-4). R1-6-301 renumbered to R1-6-501; new R1-6-301 renumbered from R1-6-111 and amended by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Amended by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 3095, effective October 9, 2018 (Supp. 18-4).

R1-6-302. Rescheduling a Five-year Review Report

- A.** To request that a five-year review report be rescheduled under A.R.S. § 41-1056(H), an agency head shall submit one electronic copy of a letter to the Chair before the report is due that includes the following information:
1. The Title, Chapter, and Article of the rules for which rescheduling is sought;
 2. Whether the rules were initially made or substantially revised with an effective date or date of Council approval that is within two years before the due date of the report; and
 - a. If substantially revised:
 - i. A description of the revisions,
 - ii. Why the revisions are believed to be substantial,
 - iii. The date of Council approval of the rules, if applicable, and

- iv. The date on which the rules were published in the Register by the Office of the Secretary of State and the effective date of the rules; or
 - b. If initially made:
 - i. The date of Council approval of the rules, if applicable, and
 - ii. The date on which the rules were published in the Register by the Office of the Secretary of State and the effective date of the rules.
- B.** The Chair, in the Chair's discretion, may grant the rescheduling of a five-year review report for the rules within an Article that meet the requirements of this Section.
- C.** The Chair may, on the Chair's own initiative, reschedule a five-year review report if all rules within an Article meet the requirements of this Section.

Historical Note

New Section renumbered from R1-6-301 and amended by final rulemaking at 6 A.A.R. 8, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 5538, effective December 2, 2003 (Supp. 03-4). R1-6-302 renumbered to R1-6-502; new R1-6-302 renumbered from R1-6-113 and amended by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Amended by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 3095, effective October 9, 2018 (Supp. 18-4).

R1-6-303. Extension of the Due Date for a Five-year Review Report

- A.** An agency may obtain an extension of 120 days to submit a five-year review report by submitting one electronic copy of a notice of extension to the Council office before the due date of the report. The agency shall specify in the notice the reason for the extension.
- B.** An agency may, as an alternative, request a longer extension that is more than 120 days but does not exceed one year by submitting one electronic copy of a request to the Chair at least 40 days prior to the due date of the report. The agency shall specify the length of the requested extension and the reason for the requested extension.
1. A request for an extension that is more than 120 days but does not exceed one year shall be placed on the agenda of a Council meeting scheduled to occur prior to the due date of the report.
 2. The Council shall consider the reason for the requested extension and may grant a request for an extension that is more than 120 days but does not exceed one year.

Historical Note

New Section R1-6-303 renumbered from R1-6-114 and amended by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Amended by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 3095, effective October 9, 2018 (Supp. 18-4).

R1-6-304. Repealed**Historical Note**

New Section R1-6-304 renumbered from R1-6-115 and amended by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Section repealed by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3).

R1-6-305. Returned Five-year Review Reports

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The Council may vote to return, in whole or in part, a five-year review report after identifying the manner in which the five-year review report does not meet the standards in A.R.S. § 41-1056(A).

1. The Council, in consultation with the agency, shall schedule submission of a revised report.
2. An agency submitting a revised five-year review report shall attach to the revised report a letter that:
 - a. Identifies all changes made in response to the Council's explanation for return of the five-year review report, and
 - b. Explains how the changes ensure that the five-year review report meets the standards in A.R.S. § 41-1056(A).

Historical Note

New Section R1-6-305 made by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Amended by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3).

ARTICLE 4. APPEALS AND PETITIONS**R1-6-401. Applicability**

For purposes of this Article, the term "petition or appeal" refers to the following:

1. The A.R.S. § 41-1008(G) Petition for an alternative expiration date for fees established or increased by exempt rulemaking;
2. The A.R.S. § 41-1033(E) Appeal of an agency's decision on a petition requesting the making of a final rule or a review of an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule;
3. The A.R.S. § 41-1033(F) Petition to request a review of a final rule based on a person's belief that a final rule does not meet the requirements prescribed in A.R.S. § 41-1030;
4. The A.R.S. § 41-1033(G) Petition to request a review of an existing agency practice, substantive policy statement, final rule, or regulatory licensing requirement that is not specifically authorized by statute pursuant to Title 32 based on the person's belief that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern;
5. Pursuant to A.R.S. § 41-1033(H), the Council's receipt of information indicating that an existing agency practice or substantive policy statement may constitute a rule or that a final rule does not meet the requirements prescribed in A.R.S. § 41-1030 or that an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement does not meet the guidelines prescribed under A.R.S. § 41-1033(G);
6. The A.R.S. § 41-1052(B) Early Review Petition;
7. The A.R.S. § 41-1055(E) Petition for a determination that an agency is not required to file an economic, small business, and consumer impact statement;
8. The A.R.S. § 41-1056(M) Petition to require an agency that has an obsolete rule to consider including the rule in a five-year review report with a recommendation for repeal of the rule;
9. The A.R.S. § 41-1056(N) Petition to require an agency to consider including a recommendation for reducing a licensing time frame in a five-year review report;
10. The A.R.S. § 41-1056.01(D) Appeal related to the economic, small business, and consumer impact of a rule; and

11. The A.R.S. § 41-1081(F) Appeal of a delegation agreement.

Historical Note

Adopted effective April 3, 1996 (Supp. 96-2). Amended by final rulemaking at 6 A.A.R. 8, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 5538, effective December 2, 2003 (Supp. 03-4). Amended by final rulemaking at 17 A.A.R. 1410, effective September 5, 2011 (Supp. 11-3). R1-6-401 renumbered to R1-6-601; new Section R1-6-401 renumbered from R1-6-201 and amended by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Amended by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 3095, effective October 9, 2018 (Supp. 18-4).

R1-6-402. Filing of Petitions or Appeals; Agency Response; Council Decision

- A. A person filing a petition or appeal shall submit to the Council one electronic copy of the petition or appeal. The petition or appeal shall contain:
 1. The name, mailing address, e-mail address, and telephone number of the person filing the petition or appeal;
 2. The name of the person being represented by the person filing the petition or appeal, if applicable;
 3. The reasons for submitting the petition or appeal, including relevant facts, laws, and statutory authority;
 4. The reasons why the Council should grant the petition or appeal; and
 5. Any supporting documents relevant to the petition or appeal.
- B. The petition or appeal shall not exceed five double-spaced pages and shall be in a clear and legible typeface.
- C. If applicable, the Council shall notify the affected agency head of the petition or appeal by 5:00 p.m. of the business day following receipt of the petition or appeal. The agency may submit a response to the petition or appeal to the Council.
- D. When required by statutes, within 14 calendar days after a petition or appeal is received by the Council, the Chair shall send written notice to the person filing the petition or appeal and the affected agency head stating whether the required number of Council members have requested that a given petition or appeal be considered at a Council meeting.
- E. No later than seven calendar days after the Council renders a decision on a petition or appeal, the Chair shall send a letter to the affected agency head and the person filing the petition, advising them of the reasons for, and date of, the decision.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3).

R1-6-403. Additional Requirements for an Appeal of a Delegation Agreement

- A. Under A.R.S. § 41-1081(F), a person who has filed a written comment with a delegating agency in objection to all or part of a proposed delegation agreement may, within thirty days after the agency gives written notice of its decision pursuant to A.R.S. § 41-1081(E), appeal an agency's decision to enter into a delegation agreement.
- B. In addition to the information required by R1-6-402(A), an appeal of a delegation agreement shall contain:
 1. The name of each agency and each political subdivision entering into the delegation agreement;
 2. The subject matter of the delegation agreement;

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3. Copies of all written comments made by the appellant that object to the delegation agreement and have been filed with the delegating agency; and
 4. The reasons why the appellant is objecting to the delegation agreement and filing the appeal.
- C.** The Council shall notify the delegating agency head of an appeal of a delegation agreement by 5:00 p.m. of the business day following receipt of the appeal.
- D.** The delegating agency head shall submit electronic copies of the following information and documentation by 5:00 p.m. on the third business day following notification by the Council of the appeal:
1. A memorandum that includes:
 - a. The date the delegating agency gave written notice of the decision to enter into the delegation agreement;
 - b. The dates of all public proceedings regarding the delegation agreement; and
 - c. The name, mailing address, e-mail address, and telephone number of the contact persons for each agency and each political subdivision involved in the agreement.
 2. A copy of the delegation agreement; and
 3. The agency's written summary, prepared as required by A.R.S. § 41-1081(E), responding to all oral or written comments received by the agency regarding the delegation agreement.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3).

R1-6-404. Additional Requirements for an Appeal Related to the Economic, Small Business, and Consumer Impact of a Rule

- A.** Under A.R.S. § 41-1056.01(D), a person who is or may be affected by an agency's final decision on a petition filed pursuant to A.R.S. § 41-1056.01(A) may, within thirty days of publication of the decision, file an appeal.
- B.** In addition to the information required by R1-6-402(A), an appeal of an agency's final decision on a petition filed pursuant to A.R.S. § 41-1056.01(A) shall contain a statement indicating how the person filing the appeal is or may be affected by the agency's decision.
- C.** The Council shall notify the affected agency head of an appeal of an agency's final decision on a petition filed pursuant to A.R.S. § 41-1056.01(A) by 5:00 p.m. of the business day following receipt of the appeal.
- D.** The affected agency head shall submit electronic copies of the following information and documentation by 5:00 p.m. on the third business day following notification by the Council of the appeal:
 1. A memorandum that includes:
 - a. The date of publication of the agency's final decision under A.R.S. § 41-1056.01(C);
 - b. The name, mailing address, e-mail address, and telephone number of the agency's contact person; and
 - c. Reasons why the agency believes that:
 - i. The actual economic, small business, and consumer impact did not significantly exceed the estimated economic, small business, and consumer impact;
 - ii. The actual economic, small business, and consumer impact was estimated on approval of the rule and the impact does not impose a significant burden on persons subject to the rule; or

- iii. The agency selected the alternative that 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.
2. A copy of final judgments, if any, issued by a court of competent jurisdiction that are based on whether the contents of the rule's economic, small business, and consumer impact statement were insufficient or inaccurate;
3. A copy of the rule being appealed; and
4. A copy of the agency's written summary of comments received, the agency's response to those comments, and the agency's final decision on whether to initiate rulemaking, prepared and published as required by A.R.S. § 41-1056.01(C).

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3).

ARTICLE 5. REPEALED**R1-6-501. Repealed****Historical Note**

New Section made by final rulemaking at 17 A.A.R. 1410, effective September 5, 2011 (Supp. 11-3). R1-6-501 renumbered to R1-6-701; new Section R1-6-501 renumbered from R1-6-301 and amended by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Section repealed by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3).

R1-6-502. Repealed**Historical Note**

New Section R1-6-502 renumbered from R1-6-302 and amended by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Section repealed by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3).

ARTICLE 6. REPEALED**R1-6-601. Repealed****Historical Note**

New Section R1-6-601 renumbered from R1-6-401 and amended by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Section repealed by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3).

ARTICLE 7. REPEALED**R1-6-701. Repealed****Historical Note**

New Section R1-6-701 renumbered from R1-6-501 and amended by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Section repealed by final rulemaking at 23 A.A.R. 2265, effective August 9, 2017 (Supp. 17-3).

ARTICLE 8. REPEALED**R1-6-801. Repealed****Historical Note**

New Section R1-6-801 made by final rulemaking at 19 A.A.R. 2731, effective October 5, 2013 (Supp. 13-3). Section repealed by final rulemaking at 23 A.A.R. 2265,

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effective August 9, 2017 (Supp. 17-3).

A.A.R. 2731, effective October 5, 2013 (Supp. 13-3).
Section repealed by final rulemaking at 23 A.A.R. 2265,
effective August 9, 2017 (Supp. 17-3).

R1-6-802. Repealed

Historical Note

New Section R1-6-802 made by final rulemaking at 19

41-1001.01. Regulatory bill of rights; small businesses

A. To ensure fair and open regulation by state agencies, a person:

1. Is eligible for reimbursement of fees and other expenses if the person prevails by adjudication on the merits against an agency in a court proceeding regarding an agency decision as provided in section 12-348.
2. Is eligible for reimbursement of the person's costs and fees if the person prevails against any agency in an administrative hearing as provided in section 41-1007.
3. Is entitled to have an agency not charge the person a fee unless the fee for the specific activity is expressly authorized as provided in section 41-1008.
4. Is entitled to receive the information and notice regarding inspections and audits prescribed in section 41-1009.
5. May review the full text or summary of all rulemaking activity, the summary of substantive policy statements and the full text of executive orders in the register as provided in article 2 of this chapter.
6. May participate in the rulemaking process as provided in articles 3, 4, 4.1 and 5 of this chapter, including:
 - (a) Providing written comments or testimony on proposed rules to an agency as provided in section 41-1023 and having the agency adequately address those comments as provided in section 41-1052, subsection D, including comments or testimony concerning the information contained in the economic, small business and consumer impact statement.
 - (b) Filing an early review petition with the governor's regulatory review council as provided in article 5 of this chapter.
 - (c) Providing written comments or testimony on rules to the governor's regulatory review council during the mandatory sixty-day comment period as provided in article 5 of this chapter.
7. Is entitled to have an agency not base a licensing decision in whole or in part on licensing conditions or requirements that are not specifically authorized by statute, rule or state tribal gaming compact as provided in section 41-1030, subsection B.
8. Is entitled to have an agency not make a rule under a specific grant of rulemaking authority that exceeds the subject matter areas listed in the specific statute or not make a rule under a general grant of rulemaking authority to supplement a more specific grant of rulemaking authority as provided in section 41-1030, subsection C.
9. May allege that an existing agency practice or substantive policy statement constitutes a rule and have that agency practice or substantive policy statement declared void because the practice or substantive policy statement constitutes a rule as provided in section 41-1033.
10. May file a complaint with the administrative rules oversight committee concerning:
 - (a) A rule's, practice's or substantive policy statement's lack of conformity with statute or legislative intent as provided in section 41-1047.
 - (b) An existing statute, rule, practice alleged to constitute a rule or substantive policy statement that is alleged to be duplicative or onerous as provided in section 41-1048.
11. May have the person's administrative hearing on contested cases and appealable agency actions heard by an independent administrative law judge as provided in articles 6 and 10 of this chapter.

12. May have administrative hearings governed by uniform administrative appeal procedures as provided in articles 6 and 10 of this chapter and may appeal a final administrative decision by filing a notice of appeal pursuant to title 12, chapter 7, article 6.
 13. May have an agency approve or deny the person's license application within a predetermined period of time as provided in article 7.1 of this chapter.
 14. Is entitled to receive written notice from an agency on denial of a license application:
 - (a) That justifies the denial with references to the statutes or rules on which the denial is based as provided in section 41-1076.
 - (b) That explains the applicant's right to appeal the denial as provided in section 41-1076.
 15. Is entitled to receive information regarding the license application process before or at the time the person obtains an application for a license as provided in sections 41-1001.02 and 41-1079.
 16. May receive public notice and participate in the adoption or amendment of agreements to delegate agency functions, powers or duties to political subdivisions as provided in section 41-1026.01 and article 8 of this chapter.
 17. May inspect all rules and substantive policy statements of an agency, including a directory of documents, in the office of the agency director as provided in section 41-1091.
 18. May file a complaint with the office of the ombudsman-citizens aide to investigate administrative acts of agencies as provided in chapter 8, article 5 of this title.
 19. Unless specifically authorized by statute, may expect state agencies to avoid duplication of other laws that do not enhance regulatory clarity and to avoid dual permitting to the extent practicable as prescribed in section 41-1002.
 20. May have the person's administrative hearing on contested cases pursuant to title 23, chapter 2 or 4 heard by an independent administrative law judge as prescribed by title 23, chapter 2 or 4.
 21. Pursuant to section 41-1009, subsection E, may correct deficiencies identified during an inspection unless otherwise provided by law.
- B. The enumeration of the rights listed in subsection A of this section does not grant any additional rights that are not prescribed in the sections referenced in subsection A of this section.
- C. Each state agency that conducts audits, inspections or other regulatory enforcement actions pursuant to section 41-1009 shall create and clearly post on the agency's website a small business bill of rights. The agency shall create the small business bill of rights by selecting the applicable rights prescribed in this section and section 41-1009 and any other agency-specific statutes and rules. The agency shall provide a written document of the small business bill of rights to the authorized on-site representative of the regulated small business. In addition to the rights listed in this section and section 41-1009, the agency notice of the small business bill of rights shall include the process by which a small business may file a complaint with the agency employees who are designated to assist members of the public or regulated community pursuant to section 41-1006. The notice must provide the contact information of the agency's designated employees. The agency notice must also state that if the regulated person has already made a reasonable effort with the agency to resolve the problem and still has not been successful, the regulated person may contact the office of ombudsman-citizens aide.

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

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

41-1027. Expedited rulemaking

A. An agency may conduct expedited rulemaking pursuant to this section if the rulemaking does not increase the cost of regulatory compliance, increase a fee or reduce procedural rights of persons regulated and does one or more of the following:

1. Amends or repeals rules made obsolete by repeal or supersession of an agency's statutory authority.
2. Amends or repeals rules for which the statute on which the rule is authorized has been declared unconstitutional by a court with jurisdiction, there is a final judgment and no statute has been enacted to replace the unconstitutional statute.
3. Corrects typographical errors, makes address or name changes or clarifies language of a rule without changing its effect.
4. Adopts or incorporates by reference without material change federal statutes or regulations pursuant to section 41-1028, statutes of this state or rules of other agencies of this state.
5. Reduces or consolidates steps, procedures or processes in the rules.
6. Amends or repeals rules that are outdated, redundant or otherwise no longer necessary for the operation of state government.
7. Implements, without material change, a course of action that is proposed in a five-year review report approved by the council pursuant to section 41-1056 within one hundred eighty days of the date that the agency files the proposed expedited rulemaking with the secretary of state.
8. Adopts, without material change, rules of another agency of this state that has been or imminently will be consolidated into the agency.

B. An agency shall deliver a notice of proposed expedited rulemaking to the governor, the president of the senate, the speaker of the house of representatives, the committee and the council. The notice shall contain the name, address and telephone number of the agency contact person and the exact wording of the proposed expedited rulemaking and indicate how the proposed expedited rulemaking achieves the purpose prescribed in subsection A of this section.

C. On delivery of the notice required in subsection B of this section, the agency shall file the notice of proposed expedited rulemaking with the secretary of state for publication in the next state administrative register. The agency and the council shall post the notice of proposed expedited rulemaking on their respective websites and shall allow any person to provide written comment for at least thirty days after posting the notice. The agency shall adequately respond in writing to the comments on the proposed expedited rulemaking.

D. An agency may not submit a final expedited rule to the council that is substantially different from the proposed rule contained in the notice of proposed expedited rulemaking. However, an agency may terminate an expedited rulemaking proceeding and commence a new rulemaking proceeding for the purpose of making a substantially different rule. An agency shall use the criteria prescribed in section 41-1025, subsection B for determining whether a final expedited rule is substantially different from the proposed expedited rule.

E. After adequately addressing, in writing, any written objections, an agency shall file a request for approval with the council. The request shall contain the notice of final expedited rulemaking and the agency's responses to any written comments. The council may require a representative of an agency whose expedited rulemaking is under examination to attend a council meeting and answer questions. The council may communicate to the agency its comments on the expedited rulemaking within the scope of subsection A of this section and require the agency to respond to its comments or testimony in writing. A person may submit written comments to the council that are within the scope of subsection A of this section.

F. Before an agency files a notice of final expedited rulemaking with the secretary of state, the council shall approve any expedited rulemaking. The council shall not approve the rule unless:

1. The rule satisfies the criteria for expedited rulemaking pursuant to subsection A of this section.
2. The rule is clear, concise and understandable.
3. The rule is not illegal, inconsistent with legislative intent or beyond the agency's statutory authority.
4. The agency, in writing, adequately addressed the comments on the proposed rule and any supplementary proposal.
5. If applicable, the permitting requirements comply with section 41-1037.
6. The rule is not a substantial change, considered as a whole, from the proposed rule and any supplementary proposal.
7. The rule imposes the least burden and costs to persons regulated by the rule.

G. On receipt of council approval, the agency shall file a notice of final expedited rulemaking and the council's certificate of approval with the secretary of state.

H. The expedited rulemaking becomes effective immediately on the filing of the notice of final expedited rulemaking.

41-1033. Petition for a rule or review of an agency practice, substantive policy statement, final rule or unduly burdensome licensing requirement; notice

A. Any person may petition an agency to do either of the following:

1. Make, amend or repeal a final rule.
2. Review an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule.

B. An agency shall prescribe the form of the petition and the procedures for the petition's submission, consideration and disposition. The person shall state on the petition the rulemaking to review or the agency practice or substantive policy statement to consider making into a rule.

C. Not later than sixty days after submission of the petition, the agency shall either:

1. Reject the petition and state its reasons in writing for denial to the petitioner.
2. Initiate rulemaking proceedings in accordance with this chapter.
3. If otherwise lawful, make a rule.

D. The agency's response to the petition is open to public inspection.

E. If an agency rejects a petition pursuant to subsection C of this section, the petitioner has thirty days to appeal to the council to review whether the existing agency practice or substantive policy statement constitutes a rule. The council chairperson shall place this appeal on the agenda of the council's next meeting if at least three council members make such a request of the council chairperson within two weeks after the filing of the appeal.

F. A person may petition the council to request a review of a final rule based on the person's belief that the final rule does not meet the requirements prescribed in section 41-1030.

G. A person may petition the council to request a review of an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement that is not specifically authorized by statute pursuant to title 32 based on the person's belief that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern. If the council determines that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement applies to a profession for which the average wage in that profession in this state does not exceed two hundred percent of the federal poverty guidelines for a family of four, the council shall review the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement as prescribed by this section. This subsection does not apply to an individual or institution that is subject to title 36, chapter 4, article 10 or chapter 20.

H. If the council receives information that indicates an existing agency practice or substantive policy statement may constitute a rule, that a final rule does not meet the requirements prescribed in section 41-1030 or that an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement does not meet the guidelines prescribed in subsection G of this section and at least four council members request of the chairperson that the matter be heard in a public meeting:

1. Within ninety days after receipt of the fourth council member's request, the council shall determine whether the agency practice or substantive policy statement constitutes a rule, whether the final rule meets the requirements prescribed in section 41-1030 or whether an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement meets the guidelines prescribed in subsection G of this section.

2. Within ten days after receipt of the fourth council member's request, the council shall notify the agency that the matter has been or will be placed on an agenda.
 3. Not later than thirty days after receiving notice from the council, the agency shall submit a statement to the council that addresses whether the existing agency practice, substantive policy statement constitutes a rule or whether the final rule meets the requirements prescribed in section 41-1030 or whether an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement meets the guidelines prescribed in subsection G of this section.
- I. For the purposes of subsection H of this section, the council meeting shall not be scheduled until the expiration of the agency response period prescribed in subsection H, paragraph 3 of this section.
- J. An agency practice, substantive policy statement, final rule or regulatory licensing requirement considered by the council pursuant to this section shall remain in effect while under consideration of the council. If the council ultimately decides the agency practice or substantive policy statement constitutes a rule or that the final rule does not meet the requirements prescribed in section 41-1030, the practice, policy statement or rule shall be considered void. If the council determines that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern and meets the requirements of subsection G of this section, the council may modify, revise or declare void any such existing agency practice, substantive policy statement, final rule or regulatory licensing requirement.
- K. A council decision pursuant to this section shall include findings of fact and conclusions of law, separately stated. Conclusions of law shall specifically address the agency's authority to act consistent with section 41-1030.
- L. A decision by the agency pursuant to this section is not subject to judicial review, except that, in addition to the procedure prescribed in this section or in lieu of the procedure prescribed in this section, a person may seek declaratory relief pursuant to section 41-1034.
- M. Each agency and the secretary of state shall post prominently on their websites notice of an individual's right to petition the council for review pursuant to this section.

41-1051. Governor's regulatory review council; membership; terms; compensation; powers

A. The governor's regulatory review council is established consisting of six members who are appointed by the governor pursuant to section 38-211 and who are subject to sections 38-291 and 38-295 and the director of the department of administration or the assistant director of the department of administration who is responsible for administering the council. The director or assistant director is an ex officio member and chairperson of the council. The council shall elect a vice-chairperson to serve as chairperson in the chairperson's absence. The governor shall appoint at least one member who represents the public interest, at least one member who represents the business community, at least one member who is a small business owner, one member from a list of three persons who are not legislators submitted by the president of the senate and one member from a list of three persons who are not legislators submitted by the speaker of the house of representatives. At least one member of the council shall be an attorney licensed to practice law in this state. The governor shall appoint the members of the council for staggered terms of three years. A vacancy occurring during the term of office of any member shall be filled by appointment by the governor for the unexpired portion of the term in the same manner as provided in this section.

B. The council shall meet at least once a month at a time and place set by the chairperson and at other times and places as the chairperson deems necessary.

C. Members of the council are eligible to receive compensation in an amount of two hundred dollars for each day on which the council meets and reimbursement of expenses pursuant to title 38, chapter 4, article 2.

D. The chairperson, subject to chapter 4, article 4 and, as applicable, articles 5 and 6 of this title, shall employ, determine the conditions of employment of and specify the duties of administrative, secretarial and clerical employees as the chairperson deems necessary.

E. The council may make rules pursuant to this chapter to carry out the purposes of this chapter.

F. The council shall make a list of agency rules approved or returned pursuant to sections 41-1027 and 41-1052 and section 41-1056, subsection C for the previous twelve-month period available to the public on request and on the council's website.

41-1052. Council review and approval

A. Before filing a final rule subject to this section with the secretary of state, an agency shall prepare, transmit to the council and the committee and obtain the council's approval of the rule and its preamble and economic, small business and consumer impact statement that meets the requirements of section 41-1055. The office of economic opportunity shall prepare the economic, small business and consumer impact statement.

B. The council shall accept an early review petition of a proposed rule, in whole or in part, if the proposed rule is alleged to violate any of the criteria prescribed in subsection D of this section and if the early petition is filed by a person who would be adversely impacted by the proposed rule. The council may determine whether the proposed rule, in whole or in part, violates any of the criteria prescribed in subsection D of this section.

C. Within one hundred twenty days after receipt of the rule, preamble and economic, small business and consumer impact statement, the council shall review and approve or return, in whole or in part, the rule, preamble or economic, small business and consumer impact statement. An agency may resubmit a rule, preamble or economic, small business and consumer impact statement if the council returns the rule, economic, small business and consumer impact statement or preamble, in whole or in part, to the agency.

D. The council shall not approve the rule unless:

1. The economic, small business and consumer impact statement contains information from the state, data and analysis prescribed by this article.
2. The economic, small business and consumer impact statement is generally accurate.
3. The probable benefits of the rule outweigh within this state the probable costs of the rule and the agency has demonstrated that it has selected the alternative that 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.
4. The rule is written in a manner that is clear, concise and understandable to the general public.
5. The rule is not illegal, inconsistent with legislative intent or beyond the agency's statutory authority and meets the requirements prescribed in section 41-1030.
6. The agency adequately addressed, in writing, the comments on the proposed rule and any supplemental proposals.
7. The rule is not a substantial change, considered as a whole, from the proposed rule and any supplemental notices.
8. The preamble discloses a reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rule.
9. The rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.
10. If a rule requires a permit, the permitting requirement complies with section 41-1037.

E. The council shall verify that a rule with new fees does not violate section 41-1008. The council shall not approve a rule that contains a fee increase unless two-thirds of the voting quorum present votes to approve the rule.

F. The council shall verify that a rule with an immediate effective date complies with section 41-1032. The council shall not approve a rule with an immediate effective date unless two-thirds of the voting quorum present

votes to approve the rule.

G. If the rule relies on scientific principles or methods, including a study disclosed pursuant to subsection D, paragraph 8 of this section, and a person submits an analysis to the council questioning whether the rule is based on valid scientific or reliable principles or methods, the council shall not approve the rule unless the council determines that the rule is based on valid scientific or reliable principles or methods that are specific and not of a general nature. In making a determination of reliability or validity, the council shall consider the following factors as applicable to the rule:

1. The authors of the study, principle or method have subject matter knowledge, skill, experience, training and expertise.
2. The study, principle or method is based on sufficient facts or data.
3. The study is the product of reliable principles and methods.
4. The study and its conclusions, principles or methods have been tested or subjected to peer reviewed publications.
5. The known or potential error rate of the study, principle or method has been identified along with its basis.
6. The methodology and approach of the study, principle or method are generally accepted in the scientific community.

H. The council may require a representative of an agency whose rule is under examination to attend a council meeting and answer questions. The council may also communicate to the agency its comments on any rule, preamble or economic, small business and consumer impact statement and require the agency to respond to its comments in writing.

I. At any time during the thirty days immediately following receipt of the rule, a person may submit written comments to the council that are within the scope of subsection D, E, F or G of this section. The council may permit testimony at a council meeting within the scope of subsection D, E, F or G of this section.

J. If the agency makes a good faith effort to comply with the requirements prescribed in this article and has explained in writing the methodology used to produce the economic, small business and consumer impact statement, the rule may not be invalidated after it is finalized on the ground that the contents of the economic, small business and consumer impact statement are insufficient or inaccurate or on the ground that the council erroneously approved the rule, except as provided by section 41-1056.01.

K. The absence of comments pursuant to subsection D, E, F or G of this section or article 4.1 of this chapter does not prevent the council from acting pursuant to this section.

L. The council shall review and approve or reject a notice of proposed expedited rulemaking pursuant to section 41-1027.

41-1053. Council review of expedited rules

- A. After receipt of the expedited rule package from the agency, the council shall place the expedited rule on its consent agenda for approval unless a member of the council or the committee requests a hearing.
- B. If a hearing is requested, the council shall act on the expedited rule pursuant to section 41-1052 or shall remand the expedited rule to the agency for initiation of a rule making pursuant to sections 41-1022, 41-1023 and 41-1024.
- C. The council, at any time a proposed expedited rule is pending, may disapprove the expedited rule making and order initiation of a regular rule making pursuant to sections 41-1022, 41-1023 and 41-1024.

41-1055. Economic, small business and consumer impact statement

A. The economic, small business and consumer impact summary in the preamble shall include:

1. An identification of the proposed rule making, including all of the following:

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

(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.

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

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

3. If the economic, small business and consumer impact summary accompanies a proposed rule or a proposed expedited rule, the name and address of agency employees who may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement.

B. The economic, small business and consumer impact statement shall include:

1. An identification of the proposed rule making.

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

3. A cost benefit analysis of the following:

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

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

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

4. A general description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rule making.

5. A statement of the probable impact of the proposed rule making on small businesses. The statement shall include:

(a) An identification of the small businesses subject to the proposed rule making.

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

(c) 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.

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

6. A statement of the probable effect on state revenues.

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

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

C. If for any reason adequate data are not reasonably available to comply with the requirements of subsection B of this section, the agency shall explain the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize the probable impacts in qualitative terms. The absence of adequate data, if explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic, small business and consumer impact statement.

D. An agency is not required to prepare an economic, small business and consumer impact statement pursuant to this chapter and is not required to file a petition pursuant to subsection E of this section for the following rule makings:

1. Initial making, but not renewal, of an emergency rule pursuant to section 41-1026.

2. Proposed expedited rule making or final expedited rule making.

E. Before filing a proposed rule with the secretary of state, an agency may petition the council for a determination that the agency is not required to file an economic, small business and consumer impact statement. The petition shall demonstrate both of the following:

1. The rule making decreases monitoring, record keeping, costs or reporting burdens on agencies, political subdivisions, businesses or persons.

2. The rule making does not increase monitoring, record keeping, costs or reporting burdens on persons subject to the proposed rule making.

F. The council shall place a petition under subsection E of this section on the agenda of its next meeting if at least four council members make such a request of the council chairperson within two weeks after the filing of the petition.

G. The preamble for a rule making that is exempt pursuant to subsection D or E of this section shall state that the rule making is exempt from the requirements to prepare and file an economic, small business and consumer impact statement.

H. The cost-benefit analysis required by subsection B of this section shall calculate only the costs and benefits that occur in this state.

I. If a person submits an analysis 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, the agency shall consider the analysis.

41-1056. Review by agency

A. At least once every five years, each agency shall review all of its rules, including rules made pursuant to an exemption from this chapter or any part of this chapter, to determine whether any rule should be amended or repealed. The agency shall prepare and obtain council approval of a written report summarizing its findings, its supporting reasons and any proposed course of action. The report shall contain a certification that the agency is in compliance with section 41-1091. For each rule, the report shall include a concise analysis of all of the following:

1. The rule's effectiveness in achieving its objectives, including a summary of any available data supporting the conclusions reached.
2. Written criticisms of the rule received during the previous five years, including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.
3. Authorization of the rule by existing statutes.
4. Whether the rule is consistent with statutes or other rules made by the agency and current agency enforcement policy.
5. The clarity, conciseness and understandability of the rule.
6. The estimated economic, small business and consumer impact of the rules as compared to the economic, small business and consumer impact statement prepared on the last making of the rules.
7. 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.
8. If applicable, that the agency completed the previous five-year review process.
9. 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.
10. A determination that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.
11. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license or agency authorization, whether the rule complies with section 41-1037.

B. An agency may also include as part of the report the text of a proposed expedited rule pursuant to section 41-1027.

C. The council shall schedule the periodic review of each agency's rules and shall approve or return, in whole or in part, the agency's report on its review. The council may grant an agency an extension from filing an agency's report. If the council returns an agency's report, in whole or in part, the council shall inform the agency of the manner in which its report is inadequate and, in consultation with the agency, shall schedule submission of a revised report. The council shall not approve a report unless the report complies with subsection A of this section.

D. The council may review rules outside of the five-year review process if requested by at least four council members.

E. The council may require the agency to propose an amendment or repeal of the rule by a date no earlier than six months after the date of the meeting at which the council considers the agency's report on its rule if the

council determines the agency's analysis under subsection A of this section demonstrates that the rule is materially flawed, including that the rule:

1. Is not authorized by statute.
2. Is inconsistent with other statutes, rules or agency enforcement policies and the inconsistency results in a significant burden on the regulated public.
3. Imposes probable costs, including costs to the regulated person, that significantly exceed the probable benefits of the rule within this state.
4. Is more stringent than a corresponding federal law and there is no statutory authority to exceed the requirements of federal law.
5. Is not clear, concise and understandable.
6. Does not use general permits if required under section 41-1037.
7. Does not impose the least burden to persons regulated by the rule as necessary to achieve the underlying regulatory objective of the rule.
8. Does not rely on valid scientific or reliable principles and methods, including a study, if the rule relies on scientific principles or methods, and a person has submitted an analysis under subsection A of this section questioning whether the rule is based on valid scientific or reliable principles or methods. In making a determination of validity or reliability, the council shall consider the factors listed in section 41-1052, subsection G.

F. An agency may request an extension of no longer than one year from the date specified by the council pursuant to subsection E of this section by sending a written request to the council that:

1. Identifies the reason for the extension request.
2. Demonstrates good cause for the extension.

G. The agency shall notify the council of an amendment or repeal of a rule for which the council has set an expiration date under subsection E of this section. If the agency does not amend or repeal the rule by the date specified by the council under subsection E of this section or the extended date under subsection F of this section, the rule automatically expires. The council shall file a notice of rule expiration with the secretary of state and notify the agency of the expiration of the rule.

H. The council may reschedule a report or portion of a report for any rule that is scheduled for review and that was initially made or substantially revised within two years before the due date of the report as scheduled by the council.

I. If an agency finds that it cannot provide the written report to the council by the date it is due, the agency may file an extension with the council before the due date indicating the reason for the extension. The timely filing for an extension permits the agency to submit its report on or before the date prescribed by the council.

J. If an agency fails to submit its report, including a revised report, pursuant to subsection A or C of this section, or file an extension before the due date of the report or if it files an extension and does not submit its report within the extension period, the rules scheduled for review expire and the council shall:

1. Cause a notice to be published in the next register that states the rules have expired and are no longer enforceable.
2. Notify the secretary of state that the rules have expired and that the rules are to be removed from the code.

3. Notify the agency that the rules have expired and are no longer enforceable.

K. If a rule expires as provided in subsection J of this section and the agency wishes to reestablish the rule, the agency shall comply with the requirements of this chapter.

L. Not less than ninety days before the due date of a report, the council shall send a written notice to the head of the agency whose report is due. The notice shall list the rules to be reviewed and the date the report is due.

M. A person who is regulated or could be regulated by an obsolete rule may petition the council to require an agency that has the obsolete rule to consider including the rule in the five-year report with a recommendation for repeal of the rule.

N. A person who is required to obtain or could be required to obtain a license may petition the council to require an agency to consider including a recommendation for reducing a licensing time frame in the five-year report.

STATE BOARD OF NURSING (F19-0601)
Title 4, Chapter 19, Article 1



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 4, 2019

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

FROM: Council Staff

DATE: May 8, 2019

SUBJECT: **Arizona State Board of Nursing**
Title 4, Chapter 19, Article 1, Definitions and Time-Frames

The Five-Year-Review Report (5YRR) from the Board of Nursing relates to rules in Title 4, Chapter 19, Article 1 regarding time-frames and definitions. The rules cover the following:

- **Article 1: Definitions and Time-Frames**

In the previous 5YRR for these rules, the Board proposed an amendment to the definition of "family." The amendment was finalized in 2014. There were no other changes proposed in the previous 5YRR.

Proposed Action

The Board's Notice of Proposed Rulemaking was published in the Secretary of State's Register on December 28, 2018, including an amendment to R4-191-101 to update the definition of "dispense." An open public hearing was held on February 4, 2019, no written or oral comments were received on this rule. The Notice of Finalrulemaking was submitted to GRRC on February 19, 2019 and approved as submitted by the Council on April 4, 2019. The Board proposes to take no further action on these rules.

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

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

2. Summary of the agency’s economic impact comparison and identification of stakeholders:

The Board of Nursing establishes eligibility standards for licensure. Stakeholders include the Board, Advanced Practice Registered Nurses (APRNs), Registered Nurses (RNs), Licensed Practical Nurses (LPNs), and Licensed Nursing Assistants (LNAs). The Board also maintains a registry of Certified Nursing Assistants (CNAs) that meet federal requirements. There have been no changes to licensing fees since the last 5 Year Review Report and the economic impacts have not changed. As seen below, although the total number of applicants has risen, the total refunds decreased significantly compared with the Fiscal Year (FY) 2014 amounts. The total FY Board-issued license figures and refund amounts are listed below.

Total Number of Licenses

Issued per year	FY2014	FY2015	FY2016	FY2017	FY2018
RN/LPN Licenses Issued*	23,311	24,195	23,682	25,393	26,799
CNA/LNA Certificates Issued*	14,341	13,088	13,270	14,765	15,144

*Exams, Endorsement and Renewals

Refunds issued by the Board to applicants from FY2014 to FY2018:

FY	Total Refunds
2014	\$16,255
2015	\$13,040
2016	\$15,350
2017	\$8,450
2018	\$9,320

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

The Board believes that all Article 1 rules impose the least burden and costs to persons regulated by the rules, including compliance costs necessary to achieve the underlying regulatory objective.

4. Has the agency received any written criticisms of the rules over the last five years?

No. The Board has not received any written criticisms of the rules over the last five years.

5. Has the agency analyzed the rules’ clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?

Yes. The Board indicates that the rules reviewed are clear, concise, understandable, effective and consistent with other rules and statutes.

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

Yes. The Board indicates the rules are enforced as written.

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

Not applicable. The rules are based on state law and there is no corresponding federal law.

8. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Yes. The Board certifies compliance with A.R.S. § 41-1037.

9. Conclusion

As stated above, the Board submitted a Notice of Finalrulemaking to the Council on February 19, 2019, including an amendment to R4-191-101 to update the definition of “dispense.” The Council approved the NFR as submitted on April 4, 2019. The Board proposes to take no further action on these rules. Council staff recommend approval of the report.

Doug Ducey
Governor



Joey Ridenour
Exec. Director

Arizona Board of Nursing

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April 29, 2019

Governor's Regulatory Review Council
Arizona Department of Administration
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

Dear Council Members:

Re: Nursing Board; Five Year Rule Review for Article 1

This letter accompanies the Arizona State Board of Nursing's ("Board's") submission for the Five Year Rule Review for Arizona Administrative Code ("A.A.C."), Title 4, Chapter 19, Article 1.

As set forth in A.A.C. R1-6-301:

1. The Board contact person for information regarding the report is myself, **Joey Ridenour, Executive Director for the Board, at jridenour@azbn.gov; telephone 602-771-7801.**
2. There are no rules that were not reviewed in Article 1, nor are any rules intended to expire pursuant to A.R.S. § 41-1056(J).
3. There are no rules that have not been reviewed due to rescheduled review, pursuant to A.R.S. § 41-1056(H).
4. The Board hereby certifies that it is in compliance with A.R.S. § 41-1091.

Sincerely,

A handwritten signature in blue ink that reads "Joey Ridenour".

Joey Ridenour, R.N., M.N., F.A.A.N.
Executive Director

C: Krishna Jhaveri, GRRC Staff Counsel

Agency Overview

Arizona State Board of Nursing

Background

- At the turn of the 19th century, nurse registration emerged in order to separate trained from untrained nurses as a means to protect the public. In 1921, the Arizona Legislature determined, as a matter of public policy, that the practice of nursing is a privilege granted by the people of Arizona as defined by the laws enacted by the elected representatives. It is not a natural right of individuals. Therefore, in the interest of public health, safety and welfare and to protect people from unprofessional and incompetent nursing practices, only qualified persons hold the privilege to be licensed as a nurse. The Nurse Practice Act's fundamental purpose is to protect the public and any license/certificate issued pursuant to the statutes shall be a revocable privilege; thereby no holder shall acquire any irrevocable right.

General Purpose of the Agency

The purposes of the Board of Nursing are to protect the public by:

- Promoting public protection through education and informational services to prevent violations of the Nurse Practice Act.
- Establishing eligibility standards for licensure for Advanced Practice Registered Nurses (APRNs), Registered Nurses (RNs), Licensed Practical Nurses (LPNs), and Licensed Nursing Assistants (LNAs).
- Maintaining a Registry that meets federal requirements for Certified Nursing Assistants (CNAs).
- Determining eligibility, examine and license/certify/register qualified applicants.
- Providing for interstate/foreign endorsements.
- Renewing licenses/certificates, grant temporary licenses/certificates, and provide for inactive status for those already licensed as requested.
- Setting procedures for relicensure/reinstatement/recertification for previously licensed and certified individuals.
- Establishing minimum educational standards for programs of nursing.
- Approving nursing education programs.
- Investigating and resolve complaints against regulated parties, and if violations are substantiated, impose disciplinary sanctions.
- Monitoring regulated parties on probation to ensure patient safety.
- Denying licensure/certification to applicants deemed unsafe to practice due to serious convictions, behaviors or acts.

- Enforcing legal prohibitions against the unlicensed practice of registered nursing/licensed practical nursing and use of title, and referring unlicensed practice to law enforcement.
- Ordering evaluations of licensees/certificate holders to determine their ability to practice safely; take disciplinary action based on the results of the evaluation.
- Establishing the scope of practice for nurses within limits of legislative authority.
- Promulgating rules that regulate nursing.
- Issuing Advisory Opinions regarding the function of nursing practice and education.
- Establishing a non-disciplinary rehabilitation option for nurses at risk for or experiencing medical, substance abuse, or mental health conditions that could impair nursing practice entitled Alternative to Discipline Programs, including the previously established CANDO (Chemically Addicted Nurse Diversion Option) as an alternative to traditional disciplinary action.
- Enforcing the provisions of applicable statutes/rules.
- Establishing competency standards for maintaining a license

Changes in agency objectives since establishment.

The Arizona State Board of Nursing (AZBN) has made a number of regulatory improvements since the agency began in 1921.

- Disciplinary Actions were rare during the early days (1921-1977), when few complaints were received by the Board. Beginning in the 1980's the number of drug related cases increased significantly. In 1987, the AZBN developed an effective, non-disciplinary, confidential program entitled "CANDO" (Chemically Addicted Nurse Diversion Option) to monitor and assist nurses entering into rehabilitation when impaired by substance abuse and thereby reduce the risk to the public. This program has since legislatively expanded July 2018 to become the "Alternative to Discipline Program," which includes nurses with medical or mental health conditions that may affect nursing practice, and nurses at risk for any of these conditions. While participating in an Alternative to Discipline Program, and depending on the individual nurse's condition, the nurse may agree to cease practicing nursing during a period of rehabilitation, and may only return after an experienced evaluator assures the nurse is safe to practice. CANDO averaged 50-70 admissions per year with approximately 200 individuals participating in the program on an annual basis, and the AZBN expects these numbers to increase with the expansion of this non-disciplinary, rehabilitative program.
- The Executive Director may accept a voluntary surrender of a license or certificate if a respondent chooses this option instead of a Board-imposed disciplinary action.
- The AZBN continues to develop AZBN-approved policies to increase efficiency in triage and resolution of complaints against regulated parties. These include policies establishing criteria as to when to open investigations, when investigations may be closed without presentation to the AZBN, either by dismissal, or non-disciplinary resolution.

- In 1995, the legislature authorized the Board to certify and maintain a register of nursing assistants, a workforce of approximately 22,000. Combined with approximately 92,000 RNs, 11,000 LPNs, and 7,000 LNAs, the AZBN manages the largest investigator case load of all the Arizona health profession licensing boards. This legislative change, along with improved investigative procedures, increased the volume of investigative reports to the Board from an average of 64 cases per month in 1996 to approximately 150 in FY2018.
- Initial licensure examinations are psychometrically sound and legally defensible, as the test questions clearly relate to the practice of the profession at entry level. The National Council Licensing Exam (NCLEX) is based on empirical job analyses that are performed at a national level every 3 years by the National Council of State Boards of Nursing. Test plans and passing standards are re-evaluated on the same triennial basis to ensure the content and NCLEX RN and NCLEX PN are reflective of current competencies required for safe and effective practice.
- In 1994, all boards of nursing began offering computerized adaptive testing (CAT), which is offered year round in testing centers with high speed turn around of less than 24 hours, providing qualified applicants with reduced times for licensure.
- In 1999, the AZBN mandated that applicants for licensure/certificate have criminal history reports from the DPS/FBI to allow the AZBN to evaluate potential harm to the public. Depending on the seriousness of an applicant's criminal history, they may be required to provide information about prior behavior before a decision is made to grant the individual legal authority to practice and issue a license/certificate. In approximately 2001, the Board adopted triage criteria to exclude some minor, remote in time, or isolated criminal incidents from a requirement to investigate.
- Mandatory reporting of licensee/certificate holders suspected of violating the Arizona Nurse Practice Act has been required for over 25 years. AZBN complies with Federal mandatory reporting laws; when final disciplinary actions are taken, the disciplinary information must be reported to the National Practitioner Data Bank.
- In 1987, the federal Nursing Home Reform Act was passed as part of the Omnibus Budget Reconciliation Act (OBRA), establishing various regulatory requirements for nurse aides employed in long-term care facilities receiving federal funds. The AZBN has a contract with Department of Health Services (DHS) to monitor, register and approve educational programs for nurse aides employed in nursing home settings. In 1995, the authority to regulate CNAs was placed under the jurisdiction of the AZBN. The basic argument for assigning jurisdiction to nursing boards was that, if nurses are to delegate nursing tasks to nurse aides, then nursing boards should control that aspect of the nurse aide training and approval. Because the job description of nurse aides fall within the nursing practice domain and licensed nurses are accountable for nursing care on a 24 hour basis, it was reasonable that the AZBN would assume authority and oversight of the regulation of CNAs.

- In 2001, as part of an Auditor General Sunset review, the agency proposed amendments to the Nurse Practice Act, including setting standards for continued competency. The AZBN rules were amended to require that all nurses practice nursing for a minimum of 960 hours within the past 5 years in order to qualify to renew licensure. New graduates of nursing programs must become licensed within 2 years of graduation. Applicants who fail to meet these qualifications must take and pass a Board-approved refresher course.
- In 2009, omnibus legislation to amend the Nurse Practice Act provided delegated authority to the Executive Director to dismiss cases, issue letters of concern, close complaints through settlement and enter into a consent agreement for summary suspension. Other features of the legislation allow the AZBN to engage in pilot studies for innovation in nursing education, practice and regulation; allow the AZBN to receive monies for specific projects without an appropriation to the state general fund; exempt certain short-term nursing assignments from licensure; changed the licensure renewal date to April 1 and specified conditions for obtaining the medical records of the licensee.
- In 2010 legislation was enacted to allow the AZBN to certify medication assistants, implementing successful aspects of a 4 year pilot program examining the role in long term care facilities and the effect on medication errors.
- In 2012, the legislature defined the term Certified Registered Nurse Anesthetist and established qualifications and a scope of practice.
- Due to federal laws that prevent the Board from charging for nursing assistant certification, the costs of conducting fingerprint background checks on nursing assistants, and the necessity to use licensing fees from RNs and LPNs to support the nursing assistant program, in 2015 the legislature authorized two levels of nursing assistant, effective 7/1/2016. Certified Nursing Assistants (CNAs), a new category of nursing assistant, are those individuals who meet minimal federal requirements, are not subject to criminal background checks and are under limited AZBN jurisdiction. CNAs pay no fees. Licensed Nursing Assistants (LNAs), similar to pre-7/1/2016 nursing assistants, are subject to criminal background checks and full Board jurisdiction. LNAs pay a \$50 licensure fee, a one-time \$50 fingerprint fee and a \$50 renewal fee every 2 years. Applicants may choose either level.
- In July, 2018, pursuant to a change in statute allowing expanded confidential monitoring and treatment programs, the Board approved new Alternative to Discipline programs to allow nurses with medical and mental health conditions, and those at risk of substance use disorders, or medical or mental health conditions, to be potentially eligible to enter the rehabilitation and monitoring program.

Agency's major accomplishments.

As part of its initial strategic plan, the AZBN continually examines its operations and customer services, including workflow and evolution of job duties. In response to the internal assessment and reports from outside entities, Board staff was involved in the following recent accomplishments:

- Developed and implemented new Alternative to Discipline Program in July, 2018 (see above)
- Assisted with development of new enhanced Nurse Licensure Compact, adopted by Arizona, and implemented January 2018
- Implemented new file management system, ORBS, in September, 2018
- Continuous use and improvement of online license/certificate verification, and renewal of licenses and certificates.
- Upgraded and streamlined phone systems for more effective and efficient customer service.
- Providing annual conferences for nurse educators and nursing assistant educators.
- Publishing Journal semi-annually
- Providing outreach education in response to community requests.
- Meeting with stakeholders on a regular basis: nurse recruiters, nurse educators, nurse executives.
- Continues to conduct paperless Board and Education Committee meetings.
- Continues to provide oversight for use of Licensed Nursing Assistants to administer specified medications in long term care facilities.
- Improved processing time of licensure applications from 14 days in 2002 to 2 days in 2017.
- Approved three alternative agencies for credential evaluation of foreign educated nurses.
- Utilizes a legally defensible simulation exam of nursing competency starting in 2008 and began using the exam in 2012 to identify unsafe practices in nurses reported to the Board for unsafe practice
- Collects annual data on RN/LPN renewal information related to nursing workforce to allow for workforce planning meeting the future health needs of Arizona.
- Implementation of new categories of nursing assistants, as authorized by the legislature in 2015. The new categories are: CNAs and LNAs, and these changes went into effect on July 1, 2016. All categories of nursing assistant are required to complete an approved nursing assistant training and competency evaluation program (NATCEP) and have the same scope of practice. Licensure is optional for nursing assistants who choose to pay a fee and submit to a criminal background check and are under the full authority of the Board. Licensed Nursing Assistants (LNA) would pay application and renewal fees. Certification is open to nursing assistants upon completion of a NATCEP, whereby the nursing assistant would be placed on a registry that meets federal requirements. The jurisdiction of the Board is limited to substantiated instances of abuse, neglect and misappropriation of property.

Rules promulgated in the past 5 years

- During the past five years the following rules actions were taken:
 - Article 8 – amended effective July 1, 2016
 - Article 1, Definitions – amended effective July 1, 2017
 - Article 2 – amended effective July 1, 2017
 - Article 3 – amended effective July 1, 2017
 - Article 5 – amended effective July 1, 2017

- Article 8 - amended effective July 1, 2017
- Article 5 – amended by emergency rulemaking, effective May 23, 2018
- Articles 1, 2, 3, 4, 5, 8: Final Rulemaking in Progress (Secretary of State *Register* for Notice of Proposed Rulemaking, Published December 28, 2018; scheduled for March 26, 2019, GRRC Study Session and April 2, 2019, GRRC vote)

5 Year Rule Review Article 1

ARTICLE 1. Definitions and Time-frames

A.A.C. R4-19-101, R4-19-102 and Table 1

The Board amended Article 1, Definitions, effective July 1, 2017, and a current Final Rulemaking including another change to Article 1, Definitions, is pending with the Governor's Regulatory Review Council, assigned to a March 26, 2019, Study Session, and an April 2, 2019, Council vote.

Information that is Identical Within All Rules—Article 1

1. Authority

These rules were adopted under the Board's general rulemaking authority pursuant to A.R.S. § 32-1606(A) (1), and A.R.S. § 32-1664. R4-19-102 and Table 1 were additionally authorized by A.R.S. § 42-1073.

3. Analysis of Effectiveness in Achieving Objectives

These rules effectively achieve their objectives. The definition of "dispense" is being updated in the pending rulemaking.

4. Analysis of Consistency with State and Federal Statutes and Rules

These rules are consistent with A.R.S. §41-1072 et. seq. regarding time-frames. There are no applicable federal statutes and rules that are the subject of these rules.

5. Agency Enforcement of the Rules

These rules are currently enforced as written.

6. Clarity Conciseness and Understandability of the Rules

The rules in this Article are clear, concise and understandable as written.

7. **Written Criticisms Of the Rules Over The Past Five Years**

The Board has not received any written criticisms of these rules during the past five years.

8. **Economic, Small Business and Consumer Impact Summary**

There have not been any changes made to the licensing fees since the last 5 Year Rules Review. As seen below, although the total numbers of applicants has risen, the total refunds decreased significantly compared with the FY2014 amounts. The total fiscal year ("FY") Board-issued license figures and refund amounts are listed, below.

Total Number of Licenses Issued Per Year	FY2014	FY2015	FY2016	FY2017	FY2018
RN/LPN Licenses Issued*	23,311	24,195	23,682	25,393	26,799
CNA/LNA Certificates Issued*	14,341	13,088	13,270	14,765	15,144

*Exams, Endorsement and Renewals

Refunds issued by the Board to applicants from 2014 to 2018:

FY	Total refund
2014	\$16,255
2015	\$13,040
2016	\$15,350
2017	\$8,450
2018	\$9,320

9. **Analysis submitted by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.**

The Board has not received any analysis as described above.

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

The amendment to the definition of "family" was finalized in 2014. The Board has not received any comments regarding this change. There were no other changes proposed in the 2014 5 Year Rule Review for Article 1.

11. **Probable Benefits of the Rule Outweigh the Costs**

The Board believes that all Article 1 rules impose the least burden and costs to persons regulated by these rules, including compliance costs necessary to achieve the underlying regulatory objective.

12. **More Stringent than Federal Law**

There is no corresponding federal law.

13. **Issuance of a regulatory permit, license or agency authorization and compliance with A.R.S. § 41-1037**

This article is in compliance with A.R.S. §41-1037. R4-19-102 involves time-frames for licenses, certifications and approvals. The Board believes that the licenses, certifications and approvals it issues fall within the definition of general permit. Under ARS § 41-1001 "General permit" means a regulatory permit, license or agency authorization that is for facilities, activities or practices in a class that are substantially similar in

nature and that is issued or granted by an agency to a qualified applicant to conduct identified operations or activities if the applicant meets the applicable requirements of the general permit, that requires less information than an individual or traditional permit, license or authorization and that does not require a public hearing.” The Board is authorized to issue licenses to nurses, certificates to nursing assistants and advanced practice nurses, and approve CNA and nursing programs based upon meeting standards set in rule and statute without a public hearing.

14. Proposed Course of Action

In its last 5 Year Rule Review in 2014, the Board informed the Council that it was in the process of amending R4-19-101, specifically the definition of "family". This amendment was completed in 2014. The Board has not received any written comments regarding this change in definition.

A Notice of Proposed Rulemaking was published in the Secretary of State's *Register* on December 28, 2018, including an amendment to R4-19-101 to update the definition of "dispense". An open public hearing was held on February 4, 2019. No written or oral comments on the rules were received by the Board. A notice of final rulemaking was submitted to GRRC on February 19, 2019.

R4-19-102 and Table 1 are effective as written.

The only amendments planned for this Article in the future are technical updates to wording for clarity and consistency, but no substances amendments are planned.

Analysis of Individual Rules Article 1

R4-19-101 Definitions

1. Authorization

This rule is specifically authorized by A.R.S § §32-1605.01 (B) (3) and (B) (4), 32-1606(B) (5) and (B) (15) and (16), and implements the provisions of A.R.S. §§ 32-1632, 32-1633, 32-1634.01, 32-1637, 32-1638, 32-1639.01, 32-1643 (A) (3) and (4), and 32-1645.

2. Objective

Through this rule, the Board defines terms used in Chapter 19.

3. Proposed Course of Action

The single, planned and pending change to Article 1 is to the definition of "dispense", was published in the December 28, 2018, *Register*, and submitted to the Council as a Notice of Final Rulemaking on February 19, 2019. The amendment is as follows:

"Dispense" means to ~~package, label, and deliver one or more doses of a prescription only medication in a suitable container for subsequent use by a patient.~~ deliver a controlled substance or legend drug to an ultimate user.

The Board approved amending this Section to include an updated definition of "dispensing" that reflects current practices in the community.

R4-19-102 Time-frames for Licensure, Certification, or Approval

1. Authorization

The same authorizing and implementing statutes apply to this rule as those for R4-19-101, above.

2. Objective

Through this rule, the Board informs the public of the time frame requirements and standards.

3. Proposed Course of Action

No amendments or planned changes are pending for this rule.

Table 1. Time-frames

1. Authorization

The same authorizing and implementing statutes apply to this rule as those for R4-19-101, above.

2. Objective

This table lists the specific time frames for each type of license or approval.

3. Proposed Course of Action

No amendments or planned changes are pending for this rule.



Administrative Rules Division
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TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 19. BOARD OF NURSING

(Authority: A.R.S. § 32-1606 et seq.)

Editor's Note: The Arizona State Board of Nursing amended Sections in this Chapter under an exemption from the provisions of A.R.S. Title 41, Chapter 6 under Laws 2015, Chapter 262 § 22. Exemption from A.R.S. Title 41, Chapter 6 means the Board was not required to submit proposed rules for publication in the Arizona Administrative Register, conduct a public hearing on the rules, or required to submit the rules for approval by the Governor's Regulatory Review Council. Refer to the historical notes for more information (Supp. 16-2).

ARTICLE 1. DEFINITIONS AND TIME-FRAMES

New Article 1, consisting of R4-19-101, adopted effective July 19, 1995 (Supp. 95-3).

Article 1, consisting of R4-19-101 through R4-19-102, repealed effective July 19, 1995 (Supp. 95-3).

Table with 2 columns: Section and Page. Includes R4-19-101 Definitions (3), R4-19-102 Time-frames for Licensure, Certification, or Approval (5), and Table 1 Time-frames (6).

ARTICLE 2. ARIZONA REGISTERED AND PRACTICAL NURSING PROGRAMS; REFRESHER PROGRAMS

Article 2, consisting of R4-19-201 through R4-19-214, adopted effective July 19, 1995 (Supp. 95-3).

Table with 2 columns: Section and Page. Lists sections from R4-19-201 to R4-19-217 with corresponding page numbers.

ARTICLE 3. LICENSURE

Article 3, consisting of R4-19-301 through R4-19-308, adopted effective July 19, 1995 (Supp. 95-3).

Table with 2 columns: Section and Page. Includes R4-19-301 Licensure by Examination (20), R4-19-302 Licensure by Endorsement (21), and R4-19-303 Requirements for Credential Evaluation Service (22).

Table with 2 columns: Section and Page. Lists sections from R4-19-304 to R4-19-313 with corresponding page numbers.

ARTICLE 4. REGULATION

Article 4, consisting of R4-19-401 through R4-19-404, adopted effective July 19, 1995 (Supp. 95-3).

Table with 2 columns: Section and Page. Lists sections from R4-19-401 to R4-19-405 with corresponding page numbers.

ARTICLE 5. ADVANCED PRACTICE REGISTERED NURSING

Table with 2 columns: Section and Page. Lists sections from R4-19-501 to R4-19-510 with corresponding page numbers.

EMERGENCY RULEMAKING

Table with 2 columns: Section and Page. Lists R4-19-511 Prescribing and Dispensing Authority; Prohibited Acts (39).

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ARTICLE 1. DEFINITIONS AND TIME-FRAMES**R4-19-101. Definitions**

“Abuse” means a misuse of power or betrayal of trust, respect, or intimacy by a nurse, nursing assistant, or applicant that causes or is likely to cause physical, mental, emotional, or financial harm to a client.

“Administer” means the direct application of a medication to the body of a patient by a nurse, whether by injection, inhalation, ingestion, or any other means.

“Admission cohort” means a group of students admitted at the same time to the same curriculum in a regulated nursing, nursing assistant, or advanced practice nursing program or entering the first clinical course in a regulated program at the same time. “Same time” means on the same date or within a narrow range of dates pre-defined by the program.

“Applicant” means a person seeking licensure, certification, prescribing, or prescribing and dispensing privileges, or an entity seeking approval or re-approval, if applicable, of a:

- CNS or RNP nursing program,
- Credential evaluation service,
- Nursing assistant training program,
- Nursing program,
- Nursing program change, or
- Refresher program.

“Approved national nursing accrediting agency” means an organization recognized by the United States Department of Education as an accrediting agency for a nursing program.

“Assign” means a nurse designates nursing activities to be performed by another nurse that are consistent with the other nurse’s scope of practice.

“Certificate or diploma in practical nursing” means the document awarded to a graduate of an educational program in practical nursing.

“Certified medication assistant” means a certified nursing assistant who meets Board qualifications and is additionally certified by the Board to administer medications under A.R.S. § 32-1650 et. seq.

“CES” means credential evaluation service.

“Client” means a recipient of care and may be an individual, family, group, or community.

“Clinical instruction” means the guidance and supervision provided by a nursing, nursing assistant or medication assistant program faculty member while a student is providing client care.

“CMA” means certified medication assistant.

“CNA” means a certified nursing assistant, as defined in A.R.S. § 32-1601(4).

“CNS” means clinical nurse specialist, as defined in A.R.S. § 32-1601(7).

“Collaborate” means to establish a relationship for consultation or referral with one or more licensed physicians on an as-needed basis. Supervision of the activities of a registered nurse practitioner by the collaborating physician is not required.

“Contact hour” means a unit of organized learning, which may be either clinical or didactic and is either 60 minutes in length or is otherwise defined by an accrediting agency recognized by the Board.

“Continuing education activity” means a course of study related to nursing practice that is awarded contact hours by an accrediting agency recognized by the Board, or academic credits in nursing or medicine by a regionally or nationally accredited college or university.

“CRNA” means a certified registered nurse anesthetist as defined in A.R.S. § 32-1601(5).

“DEA” means the federal Drug Enforcement Administration.

“Dispense” means to package, label, and deliver one or more doses of a prescription-only medication in a suitable container for subsequent use by a patient.

“Dual relationship” means a nurse or CNA simultaneously engages in both a professional and nonprofessional relationship with a patient or resident or a patient’s or resident’s family that is avoidable, non-incident, and results in the patient or resident or the patient’s or resident’s family being exploited financially, emotionally, or sexually.

“Eligibility for graduation” means that the applicant has successfully completed all program and institutional requirements for receiving a degree or diploma but is delayed in receiving the degree or diploma due to the graduation schedule of the institution.

“Endorsement” means the procedure for granting an Arizona nursing license to an applicant who is already licensed as a nurse in another state or territory of the United States and has passed an exam as required by A.R.S. §§ 32-1633 or 32-1638 or an Arizona nursing assistant or medication assistant certificate to an applicant who is already listed on a nurse aide register or certified as a medication assistant in another state or territory of the United States.

“Episodic nursing care” means nursing care at nonspecific intervals that is focused on the current needs of the individual.

“Failure to maintain professional boundaries” means any conduct or behavior of a nurse or CNA that, regardless of the nurse’s or CNA’s intention, is likely to lessen the benefit of care to a patient or resident or a patient’s or resident’s family or places the patient, resident or the patient’s or resident’s family at risk of being exploited financially, emotionally, or sexually.

“Family,” as applied to R4-19-511, means individuals who are related by blood, marriage, adoption, legal guardianship, or domestic partnership, or who are cohabitating or romantically involved.

“Full approval” means the status granted by the Board when a nursing program, after graduation of its first class, demonstrates the ability to provide and maintain a program in accordance with the standards provided by A.R.S. Title 32, Chapter 15 and this Chapter.

“Good standing” means the license of a nurse, or the certificate of a nursing assistant, is current, and the nurse or nursing assistant is not presently subject to any disciplinary action, consent order, or settlement agreement.

“Independent nursing activities” means nursing care within an RN’s scope of practice that does not require authorization from another health professional.

“Initial approval” means the permission, granted by the Board, to an entity to establish a nursing assistant training program, after the Board determines that the program meets the standards provided by A.R.S. Title 32, Chapter 15 and this Chapter.

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“Licensure by examination” means the granting of permission to practice nursing based on an individual’s passing of a prescribed examination and meeting all other licensure requirements.

“LPN” means licensed practical nurse.

“NCLEX” means the National Council Licensure Examination.

“Nurse” means a licensed practical or registered nurse.

“Nursing diagnosis” means a clinical judgment, based on analysis of comprehensive assessment data, about a client’s response to actual and potential health problems or life processes. Nursing diagnosis statements include the actual or potential problem, etiology or risk factors, and defining characteristics, if any.

“Nursing process” means applying problem-solving techniques that require technical and scientific knowledge, good judgment, and decision-making skills to assess, plan, implement, and evaluate a plan of care.

“Nursing program” means a formal course of instruction designed to prepare its graduates for licensure as registered or practical nurses.

“Nursing program administrator” means a nurse educator who meets the requirements of A.R.S. Title 32, Chapter 15 and this Chapter and has the administrative responsibility and authority for the direction of a nursing program.

“Nursing program faculty member” means an individual working full or part time within a nursing program who is responsible for either developing, implementing, teaching, evaluating, or updating nursing knowledge, clinical skills, or curricula.

“Nursing-related activities or duties” means client care tasks for which education is provided by a basic nursing assistant training program.

“P & D” means prescribing and dispensing.

“Parent institution” means the educational institution in which a nursing program, nursing assistant training program or medication assistant program is conducted.

“Patient” means an individual recipient of care.

“Pharmacology” means the science that deals with the study of drugs.

“Physician” means a person licensed under A.R.S. Title 32, Chapters 7, 8, 11, 13, 14, 17, or 29, or by a state medical board in the United States.

“Preceptor” means a licensed nurse or other health professional who meets the requirements of A.R.S. Title 32, Chapter 15 and this Chapter who instructs, supervises and evaluates a licensee, clinical nurse specialist, nurse practitioner or pre-licensure nursing student, for a defined period.

“Preceptorship” means a clinical learning experience by which a learner enrolled in a nursing program, nurse refresher program, clinical nurse specialist, or registered nurse practitioner program or as part of a Board order provides nursing care while assigned to a health professional who holds a license or certificate equivalent to or higher than the level of the learner’s program or in the case of a nurse under Board order, meets the qualifications in the Board order.

“Prescribe” means to order a medication, medical device, or appliance for use by a patient.

“Private business” means any individual or sole proprietorship, partnership, limited liability partnership, limited liability company, corporation or other legal business entity.

“Proposal approval” means that an institution has met the standards provided by A.R.S. Title 32, Chapter 15 and this Chapter to proceed with an application for provisional approval to establish a pre-licensure nursing program in Arizona.

“Provisional approval” means that an institution has met the standards provided by A.R.S. Title 32, Chapter 15 and this Chapter to implement a pre-licensure nursing program in Arizona.

“Refresher program” means a formal course of instruction designed to provide a review and update of nursing theory and practice.

“Register” means a listing of Arizona certified nursing assistants maintained by the Board that includes the following about each nursing assistant:

- Identifying demographic information;
- Date placed on the register;
- Date of initial and most recent certification, if applicable; and
- Status of the nursing assistant certificate, including findings of abuse, neglect, or misappropriation of property made by the Arizona Department of Health Services, sanctions imposed by the United States Department of Health and Human Services, and disciplinary actions by the Board.

“Resident” means a patient who receives care in a long-term care facility or other residential setting.

“RN” means registered nurse.

“RNP” means a registered nurse practitioner as defined in A.R.S. § 32-1601(20).

“SBTPE” means the State Board Test Pool Examination.

“School nurse” means a registered nurse who is certified under R4-19-309.

“Secure examination” means a written test given to an examinee that:

- Is administered under conditions designed to prevent cheating;
- Is taken by an individual examinee without access to aides, textbooks, other students or any other material that could influence the examinee’s score; and,
- After opportunity for examinee review, is either never used again or stored such that only designated employees of the educational institution are permitted to access the test.

“Self-study” means a written self-evaluation conducted by a nursing program to assess the compliance of the program with the standards listed in Article 2.

“Standards related to scope of practice” means the expected actions of any nurse who holds the identified level of licensure.

“Substance use disorder” means misuse, dependence or addiction to alcohol, illegal drugs or other substances.

“Supervision” means the direction and periodic consultation provided to an individual to whom a nursing task or patient care activity is delegated.

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“Unlicensed assistive personnel” or “UAP” means a CNA or any other unlicensed person, regardless of title, to whom nursing tasks are delegated.

“Verified application” means an affidavit signed by the applicant attesting to the truthfulness and completeness of the application and includes an oath that applicant will conform to ethical professional standards and obey the laws and rules of the Board.

Historical Note

Former Glossary of Terms; Amended effective Nov. 17, 1978 (Supp. 78-6). Former Section R4-19-01 repealed, new Section R4-19-01 adopted effective February 20, 1980 (Supp. 80-1). Amended paragraphs (1) and (7), added paragraphs (9) through (25) effective July 16, 1984 (Supp. 84-4). Former Section R4-19-01 renumbered as Section R4-19-101 (Supp. 86-1). Amended effective November 18, 1994 (Supp. 94-4). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended effective December 22, 1995 (Supp. 95-4). Amended effective November 25, 1996 (Supp. 96-4). Amended by final rulemaking at 7 A.A.R. 1712, effective April 4, 2001 (Supp. 01-2). Amended by final rulemaking at 14 A.A.R. 4621, effective January 31, 2009 (Supp. 08-4). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore the A.R.S. citations in the definitions of “CNA” “CNS” and “RNP” have been updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3). A.R.S. section references updated under Laws 2015, Ch. 262, effective July 1, 2016 (Laws 2015, Ch. 262, § 23) at file number R16-186 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 1420, effective July 1, 2017 (Supp. 17-2).

R4-19-102. Time-frames for Licensure, Certification, or Approval**A. In this Section:**

1. “Administrative completeness” or “administratively complete” means Board receipt of all application components required by statute or rule and necessary to begin the substantive review time-frame.
2. “Application packet” means an application form provided by the Board and the documentation necessary to establish an applicant’s qualifications for licensure, certification, or approval.
3. “Comprehensive written request for additional information” means written communication after the administrative completeness time-frame by the Board to an applicant in person or at the mailing or electronic address identified on the application notifying the applicant that additional information, including missing documents is needed before the Board can grant the license. The written communication shall:
 - a. Contain a list of information required by statute or rule and necessary to complete the application or grant the license, and
 - b. Inform the applicant that the request suspends the running of days within the time-frame, and
 - c. Be effective on the date of issuance which is:
 - i. The date of its postmark, if mailed;
 - ii. The date of delivery, if delivered in person by a Board employee or agent; or

- iii. The date of delivery to the electronic address if delivered electronically.
4. “Deficiency notice” means written communication by the Board to an applicant in person or at the mailing or electronic address identified on the application notifying the applicant that additional information, including missing documents, is needed to complete the application. The written communication shall:
 - a. Contain a list of information required by statute or rule and necessary to complete the application or grant the license;
 - b. Inform the applicant that the request suspends the running of days within the time-frame; and
 - c. Be effective on the date of issuance which is:
 - i. The date of its postmark, if mailed;
 - ii. The date of delivery, if delivered in person by a Board employee or agent; or
 - iii. The date of delivery to the electronic address if delivered electronically.
5. “Notice of administrative completeness” means written communication by the Board to an applicant in person or at the mailing or electronic address identified on the application notifying the applicant the application contains all information required by statute or rule to complete the application.
6. “Overall time-frame” has the same meaning as A.R.S. § 41-1072(2).
7. “Substantive review time-frame” has the same meaning as A.R.S. § 41-1072(3).

- B.** In computing the time-frames in this Section, the day of the act or event from which the designated period begins to run is not included. The last day of the period is included unless it is a Saturday, Sunday, or official state holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or official state holiday.
- C.** For each type of licensure, certification, or approval issued by the Board, the overall time-frame described in A.R.S. § 41-1072(2) is listed in Table 1. An applicant may submit a written request to the Board for an extension of time in which to provide a complete application. The request for an extension of time shall be submitted to the Board office before the deadline for submission of a complete application and shall state the reason that the applicant is unable to comply with the time-frame requirements in Table 1 and the amount of additional time requested. The Board may grant an extension of time based on whether the Executive Director of the Board finds that the applicant is unable to comply within the time-frame due to circumstances beyond the applicant’s control and that the additional information can reasonably be supplied during the extension of time.
- D.** For each type of licensure, certification, or approval issued by the Board, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) is listed in Table 1 and begins to run when the Board receives an application packet.
 1. If the application packet is not administratively complete, the Board shall send a deficiency notice to the applicant. The time for the applicant to respond to a deficiency notice begins to run on the date the deficiency notice is issued.
 - a. The deficiency notice shall list each deficiency.
 - b. The applicant shall submit to the Board the missing information listed in the deficiency notice within the period specified in Table 1 for responding to a deficiency notice. The time-frame for the Board to complete the administrative review is suspended until the Board receives the missing information.

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- c. If an applicant fails to provide the missing information listed in the deficiency notice within the period specified in Table 1, the Board shall close the applicant's file and send a notice to the applicant by U.S. mail and electronically, if an electronic address is included in the application.
- d. If the applicant is the subject of an investigation, the Board may continue to process the application. Failure of the applicant to supply the requested information may result in denial of the license or certificate based on information gathered during the investigation.
- 2. If the application packet is administratively complete, the Board shall send a written notice of administrative completeness to the applicant.
- 3. If the Board issues a license, certificate, or approval during the administrative completeness review time-frame, the Board shall not send a separate written notice of administrative completeness.
- E. For each type of licensure, certification, or approval issued by the Board, the substantive review time-frame described in A.R.S. § 41-1072(3) is listed in Table 1 and begins to run on the date the notice of administrative completeness is issued.
 - 1. During the substantive review time-frame, an applicant may make a request to withdraw an application packet. The Board may deny the request to withdraw an application packet if the applicant is the subject of an investigation, based on information gathered during the investigation.
 - 2. If an applicant discloses or the Board receives allegations of unprofessional conduct as described in A.R.S. § 32-1601 or this Chapter, the Board shall review the allegations and may investigate the applicant. The Board may require the applicant to provide additional information as prescribed in subsection (E)(3) based on its assessment of whether the conduct is or might be harmful or dangerous to the health of a client or the public.
 - 3. During the substantive review time-frame, the Board may make one comprehensive written request for additional information. The applicant shall submit the additional information within the period specified in Table 1. The time-frame for the Board to complete the substantive review of the application packet is suspended from the date the comprehensive written request for additional information is issued until the Board receives the additional information.
- 4. If the applicant fails to provide the additional information identified in the comprehensive written request for additional information within the time specified in Table 1, the Board shall close the applicant's file and send a notice to the applicant by U.S. mail and electronically, if an electronic address is included in the application. The Board may continue to process the application if the applicant is the subject of an investigation. Failure of the applicant to supply the requested information may result in denial of the license or certificate based on information gathered during the investigation.
- 5. The Board shall grant licensure, conditional licensure, limited licensure, certification, or approval to an applicant:
 - a. Who meets the substantive criteria for licensure, certification, or approval required by A.R.S. Title 32, Chapter 15 and this Chapter; and
 - b. Whose licensure, certification, or approval is in the best interest of the public.
- 6. The Board shall deny licensure, certification, or approval to an applicant:
 - a. Who fails to meet the substantive criteria for licensure, certification, or approval required by A.R.S. Title 32, Chapter 15 and this Chapter; or
 - b. Who has engaged in unprofessional conduct as described in A.R.S. § 32-1601 or this Chapter; and
 - c. Whose licensure, certification, or approval is not in the best interest of the public.
- 7. The Board's written order of denial shall meet the requirements of A.R.S. § 41-1076. The applicant may request a hearing by filing a written request with the Board within 30 days of receipt of the Board's order of denial. The Board shall conduct hearings in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

Historical Note

Adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-02 renumbered and amended as Section R4-19-102 effective February 21, 1986 (Supp. 86-1). Section repealed effective July 19, 1995 (Supp. 95-3). New Section adopted April 20, 1998 (Supp. 98-2). Amended by final rulemaking at 7 A.A.R. 1712, effective April 4, 2001 (Supp. 01-2). Amended by final rulemaking at 14 A.A.R. 4621, effective January 31, 2009 (Supp. 08-4).

Table 1. Time-frames

Time-frames (in days)								
Type of License, Certificate, or Approval	Applicable Statute and Section	Board Overall Time-frame Without Investigation	Board Overall Time-frame With Investigation	Board Administrative Completeness Review Time-frame	Applicant Time to Respond to Deficiency Notice	Board Substantive Review Time-frame Without Investigation	Board Substantive Review Time-frame With Investigation	Applicant Time to Respond to Comprehensive Written Request
Nursing Program Proposal Approval	A.R.S. §§ 32-1606(B)(2), 32-1644; R4-19-207	150	Not applicable	60	180	90	Not applicable	120

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Nursing Program Provisional Approval	A.R.S. §§ 32-1606(B)(2), 32-1644; R4-19-207	150	Not applicable	60	180	90	Not applicable	120
Nursing Program Full Approval or Re-approval	A.R.S. §§ 32-1606(B)(2), 32-1644; R4-19-208, R4-19-210	150	Not applicable	60	180	90	Not applicable	120
Nursing Program Change	A.R.S. § 32-1606(B)(1); R4-19-209	150	Not applicable	60	180	90	Not applicable	120
Refresher Program Approval or Re-approval	A.R.S. § 32-1606(B)(21); R4-19-216	150	Not applicable	60	180	90	No applicable	120
CNS or RNP Nursing Program Approval or Re-approval	A.R.S. §§ 32-1606(B)(18), 32-1644; R4-19-503	150	Not applicable	60	180	90	Not applicable	120
Credential Evaluation Service Approval or Re-approval	A.R.S. §§ 32-1634.01(A)(1), 32-1634.02(A)(1), 32-1639.01(1), 32-1639.02(1); R4-19-303	90	Not applicable	30	180	60	Not applicable	120
Licensure by Exam	A.R.S. §§ 32-1606(B)(5), 32-1633, 32-1638, and R4-19-301	150	270	30	270	120	240	150
Licensure by Endorsement	A.R.S. §§ 32-1606(B)(5), 32-1634, 32-1639, and R4-19-302	150	270	30	270	120	240	150
Temporary License or Renewal	A.R.S. §§ 32-1605.01(B)(3), 32-1635, 32-1640; R4-19-304	60	90	30	60	30	60	90
License Renewal	A.R.S. §§ 32-1606(B)(5), 32-1642; R4-19-305	120	270	30	270	90	240	150
School Nurse Certification or Renewal	A.R.S. §§ 32-1606(B)(13), 32-1643(A)(8); R4-19-309	150	270	30	270	120	240	150
Re-issuance or Subsequent Issuance of License	A.R.S. § 32-1664(O); R4-19-404	150	270	30	270	120	240	150
Registered Nurse Practitioner Certification or Renewal	A.R.S. §§ 32-1601(19), 32-1606(B)(21); R4-19-505, R4-19-506	150	270	30	270	120	240	150
RNP Prescribing and Dispensing Privilege	A.R.S. § 32-1601(19); R4-19-511	150	270	30	270	120	240	150
CNS Certification or Renewal	A.R.S. §§ 32-1601(6), 32-1606(B)(21); R4-19-505, R4-19-506	150	270	30	270	120	240	150

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CRNA Certification or Renewal	A.R.S. § 32-1634-.03; R4-19-505; R4-19-506	150	270	30	270	120	240	150
Temporary RNP, CRNA or CNS Certificate or Renewal	A.R.S. § 32-1635.01, 32-1634.03; R4-19-507	60	Not applicable	30	60	30	Not applicable	60
Nursing Assistant and Medication Assistant Training Programs Approval or Re-approval	A.R.S. § 32-1606(B)(11), 32-1650.01; R4-19-803, R4-19-804	120	Not applicable	30	180	90	Not applicable	120
Licensed or Certified Nursing Assistant and Medication Assistant Certification by Examination	A.R.S. §§ 32-1606(B)(11), 32-1647, 32-1650.02, 32-1650.03; R4-19-806	150	270	30	270	120	240	150
Licensed or Certified Nursing Assistant and Medication Assistant Certification by Endorsement	A.R.S. §§ 32-1606(B)(11), 32-1648, 32-1650.04; R4-19-807	150	270	30	270	120	240	150
Licensed or Certified Nursing Assistant and Certified Medication Assistant Renewal	A.R.S. § 32-1606(B)(11); R4-19-809	120	270	30	270	90	240	150
Re-issuance or Subsequent Issuance of a Nursing Assistant License	A.R.S. § 32-1664(O); R4-19-815	150	270	30	270	120	240	150

Historical Note

Table 1 adopted effective April 20, 1998 (Supp. 98-2). Amended by final rulemaking at 7 A.A.R. 1712, effective April 4, 2001 (Supp. 01-2). Table 1 amended by final rulemaking at 14 A.A.R. 4621, effective January 31, 2009 (Supp. 08-4). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore the A.R.S. citations in column two of "Registered Nurse Practitioner Certification or Renewal," "RNP Prescribing and Dispensing Privilege," and "CNS Certification or Renewal" have been updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 1308 effective July 6, 2013 (Supp. 13-2). A.R.S. Section and Chapter Section references updated under Laws 2015, Ch. 262, effective July 1, 2016 (Laws 2015, Ch. 262, § 23) at file number R16-186 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 1420, effective July 1, 2017 (Supp. 17-2).

ARTICLE 2. ARIZONA REGISTERED AND PRACTICAL NURSING PROGRAMS; REFRESHER PROGRAMS

R4-19-201. Organization and Administration

- A. The parent institution of a nursing program shall be accredited as a post-secondary institution, college, or university, by an

accrediting body that is recognized as an accrediting body by the U.S. Department of Education, and shall hold Arizona private post-secondary approval status if applicable. The parent institution shall submit evidence to the board of continuing accreditation after each reaccreditation review or action. If the parent institution holds both secondary and post-secondary

32-1606. Powers and duties of board

A. The board may:

1. Adopt and revise rules necessary to carry into effect this chapter.
2. Publish advisory opinions regarding registered and practical nursing practice and nursing education.
3. Issue limited licenses or certificates if it determines that an applicant or licensee cannot function safely in a specific setting or within the full scope of practice.
4. Refer criminal violations of this chapter to the appropriate law enforcement agency.
5. Establish a confidential program for the monitoring of licensees who are chemically dependent and who enroll in rehabilitation programs that meet the criteria established by the board. The board may take further action if the licensee refuses to enter into a stipulated agreement or fails to comply with its terms. In order to protect the public health and safety, the confidentiality requirements of this paragraph do not apply if the licensee does not comply with the stipulated agreement.
6. On the applicant's or regulated party's request, establish a payment schedule with the applicant or regulated party.
7. Provide education regarding board functions.
8. Collect or assist in the collection of workforce data.
9. Adopt rules for conducting pilot programs consistent with public safety for innovative applications in nursing practice, education and regulation.
10. Grant retirement status on request to retired nurses who are or were licensed under this chapter, who have no open complaint or investigation pending against them and who are not subject to discipline.
11. 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 the fiscal year.

B. The board shall:

1. Approve regulated training and educational programs that meet the requirements of this chapter and rules adopted by the board.
2. By rule, establish approval and reapproval processes for nursing and nursing assistant training programs that meet the requirements of this chapter and board rules.
3. Prepare and maintain a list of approved nursing programs for the preparation of registered and practical nurses whose graduates are eligible for licensing under this chapter as registered nurses or as practical nurses if they satisfy the other requirements of this chapter and board rules.
4. Examine qualified registered and practical nurse applicants.
5. License and renew the licenses of qualified registered and practical nurse applicants and licensed nursing assistants who are not qualified to be licensed by the executive director.
6. Adopt a seal, which the executive director shall keep.
7. Keep a record of all proceedings.

8. For proper cause, deny or rescind approval of a regulated training or educational program for failure to comply with this chapter or the rules of the board.
9. Adopt rules for the approval of credential evaluation services that evaluate the qualifications of applicants who graduated from an international nursing program.
10. Determine and administer appropriate disciplinary action against all regulated parties who are found guilty of violating this chapter or rules adopted by the board.
11. Perform functions necessary to carry out the requirements of nursing assistant and nurse aide training and competency evaluation program as set forth in the omnibus budget reconciliation act of 1987 (P.L. 100-203; 101 Stat. 1330), as amended by the medicare catastrophic coverage act of 1988 (P.L. 100-360; 102 Stat. 683). These functions shall include:
 - (a) Testing and registration of certified nursing assistants.
 - (b) Testing and licensing of licensed nursing assistants.
 - (c) Maintaining a list of board-approved training programs.
 - (d) Maintaining a registry of nursing assistants for all certified nursing assistants and licensed nursing assistants.
 - (e) Assessing fees.
12. Adopt rules establishing those acts that may be performed by a registered nurse practitioner or certified nurse midwife, except that the board does not have authority to decide scope of practice relating to abortion as defined in section 36-2151.
13. Adopt rules that prohibit registered nurse practitioners or certified nurse midwives from dispensing a schedule II controlled substance that is an opioid, except for an implantable device or an opioid that is for medication-assisted treatment for substance use disorders.
14. Adopt rules establishing educational requirements for the certification of school nurses.
15. Publish copies of board rules and distribute these copies on request.
16. Require each applicant for initial licensure or certification to submit a full set of fingerprints to the board for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.
17. Except for a licensee who has been convicted of a felony that has been designated a misdemeanor pursuant to section 13-604, revoke a license of a person, revoke the multistate licensure privilege of a person pursuant to section 32-1669 or not issue a license or renewal to an applicant who has one or more felony convictions and who has not received an absolute discharge from the sentences for all felony convictions three or more years before the date of filing an application pursuant to this chapter.
18. Establish standards for approving and reapproving nurse practitioner and clinical nurse specialist programs and provide for surveys of nurse practitioner and clinical nurse specialist programs as it deems necessary.
19. Provide the licensing authorities of health care institutions, facilities and homes any information the board receives regarding practices that place a patient's health at risk.
20. Limit the multistate licensure privilege of any person who holds or applies for a license in this state pursuant to section 32-1668.

21. Adopt rules to establish competency standards for obtaining and maintaining a license.
 22. Adopt rules for the qualification and certification of clinical nurse specialists.
 23. Adopt rules for approval and reapproval of refresher courses for nurses who are not currently practicing.
 24. Maintain a list of approved medication assistant training programs.
 25. Test and certify medication assistants.
 26. Maintain a registry and disciplinary record of medication assistants who are certified pursuant to this chapter.
- C. The board may conduct an investigation on receipt of information that indicates that a person or regulated party may have violated this chapter or a rule adopted pursuant to this chapter. Following the investigation, the board may take disciplinary action pursuant to this chapter.
- D. The board may limit, revoke or suspend the privilege of a nurse to practice in this state granted pursuant to section 32-1668.
- E. Failure to comply with any final order of the board, including an order of censure or probation, is cause for suspension or revocation of a license or a certificate.
- F. The president or a member of the board designated by the president may administer oaths in transacting the business of the board.

32-1632. Qualifications of registered nurse; application for license

An applicant for a license to practice as a registered nurse shall file with the board a verified written application accompanied by the prescribed fee and shall submit satisfactory proof that:

1. The applicant has completed satisfactorily the basic curriculum in an approved registered nursing program and holds a diploma or degree from that program.
2. The applicant, if convicted of one or more felonies, has received an absolute discharge from the sentences for all felony convictions three or more years before the date of filing an application pursuant to this chapter.
3. If the applicant has been convicted of a felony pursuant to section 13-604, the court has entered judgment of conviction for a class 1 misdemeanor.

32-1633. Examination of registered nurses

- A. An applicant shall pass an examination in subjects relating to the duties and services of a registered nurse taught in an approved registered nursing program as the board determines.
- B. If an applicant successfully passes the examination and meets the other requirements established pursuant to this chapter, the board shall issue a license to practice registered nursing to the applicant.
- C. If an applicant fails to pass the examination prescribed in subsection A within two years after completing the nursing program, the board may require the applicant to complete additional educational requirements as prescribed by the board by rule.
- D. If on review of credible evidence the board believes that the security of a licensure examination has been compromised and that the credibility of examination results is in question, the board may require retesting of applicants.

32-1634.01. Qualifications of international registered nurses; application for license; examination

A. An applicant for a license to practice as a registered nurse who is a graduate of an international nursing program, who is not licensed in another state or territory of the United States and who does not meet the requirements of section 32-1633, subsection A shall satisfy the following requirements:

1. Submit a report from a credential evaluation agency approved by the board that provides information that the applicant's nursing program is equivalent to an approved program or, if the applicant graduated from a Canadian nursing program, submit a passing score on the English language version of the Canadian nurses association testing service examination or an equivalent Canadian nurse licensure examination as determined by the board.
2. Meets English language proficiency requirements prescribed by the board by rule.
3. Submit a report from an agency recognized by the board verifying that any license held in an international jurisdiction is in good standing and is of equivalent status to a license issued in the United States.
4. Pass an examination as provided in section 32-1633, subsection A.
5. Submit a verified statement that indicates whether the applicant has been convicted of a felony and, if convicted of one or more felonies, that indicates the date of absolute discharge from the sentences for all felony convictions.

B. If the applicant satisfies the requirements of subsection A of this section and meets the other requirements established pursuant to this chapter and board rules, except those requiring graduation from a board approved program, the board shall issue a license to practice as a registered nurse to the applicant.

C. On review of credible evidence, the board may require retesting of an applicant if the board believes that the security of an international licensure examination has been compromised and that the credibility of the examination results is in question.

32-1637. Qualifications of practical nurse; application for license

An applicant for a license to practice as and assume the title of a licensed practical nurse shall file with the board a verified written application accompanied by the prescribed fee and shall submit satisfactory proof that the applicant:

1. Has satisfactorily completed the basic curriculum in an approved practical or professional nursing program and holds a diploma, certificate or degree from that program.
2. If convicted of one or more felonies, has received an absolute discharge from the sentences for all felony convictions three or more years before the date of filing the application.

32-1638. Examination of practical nurses

- A. An applicant shall pass an examination in subjects relating to the duties and services of a practical nurse taught in an approved practical nursing program as the board determines.
- B. If an applicant successfully passes the examination and meets the other requirements established pursuant to this chapter, the board shall issue a license to practice as a licensed practical nurse to the applicant.
- C. If an applicant fails to pass the examination prescribed in subsection A within two years after completing the nursing program, the board may require the applicant to complete additional educational requirements as prescribed by the board by rule.
- D. On review of credible evidence, the board may require retesting of applicants if the board believes that the security of a licensure examination has been compromised and that the credibility of examination results is in question.

32-1639.01. Qualifications of international graduate practical nurses; application for license; examination

A. An applicant for a license to practice as a practical nurse who is a graduate of an international nursing program, who is not licensed in another state or territory of the United States and who does not meet the requirements of section 32-1638, subsection A must satisfy the following requirements:

1. Submit a report from a credential evaluation agency approved by the board that provides information that the applicant's nursing program is equivalent to an approved practical or registered nursing program, or if the applicant graduated from a Canadian nursing program, submit a passing score on the English language version of the Canadian nurses association testing service examination or an equivalent Canadian nurse licensure examination as determined by the board.
2. Meets English language proficiency requirements prescribed by the board by rule.
3. Submit a report from an agency recognized by the board verifying that any license held in an international jurisdiction is in good standing and is of equivalent status to a license issued in the United States.
4. Pass an examination as prescribed in section 32-1638.
5. Submit a verified statement that indicates if the applicant has been convicted of a felony and, if convicted of one or more felonies, that indicates the date of absolute discharge from the sentences for all felony convictions.

B. The board shall issue a license to practice as a practical nurse to an applicant who does not meet the requirements of section 32-1637, paragraph 1, relating to graduation from a board approved program, if the applicant otherwise meets the requirements of subsection A of this section and the other requirements established pursuant to this chapter.

C. On review of credible evidence, the board may require retesting of an applicant if the board believes that the security of an international licensure examination has been compromised and that the credibility of the examination results is in question.

32-1643. Fees; penalties

- A. The board by formal vote at its annual meeting shall establish fees not to exceed the following amounts:
1. Initial application for certification for certified registered nurse anesthetist, registered nurse practitioner and clinical nurse specialist in specialty areas, one hundred fifty dollars.
 2. Initial application for school nurse certification, seventy-five dollars.
 3. Initial application for license as a registered nurse, one hundred fifty dollars.
 4. Initial application for license as a practical nurse, one hundred fifty dollars.
 5. Application for reissuance of a registered or practical nursing license, one hundred fifty dollars.
 6. Application for renewal of a registered nurse or a practical nurse license before expiration, one hundred sixty dollars.
 7. Application for renewal of license after expiration, one hundred sixty dollars, plus a late fee of fifty dollars for each month a license is lapsed, but not to exceed a total of two hundred dollars.
 8. Application for renewal of a school nurse certificate, fifty dollars.
 9. Application for temporary registered nurse, practical nurse or licensed nursing assistant license, fifty dollars.
 10. Retaking the registered nurse or practical nurse examination, one hundred dollars.
 11. Issuing a license to an applicant to become a licensed nursing assistant, fifty dollars.
 12. Issuing a license to a licensed nursing assistant applicant for renewal, fifty dollars.
 13. Application for renewal of a licensed nursing assistant license after its expiration, twenty-five dollars for each year it is expired, not to exceed a total of one hundred dollars.
 14. Issuing a duplicate license or certificate, twenty-five dollars.
 15. Copying a nursing program transcript, twenty-five dollars.
 16. Verification to another state or country of licensure for endorsement, certification for advanced practice or licensed nursing assistant licensure, fifty dollars.
 17. Providing verification to an applicant for licensure or for licensed nursing assistant licensure by endorsement, fifty dollars.
 18. Application to prescribe and dispense medication and application to prescribe medication, one hundred fifty dollars.
 19. Application for renewal of prescribing and dispensing medication privileges before expiration and application for renewal of prescribing medication privileges before expiration, twenty dollars.
 20. Application for renewal of prescribing and dispensing medication privileges after expiration and application for renewal of prescribing medication privileges after expiration, thirty-five dollars.
 21. Issuing an inactive license, fifty dollars.
 22. Writing the national council licensing examination for the first time, one hundred fifty dollars.

23. Sale of publications prepared by the board, fifty dollars.
 24. Providing notary services, two dollars, or as allowed under section 41-316.
 25. Copying records, documents, letters, minutes, applications and files, fifty cents a page.
 26. Processing fingerprint cards, fifty dollars.
 27. Registration for board seminars, one hundred dollars.
 28. Failing to notify the board of a change of address pursuant to section 32-1609, twenty-five dollars.
- B. The board may collect from the drawer of a dishonored check, draft order or note an amount allowed pursuant to section 44-6852.

32-1645. Licensed nursing assistants; certified nursing assistants; qualifications

A. A person who wishes to practice as a licensed nursing assistant shall file a verified application on a form prescribed by the board and accompanied by the fee required pursuant to section 32-1643. The applicant shall also submit a verified statement that indicates whether the applicant has been convicted of a felony and, if convicted of one or more felonies, indicates the date of absolute discharge from the sentences for all felony convictions. The applicant shall also submit proof satisfactory to the board that the applicant has:

1. Satisfactorily completed the basic curriculum of a program approved by the board.
2. Received a valid certificate from a training program approved by the board.
3. Satisfactorily completed a competency examination pursuant to section 32-1647.

B. A person who wishes to practice as a certified nursing assistant shall file a verified form prescribed by the board and authorized by the omnibus budget reconciliation act of 1987 (P.L. 100-123; 101 Stat. 1330), as amended by the medicare catastrophic coverage act of 1988 (P.L. 100-360; 102 Stat. 683). The applicant shall also submit proof satisfactory to the board that the applicant has:

1. Satisfactorily completed the basic curriculum of a program approved by the board.
2. Received a valid certificate from a training program approved by the board.
3. Satisfactorily completed the nursing assistant competency examinations pursuant to section 32-1647.

32-1664. Investigation; hearing; notice

A. In connection with an investigation, the board or its duly authorized agents or employees may obtain any documents, reports, records, papers, books and materials, including hospital records, medical staff records and medical staff review committee records, or any other physical evidence that indicates that a person or regulated party may have violated this chapter or a rule adopted pursuant to this chapter:

1. By entering the premises, at any reasonable time, and inspecting and copying materials in the possession of a regulated party that relate to nursing competence, unprofessional conduct or mental or physical ability of a licensee to safely practice nursing.

2. By issuing a subpoena under the board's seal to require the attendance and testimony of witnesses or to demand the production for examination or copying of documents or any other physical evidence. Within five days after a person is served with a subpoena, that person may petition the board to revoke, limit or modify the subpoena. The board shall do so if in its opinion the evidence required does not relate to unlawful practices covered by this chapter, is not relevant to the charge that is the subject matter of the hearing or investigation or does not describe with sufficient particularity the physical evidence whose production is required.

3. By submitting a written request for the information.

4. In the case of an applicant's or a regulated party's personal medical records, as defined in section 12-2291, by any means permitted by this section if the board either:

(a) Obtains from the applicant or regulated party, or the health care decision maker of the applicant or regulated party, a written authorization that satisfies the requirements of title 12, chapter 13, article 7.1.

(b) Reasonably believes that the records relate to information already in the board's possession regarding the competence, unprofessional conduct or mental or physical ability of the applicant or regulated party as it pertains to safe practice. If the board adopts a substantive policy statement pursuant to section 41-1091, it may authorize the executive director, or a designee in the absence of the executive director, to make the determination of reasonable belief.

B. A regulated party and a health care institution as defined in section 36-401 shall, and any other person may, report to the board any information the licensee, certificate holder, health care institution or individual may have that appears to show that a regulated party or applicant is, was or may be a threat to the public health or safety.

C. The board retains jurisdiction to proceed with an investigation or a disciplinary proceeding against a regulated party whose license or certificate expired not more than five years before the board initiates the investigation.

D. Any regulated party, health care institution or other person that reports or provides information to the board in good faith is not subject to civil liability. If requested the board shall not disclose the name of the reporter unless the information is essential to proceedings conducted pursuant to this section.

E. Any regulated party or person who is subject to an investigation may obtain representation by counsel.

F. On determination of reasonable cause, the board, or if delegated by the board the executive director, may require a licensee, certificate holder or applicant to undergo at the expense of the licensee, certificate holder or applicant any combination of mental, physical or psychological examinations, assessments or skills evaluations necessary to determine the person's competence or ability to practice safely. These examinations may include bodily fluid testing and other examinations known to detect the presence of alcohol or drugs. If the executive director orders the licensee, applicant or certificate holder to undertake an examination, assessment or evaluation pursuant to this subsection, and the licensee, certificate holder or applicant fails to affirm to the board in writing within fifteen days after receipt of the notice of the order that the licensee, certificate holder or applicant intends to comply with the order, the executive director shall refer the matter to the board to permit the board to determine whether to issue an order pursuant to this subsection. At each regular meeting of the board the

executive director shall report to the board data concerning orders issued by the executive director pursuant to this subsection since the last regular meeting of the board and any other data requested by the board.

G. The board shall provide the investigative report if requested pursuant to section 32-3206.

H. If after completing its investigation the board finds that the information provided pursuant to this section is not of sufficient seriousness to merit disciplinary action against the regulated party or applicant, it may take either of the following actions:

1. Dismiss if in the opinion of the board the information is without merit.
2. File a letter of concern if in the opinion of the board there is insufficient evidence to support disciplinary action against the regulated party or applicant but sufficient evidence for the board to notify the regulated party or applicant of its concern.

I. Except as provided pursuant to section 32-1663, subsection F and subsection J of this section, if the investigation in the opinion of the board reveals reasonable grounds to support the charge, the regulated party is entitled to an administrative hearing pursuant to title 41, chapter 6, article 10. If notice of the hearing is served by certified mail, service is complete on the date the notice is placed in the mail.

J. A regulated party shall respond in writing to the board within thirty days after notice of the hearing is served as prescribed in subsection I of this section. The board may consider a regulated party's failure to respond within this time as an admission by default to the allegations stated in the complaint. The board may then take disciplinary actions allowed by this chapter without conducting a hearing.

K. An administrative law judge or a panel of board members may conduct hearings pursuant to this section.

L. In any matters pending before it, the board may issue subpoenas under its seal to compel the attendance of witnesses.

M. Patient records, including clinical records, medical reports, laboratory statements and reports, any file, film, other report or oral statement relating to diagnostic findings or treatment of patients, any information from which a patient or a patient's family might be identified or information received and records kept by the board as a result of the investigation procedure outlined in this chapter are not available to the public and are not subject to discovery in civil or criminal proceedings.

N. Hospital records, medical staff records, medical staff review committee records, testimony concerning these records and proceedings related to the creation of these records shall not be available to the public. They shall be kept confidential by the board and shall be subject to the same provisions concerning discovery and use in legal actions as are the original records in the possession and control of hospitals, their medical staffs and their medical staff review committees. The board shall use these records and testimony during the course of investigations and proceedings pursuant to this chapter.

O. If the regulated party is found to have committed an act of unprofessional conduct or to have violated this chapter or a rule adopted pursuant to this chapter, the board may take disciplinary action.

P. The board may subsequently issue a denied license or certificate and may reissue a revoked or voluntarily surrendered license or certificate.

Q. On application by the board to any superior court judge, a person who without just cause fails to comply with a subpoena issued pursuant to this section may be ordered by the judge to comply with the subpoena and punished by the court for failing to comply. Subpoenas shall be served by regular or certified mail or in the manner required by the Arizona rules of civil procedure.

R. The board may share investigative information that is confidential under subsections M and N of this section with other state, federal and international health care agencies and with state, federal and international law

enforcement authorities if the recipient is subject to confidentiality requirements similar to those established by this section. A disclosure made by the board pursuant to this subsection is not a waiver of the confidentiality requirements established by this section.

BOARD OF MANUFACTURED HOUSING (F19-0401)

Title 4, Chapter 34, Articles 2 and 5, R4-34-204, R4-34-501, and R4-34-502



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 4, 2019

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

FROM: Council Staff

DATE: May 6, 2019

SUBJECT: MANUFACTURED HOUSING BOARD (F19-0401)
Title 4, Chapter 34, Rules R4-34-204, R4-34-501, and R4-34-502

This Five Year Review Report (5YRR) relates to three rules: R4-34-204, R4-34-501, and R4-34-502 regarding the Manufactured Housing Board (Board) within the Department of Housing (Department). R4-34-204 addresses Installers. The two rules in Article 5 (Fees) address the fee schedule (R4-34-501) and license bond amounts (R4-34-502).

At the May 1, 2018 Council Meeting, the Council voted to require the Department of Housing to review these three rules. The Department presented these rules to the Board at its October 17, 2018 Board Meeting for review and consideration. At that meeting, the Board determined that no changes to these rules were necessary. As a result, the Board submitted a letter to the Council dated November 6, 2018 describing the Board's actions and attached a draft version of the Board's minutes from the October 17, 2018 meeting. The Board did not submit a report in the form and manner required under GRRC rules at that time. The Board now submits a report consistent with R1-6-301.

Proposed Action

Based on the decision at its October 17, 2018 Board meeting, the Board proposes to take no action regarding these rules.

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

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

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The rules under review explain the requirements for licensure for manufactured housing installers. The Board has determined the economic impact of the rules does not differ from what was originally determined when the rules were adopted.

The stakeholders include the Board, licensees, and the consumers of manufactured housing.

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

The Board indicates that the rules under review provide the least intrusive and least costly method of achieving their regulatory objectives. The rules support the Board's purpose and commitment to maintaining standards of safety for manufactured homes, mobile homes and factory-built buildings. Any burdens or costs of compliance are necessary to achieve the Board's mission and maintain standards that are nationally recognized in the industry as best practices. The benefits of these rules outweigh the costs.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No. The Board has not received any written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

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

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

Yes. The Board indicates that the rules are enforced as written.

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

No. The rules are not more stringent than federal law. The Board indicates that it ensured these rules are not more stringent than federal law by incorporating by reference 24 CFR 3288 (2008). This rule establishes standards for manufactured homes. The Board states that pursuant to a contract with the U.S. Department of Housing and Urban Development

(HUD), the Arizona Department of Housing enforces federal regulations regarding plant monitoring, installation inspection, and dispute resolution for consumers of manufactured homes.

8. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

For the rules in Title 4, Chapter 34 that require a permit or license, the Board states that the rules comply with A.R.S. § 41-1037. The three rules at issue in this report were adopted prior to July 29, 2010.

9. Conclusion

As indicated in the report, the Board plans to take no action regarding these rules. The rules are clear, concise, understandable, and effective. Council staff recommends approval of this report.

DOUGLAS A. DUCEY
Governor



CAROL DITMORE
Director

STATE OF ARIZONA
DEPARTMENT OF HOUSING
1110 WEST WASHINGTON, SUITE 280
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April 18, 2019

Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Five-Year Review Report on R4-34-204, R4-34-501 and R4-34-502

Dear Ms. Sornsin,

As required by A.R.S. § 41-1056, the Board of Manufactured Housing within the Arizona Department of Housing submits for your approval a report on a review of the referenced rules. The Board reviewed all referenced rules.

As required under A.R.S. § 41-1056(A), the Board certifies that it is in compliance with A.R.S. § 41-1091 regarding a substantive policy directory.

If you have any questions regarding this report, please contact me at (602) 771-1035. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Tara Brunetti".

Tara Brunetti
Assistant Deputy Director
Office of Manufactured Housing
Arizona Department of Housing

Governor’s Regulatory Review Council

Five-Year-Review Report Template

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S.§ 41-4010(A)

Specific Statutory Authority: R4-34-101. Definitions: A.R.S.§ 41-4010(A)(1), (2), (3), (10), (13), and (15)

R4-34-204. Installers: A.R.S. § 41-4010(A)(8)

R4-34-501. General: A.R.S. § 41-4004 and 41-4010(A)(4), (6) - (9), (13), and (16)

R4-34-502. License Bond Amounts: A.R.S § 41-4010(A)(6)-(9), (13), and (16)

2. The objective of each rule:

Rule	Objective
R4-34-204	Installers: The objective of this rule is to provide descriptions of installers’ license classifications and the activities that define the scope of each license class. The rule also specifies license requirements specific to an installer. This enables an install licensee and the public to know the applicable scope of activities.
R4-34-501	General: The objective of this rule is to provide information regarding a schedule of fees in accordance with A.R.S. §§ 41-4010(A)(4), and ensure services provided to the industry by the Office generate fees to cover the Office’s expenses within the margin defined by statute. This provides transparency to the industry regarding the Office.
R4-34-502	License Bond Amounts: The objective of this rule is to establish bond amounts for each applicable license class. This provides an applicant or licensee with information necessary to obtain or maintain a license in good standing.

3. Are the rules effective in achieving their objectives?

Yes X No ___

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation

4. Are the rules consistent with other rules and statutes?

Yes X No ___

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation

5. **Are the rules enforced as written?** Yes No

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.

Rule	Explanation

6. **Are the rules clear, concise, and understandable?** Yes No

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

If yes, please fill out the table below:

Commenter	Comment	Agency's Response

8. **Economic, small business, and consumer impact comparison:** The Board believes that the economic, small business and consumer impact statements prepared for the five rulemakings completed since 1999 were generally accurate.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

In a five-year-review report approved by the Council on October 2, 2012, the Board indicated it would amend R4-34-303(B) to correct an error. The subsection incorrectly says "seller's broker" rather than "purchaser's broker." The Board has not completed the planned rulemaking due to the rule moratorium.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Board determined the probable benefits of the rules outweigh their probable costs and the rules impose the least burden and costs to regulated persons necessary to achieve the underlying regulatory objective.

The rules support the Department's purpose and commitment to maintain standards of safety for manufactured homes, mobile homes, and factory built buildings by reducing hazards to life and property, and to protect consumers of these products and services. The rules establish the minimum standards that are compliant with the federally adopted regulations and codes that are nationally recognized in the industry as best practices. The Board has determined any burden or cost of compliance is necessary to achieve the Department's mission of consumer safety. Any additional costs are not burdens imposed to regulated persons as those costs are passed on to the consumers of the products and services.

The fee schedule is established annually by the Board and is applicable to licensees engaged in the business of constructing the homes and buildings, selling the homes and buildings, and installing the homes and buildings. These licensees are required by statute to submit plans to the Office for approval when applicable, obtain a permit to install the home or building, and have their work inspected. The fee schedule is intended to recover the costs incurred by the Office in providing the required plan review, permit, and inspection. The fees are a cost of doing business and that probably is passed to the consumer of these products and services.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No X

Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?

The Board determined the rules are not more stringent than federal law. The Board ensured this by incorporating by reference 24 CFR 3280 through 3288 (2008), which establish standards for manufactured homes. Under contract with the US Department of Housing and Urban Development, the Department enforces the federal regulations regarding plant monitoring (24 CFR 3280 and 3282), installation inspection (24 CFR 3285 and 3286), and dispute resolution for consumers of manufactured homes (24 CFR 3288).

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

The following rules were made after July 29, 2010: R4-34-101, R4-34-102, R4-34-103, R4-34-601, R4-34-602, R4-34-603, R4-34-607, R4-34-702, R4-34-703, R4-34-704, R4-34-706, R4-34-801, R4-34-803, R4-34-804 and R4-34-805. The rules in Article 7 require obtaining plan approval. Those in Article 8 require permits for installation. These rules comply with A.R.S. § 41-1037 because they are issued to qualified individuals to conduct activities that are substantially similar in nature.

14. Proposed course of action

If possible, please identify a month and year by which the agency plans to complete the course of action.

For the purpose of conducting the five-year-review, the Department presented Rules R4-34-201, 502, and 502 to the Board for review and consideration at the scheduled Board Meeting held October 17, 2018. The Board reviewed and considered the language and format of the existing Rules during the course of the scheduled Board Meeting. After discussion and due consideration, the Board determined that no changes to the existing Rules are warranted.

Arizona Administrative CODE

Supplement 18-2

www.azsos.gov

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of April 1, through June 30, 2018.



TITLE 4. PROFESSIONS AND OCCUPATIONS CHAPTER 34. BOARD OF MANUFACTURED HOUSING

The table of contents on the first page contains quick links to the referenced page numbers in this Chapter. Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

Sections, Parts, Exhibits, Tables or Appendices codified in this supplement. The list provided contains quick links to the updated rules.

R4-34-101. Definitions	3	R4-34-601. Repealed	9
R4-34-102. Materials Incorporated by Reference	3	R4-34-602. Repealed	10
R4-34-103. Exceptions	4	R4-34-603. FBBs	10
R4-34-104. Repealed	4	R4-34-604. Repealed	10
		R4-34-605. Reconstruction of FBBs	10
R4-34-201. General	5	R4-34-606. Rehabilitation of Mobile Homes	10
R4-34-202. Manufacturers	5	R4-34-607. Manufacturing Inspection and Certification	11
R4-34-203. Retailers	6		
R4-34-204. Installers	6	R4-34-701. General	11
		R4-34-702. Compliance Assurance Manuals	12
R4-34-301. Transaction Copies	7	R4-34-703. Drawings and Specifications	12
R4-34-302. Advertising	7	R4-34-704. Reconstruction Plans	13
R4-34-303. Brokered Transactions	7	R4-34-705. Accessory Structures	13
		R4-34-706. FBB Installation	13
R4-34-401. Surety Bond Forms	8	R4-34-707. Designated Flood-prone Area Installation	13
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		R4-34-801. Permits	14
R4-34-501. General	9	R4-34-802. General Installation	14
R4-34-502. License Bond Amounts	9	R4-34-803. Repealed	14
R4-34-503. Repealed	9	R4-34-804. Repealed	15
R4-34-504. HUD Label Administration	9	R4-34-805. Accessory Structures	15
R4-34-505. Plans and Supplements	9		
R4-34-506. Repealed	9	R4-34-1001. Rehearing or Review	15

Questions about these rules? Contact:

Name: Debra Blake, Assistant Deputy Director
Address: Office of Manufactured Housing
Arizona Department of Housing
1110 W. Washington St., Suite 280
Phoenix, AZ 85007
Telephone: (602) 771-1000
Fax: (602) 771-1992
E-mail: Debra.blake@azhousing.gov
Website: www.housing.az.gov

The release of this Chapter in supplement 18-2 replaces supplement 12-2, 16 pages

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into titles. Titles are divided into chapters. A chapter includes state agency rules. Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each chapter.

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2018 is cited as Supp. 18-1.

Please note: The Office publishes by chapter, not by individual rule section. Therefore there might be only a few sections codified in each chapter released in a supplement. Historical notes at the end of a section provide an effective date and information when a rule was last updated.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate chapters of the *Administrative Code* in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, www.azleg.gov. An agency’s authority

note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in a chapter can be found at the Secretary of State’s website, under Services-> Legislative Filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at www.azsos.gov/rules, click on the *Administrative Register* link.

Editor’s notes at the beginning of a chapter provide information about rulemaking sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

EXEMPTIONS AND PAPER COLOR

At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

PERSONAL USE/COMMERCIAL USE

This chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1, R1-1-113.

Rhonda Paschal, managing rules editor, assisted with the editing of this chapter.



Administrative Rules Division
The Arizona Secretary of State electronically publishes each A.A.C. Chapter with a digital certificate. The certificate-based signature displays the date and time the document was signed and can be validated in Adobe Acrobat Reader.

TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 34. BOARD OF MANUFACTURED HOUSING

(Authority: A.R.S. § 41-2141 et seq.)

ARTICLE 1. GENERAL

Article 1, consisting of Sections R4-34-101 through R4-34-104, adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4).

Article 1, consisting of Sections R4-34-101 through R4-34-107, repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

Table listing sections R4-34-101 through R4-34-107 with their respective topics: Definitions, Materials Incorporated by Reference, Exceptions, Repealed, Repealed, Repealed, Repealed.

ARTICLE 2. LICENSING

Article 2, consisting of Sections R4-34-201 through R4-34-204, adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4).

Article 2, consisting of Sections R4-34-201 through R4-34-205, repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

Table listing sections R4-34-201 through R4-34-205 with their respective topics: General, Manufacturers, Retailers, Installers, Repealed.

ARTICLE 3. SALES TRANSACTIONS AND TRUST OR ESCROW ACCOUNT

Article 3, consisting of Sections R4-34-301 through R4-34-303, adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4).

Article 3, consisting of Sections R4-34-301 through R4-34-309, repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

Former Article 3, consisting of Sections R4-34-301 through R4-34-304, renumbered to Article 7, Sections R4-34-701 through R4-34-704, effective July 3, 1991 (Supp. 91-3).

New Article 3, consisting of Sections R4-34-301 through R4-34-306, renumbered from Article 7, Sections R4-34-701 through R4-34-706, effective July 3, 1991 (Supp. 91-3).

Table listing sections R4-34-301 through R4-34-308 with their respective topics: Transaction Copies, Advertising, Brokered Transactions, Repealed, Repealed, Repealed, Repealed, Repealed.

R4-34-309. Repealed8

ARTICLE 4. SURETY BONDS

Article 4, consisting of Sections R4-34-401 and R4-34-402, adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4).

Article 4, consisting of Sections R4-34-401 through R4-34-404, repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

Former Article 4, consisting of Sections R4-34-401 through R4-34-403, renumbered to Article 5, Sections R4-34-501 through R4-34-503, effective July 3, 1991 (Supp. 91-3).

New Article 4, consisting of Sections R4-34-401 through R4-34-404, renumbered from Article 9, Sections R4-34-901 through R4-34-904, effective July 3, 1991 (Supp. 91-3).

Table listing sections R4-34-401 through R4-34-404 with their respective topics: Surety Bond Forms, Cash Deposits, Repealed, Repealed.

ARTICLE 5. FEES

Article 5, consisting of Sections R4-34-501 through R4-34-506, adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4).

Article 5, consisting of Sections R4-34-501 through R4-34-503, repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

Former Article 5, consisting of Sections R4-34-501 and R4-34-502, renumbered to Article 8, Sections R4-34-801 and R4-34-802, effective July 3, 1991 (Supp. 91-3).

New Article 5, consisting of Sections R4-34-501 through R4-34-503, renumbered from Article 4, Sections R4-34-401 through R4-34-403, effective July 3, 1991 (Supp. 91-3).

Table listing sections R4-34-501 through R4-34-506 with their respective topics: General, License Bond Amounts, Repealed, HUD Label Administration, Plans and Supplements, Repealed.

ARTICLE 6. MANUFACTURING, CONSTRUCTION, AND INSPECTION

Article 6, consisting of Sections R4-34-601 through R4-34-607, adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4).

Article 6, consisting of Sections R4-34-601 through R4-34-610, repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

Table listing sections R4-34-601 through R4-34-602 with their respective topics: Repealed, Repealed.

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 R4-34-605. Reconstruction of FBBs 10
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 R4-34-608. Repealed 11
 R4-34-609. Repealed 11
 R4-34-610. Repealed 11

ARTICLE 7. PLAN APPROVALS

Article 7, consisting of Sections R4-34-701 through R4-34-706, adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4).

Article 7, consisting of Sections R4-34-701 through R4-34-704, repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

Former Article 7, consisting of Sections R4-34-701 through R4-34-706, renumbered to Article 3, Sections R4-34-301 through R4-34-306, effective July 3, 1991 (Supp. 91-3).

New Article 7, consisting of Sections R4-34-701 through R4-34-704, renumbered from Article 3, Sections R4-34-301 through R4-34-304, effective July 3, 1991 (Supp. 91-3).

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 R4-34-702. Compliance Assurance Manuals 12
 R4-34-703. Drawings and Specifications 12
 R4-34-704. Reconstruction Plans 13
 R4-34-705. Accessory Structures 13
 R4-34-706. FBB Installation 13
 R4-34-707. Designated Flood-prone Area Installation 13

ARTICLE 8. PERMITS AND INSTALLATION

Article 8, consisting of Sections R4-34-801 through R4-34-805, adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4).

Article 8, consisting of Sections R4-34-801 and R4-34-802, repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

Former Article 8, consisting of Sections R4-34-801 through R4-34-804, repealed effective July 3, 1991 (Supp. 91-3).

New Article 8, consisting of Sections R4-34-801 and R4-34-802, renumbered from Article 5, Sections R4-34-501 and R4-34-502, effective July 3, 1991 (Supp. 91-3).

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 R4-34-801. Permits14
 R4-34-802. General Installation14
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 R4-34-804. Repealed15
 R4-34-805. Accessory Structures15
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ARTICLE 9. REPEALED

Article 9, consisting of Section R4-34-901, repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

Former Article 9, consisting of Sections R4-34-901 through R4-34-904, renumbered to Article 4, Sections R4-34-401 through R4-34-404, effective July 3, 1991 (Supp. 91-3).

New Article 9, consisting of Section R4-34-901, renumbered from Article 10, Section R4-34-1001, effective July 3, 1991 (Supp. 91-3).

Section
 R4-34-901. Repealed15

ARTICLE 10. ADMINISTRATIVE PROCEDURES

Article 10, consisting of Section R4-34-1001, adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4).

Former Article 10, consisting of Section R4-34-1001, renumbered to Article 9, Section R4-34-901, effective July 3, 1991 (Supp. 91-3).

Article 10, consisting of Section R4-34-1001, adopted effective April 4, 1985.

Section
 R4-34-1001. Rehearing or Review15

ARTICLE 11. RENUMBERED

Article 11, consisting of Section R4-34-1101, renumbered to 4 A.A.C. 36, R4-36-201 (Supp. 95-4).

Article 11, consisting of Section R4-34-1101, adopted as a permanent rule effective November 16, 1988.

Article 11, consisting of Section R4-34-1101, adopted as an emergency effective March 14, 1988 pursuant to A.R.S. § 41-1026, valid for only 90 days. Emergency expired.

Section
 R4-34-1101. Renumbered15

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ARTICLE 1. GENERAL**R4-34-101. Definitions**

The definitions in A.R.S. §§ 41-4001, and 41-4008 apply to this Chapter. Additionally, in this Chapter:

1. "Act" means the Manufactured Housing Improvement Act of 2000, which is Title VI of the American Homeownership and Economic Opportunity Act of 2000.
2. "Agency" means the seller or purchaser of a used home has given a licensed salesperson written legal authority to act on behalf of the seller or purchaser when dealing with a third party. The written legal authority is also binding on the salesperson's licensed and employing retailer.
3. "Agency disclosure" means a document that specifies the person a licensed salesperson or licensed retailer represents in a brokered transaction.
4. "Agent" means a licensed retailer authorized to act on behalf of a seller, purchaser, or both the seller and purchaser of a used home.
5. "Branch location" means a satellite office, in addition to the principal office, where business may be transacted.
6. "Brokered transaction" means a transaction in which a licensed broker acts as an agent for the seller, purchaser, or both.
7. "Certificate" means an Arizona Insignia of Approval, which is required for modular manufacture, installation, reconstruction, or rehabilitation work.
8. "Co-brokered transaction" means a transaction in which the listing retailer and the selling retailer are not the same person.
9. "Commercial" means an FBB with a use-occupancy classification other than single-family dwelling.
10. "Consummation of sale, as defined at A.R.S. § 41-1001, includes filing an Affidavit of Affixture, if applicable.
11. "FBB" means factory-built building.
12. "Field installed" means components, equipment, and/or construction that is to be completed or installed at the site. Field installed does not include reconstruction.
13. "HVAC" means heating, ventilation, and air conditioning.
14. "Modular" means an FBB.
15. "New" means a unit or subassembly not previously sold, bargained, exchanged, or given away to a purchaser.
16. "Permanent foundation" means a system of support and perimeter enclosure of crawl space that is:
 - a. Constructed of durable materials (e.g., concrete, masonry, steel, or treated wood);
 - b. Developed in accordance with the manufacturer's installation instructions or designed by an Arizona registered engineer;
 - c. Attached in a manner that effectively transfers all vertical and horizontal design loads that could be imposed on the structure by wind, snow, frost, seismic, or flood conditions, as applicable, to the underlying soil or rock;
 - d. Designed to exclude unwanted elements and varmits, ensure sufficient ventilation, and provide adequate access to the building; and
- e. Not affixed with anchoring straps or cable to ground anchors other than footings.
17. "Purchase contract in a brokered transaction" means a written agreement between a purchaser and seller of a used home that indicates the sales price and terms of the sale.
18. "Repair" means work performed on a manufactured home, mobile home, or FBB to restore the building to a habitable condition but does not impact the original structure, electrical, plumbing, HVAC, mechanical, use occupancy, or energy design.
19. "Residential" means a building with a use-occupancy classification of single family dwelling or as governed by the International Residential Code.
20. "Retailer" means a broker or dealer as prescribed at A.R.S. § 41-4001(5) and (10).
21. "Site" means a parcel of land bounded by a property line or a designated portion of a public right-of-way.
22. "Site work" means soil preparation including soil analysis, grading, drainage, utility trenches, and foundation systems preparation, and field-installed work including terminal and connections, on-site utility connections, accessibility structures, egress paths, parking, lighting, landscaping, and similar work.
23. "Standards" means the materials incorporated by reference in R4-34-102.
24. "Supplement" means a submittal of not more than two sheets of paper that indicates floor plan dimensional sizes, does not change more than 25% of a system or configuration, and is incorporated as part of an originally approved plan.
25. "Technical service" means engineering assistance and interpretative application or clarification of compliance and enforcement of A.R.S. Title 41, Chapter 16, Articles 1, 2, and 4 and this Chapter.
26. "Used home" means a previously titled manufactured home, mobile home, or FBB designed for use as a residential dwelling.

Historical Note

Former Section R4-34-101 renumbered to R4-34-102, new Section R4-34-101 adopted effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 464, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 13 A.A.R. 3582, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 18 A.A.R. 944, effective June 4, 2012 (Supp. 12-2). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-102. Materials Incorporated by Reference

The following materials, which the Board incorporates by reference, apply to this Chapter. The materials, which include no later amendments or editions, are available from the Board. If there is a conflict between the incorporated material and a statute or rule, the statute or rule controls.

1. 24 CFR 3280, Manufactured Home Construction and Safety Standards, April 1, 2008, edition, available from

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- the U.S. Government Printing Office, 732 N. Capitol St. NW, Washington, D.C. 20401 or bookstore.gpo.gov;
2. 24 CFR 3282, Manufactured Home Procedural and Enforcement Regulations, April 1, 2008, edition, available from the U.S. Government Printing Office, 732 N. Capitol St. NW, Washington, D.C. 20401 or bookstore.gpo.gov;
 3. 24 CFR 3284, Manufactured Housing Program Fee, April 1, 2008, edition, available from the U.S. Government Printing Office, 732 N. Capitol St. NW, Washington, D.C. 20401 or bookstore.gpo.gov;
 4. 24 CFR 3285, Model Manufactured Home Installation Standards, April 1, 2008, edition, available from the U.S. Government Printing Office, 732 N. Capitol St. NW, Washington, D.C. 20401 or bookstore.gpo.gov;
 5. 24 CFR 3286, Manufactured Home Installation Program, April 1, 2009, edition, available from the U.S. Government Printing Office, 732 N. Capitol St. NW, Washington, D.C. 20401 or bookstore.gpo.gov;
 6. 24 CFR 3288, Manufactured Home Dispute Resolution Program, April 1, 2008, edition, available from the U.S. Government Printing Office, 732 N. Capitol St. NW, Washington, D.C. 20401 or bookstore.gpo.gov;
 7. International Building Code (IBC), 2009 edition, available from the International Code Council, 4051 Flossmoor Road, Country Club Hills, IL 60478;
 8. International Residential Code (IRC), 2009 edition, available from the International Code Council, 4051 Flossmoor Road, Country Club Hills, IL 60478;
 9. International Mechanical Code (IMC), 2009 edition, available from the International Code Council, 4051 Flossmoor Road, Country Club Hills, IL 60478;
 10. International Plumbing Code (IPC), 2009 edition, available from the International Code Council, 4051 Flossmoor Road, Country Club Hills, IL 60478;
 11. International Fuel Gas Code (IFGC), 2009 edition, available from the International Code Council, 4051 Flossmoor Road, Country Club Hills, IL 60478;
 12. International Energy Conservation Code (IECC), 2009 edition, available from the International Code Council, 4051 Flossmoor Road, Country Club Hills, IL 60478;
 13. National Electrical Code (NEC), 2008 edition, available from the National Fire Protection Association, One Batterymarch Park, Quincy, MA 02169; and
 14. Protecting Manufactured Homes from Floods and Other Hazards, publication 85, second edition, November 2009, available from the Federal Emergency Management Agency, 500 C. St. SW, Washington, D.C. 20472 or www.fema.gov.

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1). Amended effective May 28, 1980 (Supp. 80-3). Amended effective October 20, 1981 (Supp. 81-5). Former Section R4-34-102 renumbered to R4-34-103, new Section R4-34-102 renumbered from R4-34-101 and amended effective July 3, 1991 (Supp. 91-3). Amended effective September 3, 1992 (Supp. 92-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 464, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 18 A.A.R. 944, effective June 4, 2012 (Supp. 12-2).

Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-103. Exceptions

- A.** The Board makes the following exceptions to the materials incorporated by reference in R4-34-102:
1. International Building Code and International Residential Code. A water or gas connection may be a flexible connector if the flexible connector:
 - a. Is not more than 6 feet long,
 - b. Is of the rated size necessary to supply the total demand of the unit, and
 - c. Made of materials that comply with the International Plumbing Code and International Fuel Gas Code; and
 2. International Residential Code. Exclude Section R313, Automatic Fire Sprinkler Systems.
- B.** Under A.R.S. § 41-4010(D), a local jurisdiction may petition the Board for an exception to a standard. If the Board grants a local jurisdiction an exception to a standard, the local jurisdiction shall be bound by any conditions in the exception order issued by the Board. The local jurisdiction shall ensure the petition for an exception:
1. Specifies the standard sections affected;
 2. Justifies the requested exception with documented evidence of the local conditions that support the requested exception;
 3. Specifies the boundaries of the area affected by the local conditions;
 4. States why the exception is necessary to protect the health and safety of the public; and
 5. Provides an estimate of the economic impact the requested exception will have on the petitioning jurisdiction, other affected governmental entities, the public, unit owners, and licensees, and the facts upon which the estimate is based.
- C.** An exception ordered by the Board applies only within the jurisdiction that petitioned for the exception.
- D.** An exception order is effective on the date specified in the order, which will be at least 60 days after a Departmental Substantive Policy Statement has been issued to all licensed installers describing the exception, the area within which it applies, and any provisions applicable to its use.

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1). Amended effective December 13, 1979 (Supp. 79-6). Amended subsection (A), paragraph (5) effective September 17, 1980 (Supp. 80-5). Amended effective October 20, 1981 (Supp. 81-5). Amended subsection (A), paragraph (2) effective August 29, 1983 (Supp. 83-4). Former Section R4-34-103 renumbered to R4-34-104, new Section R4-34-103 renumbered from R4-34-102 and amended effective July 3, 1991 (Supp. 91-3). Amended effective September 3, 1992 (Supp. 92-3). Amended effective December 14, 1994 (Supp. 94-4). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 18 A.A.R. 944, effective June 4, 2012 (Supp. 12-2). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-104. Repealed

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Historical Note

Adopted effective January 31, 1979 (Supp. 79-1). Amended subsection (A) effective February 18, 1981 (Supp. 81-1). Amended subsection (A), paragraph (2) effective August 29, 1983 (Supp. 83-4). Amended subsection (A)(2)(d) effective July 18, 1984 (Supp. 84-4). Former Section R4-34-104 renumbered to R4-34-105, new Section R4-34-104 renumbered from R4-34-103 and amended effective July 3, 1991 (Supp. 91-3). Amended effective September 3, 1992 (Supp. 92-3). Amended effective April 12, 1994 (Supp. 94-2). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Repealed by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-105. Repealed**Historical Note**

Adopted effective January 31, 1979 (Supp. 79-1). Former Section R4-34-105 renumbered to R4-34-106, new Section R4-34-105 renumbered from R4-34-104 and amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

R4-34-106. Repealed**Historical Note**

Adopted effective January 31, 1979 (Supp. 79-1). Amended effective April 23, 1981 (Supp. 81-2). Amended effective October 20, 1981 (Supp. 81-5). Correction, subsection (A) (Supp. 81-6). Amended by adding subsection (C) effective April 30, 1982 (Supp. 82-2). Former Section R4-34-106 renumbered to R4-34-107, new Section R4-34-106 renumbered from R4-34-105 and amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

R4-34-107. Repealed**Historical Note**

Adopted as an emergency effective May 20, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Permanent rule adopted effective August 13, 1985 (Supp. 85-4). Section R4-34-107 renumbered from R4-34-106 and amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

ARTICLE 2. LICENSING**R4-34-201. General**

- A. Within five business days following receipt, the Department shall perform an administrative review of an application. If the Department determines the application is incomplete, the applicant will be provided an opportunity to complete the application. Within 14 business days following receipt of a completed application and after the applicant has passed any required license examination, the Department shall issue a conditional license.
- B. Corporate applicants shall submit a copy of their organizational documents, including articles of incorporation or organization, with all amendments, filed with the state, as applicable, and a certificate of good standing to transact business in this state.
- C. An exemption from any applicable examination requirement may be granted if a new license application identifies the same

license classification and the same qualifying party listed on a previously held license, provided the previous license was in good standing before it expired.

- D. A licensee will be given notice that a conditional license is automatically effective as a permanent license to transact business within the scope of the license following review and approval by the Department of the licensee's criminal background analysis.
- E. Unless otherwise stated in the purchase contract, a retailer selling a mobile home, manufactured home, or FBB shall know the ordinances of the town, city, or county where the unit is to be installed regardless of whether the retailer is obligated to provide for the delivery or installation of the unit.

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1). Amended effective May 9, 1980 (Supp. 80-3). Amended subsection (B) effective January 20, 1981. Amended subsection (B) effective February 18, 1981 (Supp. 81-1). Amended subsection (B) effective April 23, 1981 (Supp. 81-2). Amended effective October 20, 1981 (Supp. 81-5). Correction, subsection (B)(6)(a) 1979 Edition (Supp. 81-6). Former Section R4-34-201 renumbered and amended as Section R4-34-202, new Section R4-34-201 adopted effective September 15, 1982 (Supp. 82-5). Amended subsection (A), paragraph (2) effective August 11, 1986. Amended by adding subsection (F) effective August 25, 1986 (Supp. 86-4). Amended effective July 3, 1991 (Supp. 91-3). Amended effective September 3, 1992 (Supp. 92-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 14 A.A.R. 286, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-202. Manufacturers

Manufacturers' license applications fall into one of the following license classes:

1. M-9A Manufacturer of FBBs manufactures or reconstructs FBBs;
2. M-9C Manufacturer of manufactured homes manufactures or reconstructs manufactured homes; and
3. M-9E Master Manufacturer performs work within the scope of classes M-9A and M-9C.

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1). Amended subsections (A) and (C) effective February 18, 1981 (Supp. 81-1). Amended subsections (C) and (D) effective May 20, 1981 (Supp. 81-3). Amended subsections (B) and (D) effective October 20, 1981 (Supp. 81-5). Former Section R4-34-202 renumbered and amended as Section R4-34-203, former Section R4-34-201 renumbered and amended as Section R4-34-202 effective September 15, 1982 (Supp. 82-5). Amended subsections (B)(3), (B)(4)(b), and (B)(5)(a), by updating the Codes from 1979 Edition to 1982 Edition effective July 8, 1983 (Supp. 83-4). Amended by adding subsection (B)(6)(ii) effective February 14, 1984 (Supp. 84-1). Amended subsection (B)(6)(b) effective November 27, 1984 (Supp. 84-6). Amended effective April 4, 1986 (Supp. 86-2). Amended subsection (B) effective August 11, 1986 (Supp. 86-4). Amended effective July 3, 1991 (Supp. 91-3). Amended effective September 3, 1992 (Supp. 92-3). Amended effective April 12, 1994 (Supp. 94-2). Amended effective November 1, 1995 (Supp. 95-4). Sec-

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tion repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 464, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-203. Retailers

Retailers' license applications fall into one of the following license classes:

1. D-8 Retailer of manufactured homes or mobile homes:
 - a. Buys, sells, or exchanges new or used manufactured homes and used mobile homes;
 - b. May sell new or used accessory structures included in a sales agreement;
 - c. Acts as an agent for the sale or exchange of used manufactured homes or mobile homes including existing or new accessory structures included in a sales agreement;
 - d. Makes alterations to new manufactured homes before a sale to a purchaser; or
 - e. Contracts with licensed installers or contractors for the installation of manufactured homes, mobile homes, and existing or new accessory structures included in a sales agreement.
2. D-8B Broker of manufactured homes or mobile homes:
 - a. Acts as an agent for the sale or exchange of used manufactured homes or mobile homes that may include existing or new accessory structures included in a sales agreement;
 - b. Contracts with licensed installers or contractors for the installation of manufactured homes, mobile homes, and existing or new accessory structures included in a sales agreement.
3. D-10 Retailer of FBBs:
 - a. Buys, sells, or exchanges new or used FBBs;
 - b. Acts as an agent for the sale or exchange of new or used FBBs;
 - c. Makes alterations to new FBBs before sale to a purchaser; or
 - d. Contracts with licensed installers or contractors for the installation of FBBs including any existing or new accessory structures included in a sales agreement.
4. D-12 Master Retailer: Performs work within the scope of classes D-8, D-8B, and D-10.

Historical Note

Former Section R4-34-202 renumbered and amended as Section R4-34-203 effective September 15, 1982 (Supp. 82-5). Amended subsections (A)(1), (A)(2), and (A)(3) by updating the Codes from 1979 Edition to the 1982 Edition effective July 8, 1983 (Supp. 83-4). Amended subsection (A)(4) effective November 27, 1984 (Supp. 84-6). Amended by adding subsection (D) with Exhibits 1, 2, and 3 effective January 2, 1985 (Supp. 85-1). Amended subsection (D) effective April 4, 1986 (Supp. 86-2). Amended subsection (B) effective August 11, 1986 (Supp. 86-4). Amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 464, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 286, effective March 8, 2008 (Supp. 08-1). Amended by final rulemak-

ing at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-204. Installers

A. Installers' license applications fall into one of the following license classes:

1. I-10C General installer of manufactured homes, mobile homes, or residential single-family FBBs:
 - a. Installs manufactured homes, mobile homes, or residential single-family FBBs on foundation systems;
 - b. Installs ground anchors and tie-downs for manufactured homes or mobile homes;
 - c. Connects water, sanitary waste, gas, and electrical systems of all amperages to the proper onsite utility terminals provided by others;
 - d. Installs evaporative cooler systems on manufactured homes, mobile homes, or residential single-family FBBs including providing roof jack to cooler ducts, installing exterior duct work, providing electrical service and controls to cooler from nearest supply source, providing water to the cooler from nearest fresh water source, and performing cooler repair work;
 - e. Performs repair work, replaces or newly installs to existing mobile homes, manufactured homes, and residential single-family FBBs items in subsections (A)(1)(a) through (d); and
 - f. May subcontract to a properly licensed entity for installation of a manufactured home, mobile home, or residential single-family FBB or installation of an accessory structure in conjunction with installation of a home.
2. I-10D Installer of accessory structures attached to manufactured homes, mobile homes, or residential single-family FBBs including installation of prefabricated accessory structure units, on-site constructed accessory structures, concrete footings or slabs for accessory structures, and plumbing, electrical, and mechanical equipment. An I-10 Installer may subcontract, as needed, to a properly licensed installer or contractor for installation of any accessory-structure item under this subsection.
3. I-10G Master installer of manufactured homes, mobile homes, residential single-family FBBs, or commercial single-story FBBs built on a chassis with an electrical system no greater than 400 amperes is qualified to perform the work described under subsections (A)(1) and (2) and installs HVAC systems including electrical wiring, gas connections, and ductwork. An I-10G Master installer does not provide service, maintenance, repair, or discharging, adding, or reclaiming refrigerants or any other work requiring certification. An I-10G Master installer may subcontract to a properly licensed entity for installation of any item under this subsection.

B. Installer applicants. To be qualified for an installer I-10C, I-10D, or I-10G license, an applicant shall:

1. Have a minimum of three years practical or field management experience in the specific type of installation, a related construction field, or the equivalent, for which the applicant is applying. At least two of the three years' experience shall be within 10 years of the date of application. The applicant may substitute technical training in the specific type of installation, a related construction field, or the equivalent, from an accredited college or university or from a Department of Housing workshop for no more than one year of the three years' experience required in this subsection;

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2. Supply a written, notarized statement from each employer or other individual familiar with the applicant's employment or other work experience, which includes the name, address, and telephone number of the individual making the statement, the dates of the applicant's employment or other work experience, a description of the position the applicant held, and a signature indicating the signer vouches for the truthfulness of the statement as proof the applicant meets the experience requirement in subsection (B)(1); and
3. Supply a certified copy of each official transcript or certificate, demonstrating successful completion of any technical training the applicant wishes the Department to consider as proof of meeting the experience requirement in subsection (B)(1).

Historical Note

Adopted effective November 27, 1984 (Supp. 84-6).
 Repealed effective September 3, 1992 (Supp. 92-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 13 A.A.R. 3582, effective December 1, 2007 (Supp. 07-4).
 Amended by final rulemaking at 14 A.A.R. 286, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-205. Repealed**Historical Note**

Adopted effective February 8, 1991 (Supp. 91-1).
 Amended effective September 3, 1992 (Supp. 92-3).
 Amended effective December 14, 1994 (Supp. 94-4).
 Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

ARTICLE 3. SALES TRANSACTIONS AND TRUST OR ESCROW ACCOUNT**R4-34-301. Transaction Copies**

A retailer shall maintain a record of all transaction documents. In every transaction:

1. The retailer shall provide the purchaser with a copy of all completed and signed documents;
2. If a purchaser is unrepresented, the listing retailer shall provide the purchaser with a copy of all completed and signed documents; and
3. If a transaction is co-brokered, the listing retailer shall provide a copy of the listing agreement to the selling retailer, and the selling retailer shall provide a copy of all completed and signed documents to the listing retailer.

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1).
 Amended subsections (A) and (C) effective October 20, 1981 (Supp. 81-5). Amended by adding subsection (D) effective April 20, 1982 (Supp. 82-2). Former Section R4-34-301 renumbered to R4-34-701, new Section R4-34-301 renumbered from R4-34-701 and amended effective July 3, 1991 (Supp. 91-3). Amended effective September 3, 1992 (Supp. 92-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-302. Advertising

- A. A retailer shall include the retailer's licensed business name in all advertising.
- B. A retailer shall not advertise or market a used home for more than the listed price.

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1).
 Amended effective March 17, 1981 (Supp. 81-2).
 Amended subsections (A) and (C) effective October 20, 1981 (Supp. 81-5). Former Section R4-34-302 renumbered to R4-34-702, new Section R4-34-302 renumbered from R4-34-702 and amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-303. Brokered Transactions

- A. A broker shall provide a copy of the agency disclosure to the party or parties the broker represents.
- B. A seller's retailer shall place all earnest money deposits received in connection with the sales transaction in the retailer's trust or escrow account in accordance with A.R.S. § 41-4030 except as provided in the exception provision.
- C. Upon consummation of a brokered transaction, the seller's broker shall provide the seller with a closing statement that includes an accounting of all expenses charged to the seller, all pro rations, and all credits.
- D. In a co-brokered transaction, the seller shall pay the commission shown on the listing agreement as the total commission.
- E. The seller's broker shall prepare an addendum to the listing agreement if any of the terms of the listing agreement change. The seller's signature is required for the addendum to be valid. The addendum to the listing agreement shall reflect the date the seller signs the addendum to the listing agreement.
- F. If the seller or broker elects to finance the unpaid balance reflected on the offer to purchase or purchase contract, the broker shall:
 1. Maintain evidence of the original portion of the purchase price being financed by the seller or broker, and
 2. Maintain evidence the title has been transferred into the name of the purchaser and the lienholder's position has been secured on the title.

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1).
 Amended effective March 17, 1981 (Supp. 81-2).
 Amended effective October 20, 1981 (Supp. 81-5). Former Section R4-34-303 renumbered to R4-34-703, new Section R4-34-303 renumbered from R4-34-703 and amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-304. Repealed**Historical Note**

Adopted effective January 31, 1979 (Supp. 79-1).
 Amended effective October 20, 1981 (Supp. 81-5).
 Amended effective April 30, 1982 (Supp. 82-2). Former Section R4-34-304 renumbered to R4-34-704, new Section R4-34-304 renumbered from R4-34-704 and amended effective July 3, 1991 (Supp. 91-3). Section

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repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

R4-34-305. Repealed**Historical Note**

Adopted effective January 31, 1979 (Supp. 79-1). Amended effective October 20, 1981 (Supp. 81-5). Former Section R4-34-305 renumbered to R4-34-705, new Section R4-34-305 renumbered from R4-34-705 and amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

R4-34-306. Repealed**Historical Note**

Adopted effective January 31, 1979 (Supp. 79-1). Amended effective November 19, 1980 (Supp. 80-6). Amended effective October 20, 1981 (Supp. 81-5). Amended effective October 8, 1982 (Supp. 82-5). Former Section R4-34-306 renumbered to R4-34-706, new Section R4-34-306 renumbered from R4-34-706 and amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

R4-34-307. Repealed**Historical Note**

Adopted effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

R4-34-308. Repealed**Historical Note**

Adopted effective February 8, 1991 (Supp. 91-1). Amended effective September 3, 1992 (Supp. 92-3). Amended effective December 14, 1994 (Supp. 94-4). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

R4-34-309. Repealed**Historical Note**

Adopted effective February 8, 1991 (Supp. 91-1). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

ARTICLE 4. SURETY BONDS**R4-34-401. Surety Bond Forms**

- A.** Manufacturers, installers, and retailers (except those with a D-8B license classification), shall submit the applicable surety bond amount from the list in R4-34-502, with a form provided by the Office of Administration.
- B.** A rider to the bond is required for the following changes:
1. Location of the licensee's principal place of business,
 2. Business name,
 3. Branch address,
 4. License classification, or
 5. Bond amount.

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1). Amended subsection (A) effective October 20, 1981 (Supp. 81-5). Amended subsection (B) effective April 30, 1982 (Supp. 82-2). Former Section R4-34-401 renumbered to R4-34-501, new Section R4-34-401 renumbered from R4-34-901 and amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6

A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 464, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 286, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-402. Cash Deposits

- A.** Unless exempt under R4-34-401, an applicant or licensee posting cash in lieu of a commercial surety bond shall pay by:
1. Cash. A cash deposit is not transferrable and shall be made in the name of the applicant or licensee as the name appears on the license application or issued license; or
 2. Certified or cashier's check or bank or postal money order made payable to the Arizona State Treasurer.
- B.** Upon receipt of an order from a court of competent jurisdiction directing payment of funds on deposit, the Director shall make payment as directed and suspend the license under A.R.S. § 41-4029. To reinstate the license, the licensee shall return the cash deposit to the required balance or file a commercial surety bond for the full amount, and pay all applicable reinstatement fees.
- C.** A cash deposit may be withdrawn by the applicant, licensee, or someone having authority to act on behalf of the applicant or licensee, under the following circumstances:
1. A license is not issued to the applicant;
 2. The license has been terminated, expired, revoked, or voluntary cancelled for at least two years, and there are no outstanding claims; and
 3. Two years after the licensee files a commercial surety bond that replaces the cash deposit if there are no outstanding claims.

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1). Former Section R4-34-402 renumbered to R4-34-502, new Section R4-34-402 renumbered from R4-34-902 effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 14 A.A.R. 286, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-403. Repealed**Historical Note**

Adopted effective January 31, 1979 (Supp. 79-1). Amended effective October 20, 1981 (Supp. 81-5). Former Section R4-34-403 renumbered to R4-34-503, new Section R4-34-403 renumbered from R4-34-903 and amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

R4-34-404. Repealed**Historical Note**

R4-34-904 adopted effective January 31, 1979 (Supp. 79-1). Amended subsections (A) and (B) effective October 20, 1981 (Supp. 81-5). Editor's correction, subsection (B)(2) (Supp. 85-2). Former Section R4-34-904 renumbered to R4-34-404 and amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

ARTICLE 5. FEES

R4-34-501. General

- A. The Board shall establish a fee schedule before May 15 for the coming fiscal year.
- B. The Director shall notify all licensees of the established fee schedule before June 1 of each year and post the fee schedule on the Department’s website.
- C. Licensees shall pay fees for the following services:
 - 1. Manufacturer license,
 - 2. Retailer license,
 - 3. Installer license,
 - 4. Salesperson license,
 - 5. Inspection and technical service,
 - 6. Plans and supplements,
 - 7. Installation permits and insignias, and
 - 8. Administrative functions.

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1). Amended M-9B, M-9C, and M-9E effective October 20, 1981 (Supp. 81-5). Amended by adding M-9F effective April 30, 1982 (Supp. 82-2). Former Section R4-34-501 renumbered to R4-34-801, new Section R4-34-501 renumbered from R4-34-401 and amended effective July 3, 1991 (Supp. 91-3). Amended effective December 14, 1994 (Supp. 94-4). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 14 A.A.R. 286, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-502. License Bond Amounts

- A. An applicant shall submit the license bond amount listed for each license class.

License Class	Bond Amount
M-9A	\$10,000
M-9C	\$65,000
M-9E	\$100,000
D-8	\$25,000
D-10	\$25,000
D-12	\$25,000
I-10C	\$2,500
I-10D	\$1,000
I-10G	\$5,000

- B. The Board shall not renew a license unless and until the licensee’s surety bond is in full force and effect or the full cash deposit is made or in place.

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1). Amended D-8, D-8A, D-9, D-12 and added D-8B effective October 20, 1981 (Supp. 81-5). Amended D-8 effective January 31, 1983 (Supp. 83-1). Former Section R4-34-502 renumbered to R4-34-802, new Section R4-34-502 renumbered from R4-34-402 and amended effective July 3, 1991 (Supp. 91-3). Amended effective December 14, 1994 (Supp. 94-4). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 464, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-503. Repealed

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1). Amended I-10D effective August 21, 1981 (Supp. 81-4). Amended effective October 20, 1981 (Supp. 81-5). Correction, I-10G (Supp. 81-6). Former Section R4-34-503 renumbered to R4-34-803, new Section R4-34-503 renumbered from R4-34-403 and amended effective July 3, 1991 (Supp. 91-3). Amended effective December 14, 1994 (Supp. 94-4). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Repealed by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-504. HUD Label Administration

In addition to the fees required under R4-34-501(C), a manufacturer of manufactured homes shall pay \$5 to the Department for each label issued in this state.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-505. Plans and Supplements

If a licensee submits a plan or supplement that is not complete and correct, the Department shall provide written notice the plan or supplement is not acceptable and provide 60 days from the date on the notice for the licensee to submit a complete and correct plan or supplement. If the licensee fails to submit a complete and correct plan or supplement within the time provided, the Department shall return the submitted plan or supplement and treat the submittal fee paid as forfeited. To resubmit a plan or supplement, the licensee shall pay a new submittal fee.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-506. Repealed

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Repealed by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

ARTICLE 6. MANUFACTURING, CONSTRUCTION, AND INSPECTION

R4-34-601. Repealed

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1). Amended subsection (C) effective October 20, 1981 (Supp. 81-5). Amended by adding M-9F effective April 30, 1982 (Supp. 82-2). Amended subsection (C) effective June 18, 1982 (Supp. 82-3). Amended effective July 3, 1991 (Supp. 91-3). Amended effective December 14, 1994 (Supp. 94-4). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 14 A.A.R. 286, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 18 A.A.R. 944, effective June 4, 2012 (Supp. 12-2). Repealed by

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final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-602. Repealed**Historical Note**

Adopted effective January 31, 1979 (Supp. 79-1). Amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Repealed by final rulemaking at 11 A.A.R. 464, effective March 5, 2005 (Supp. 05-1).

R4-34-603. FBBs

- A.** A manufacturer shall construct an FBB according to the applicable standards in R4-34-102 and:
1. Provide a complete set of drawings and specifications to the Department under R4-34-703(B);
 2. Affix a permanent serial or identification number to each unit during the first stage of manufacturing. If an FBB has multiple sections (modules), the manufacturer shall ensure each module is separately identified. The serial or identification number location and application method shall be shown in the plans required under R4-34-703; and
 3. Affix a Modular Manufacturer's Certificate to each completed module where indicated in the plan required under R4-34-703 (B)(5).
- B.** The Department may require a manufacturer of an FBB that is produced and shipped before plan approval to remove the FBB from this state and remove the Modular Manufacturer's Certificate based on the Department's assessment of the following factors:
1. Probable harm to public safety and welfare,
 2. Previous violations of a similar nature, and
 3. Manufacturer's failure to comply with plan submittal and requirements.

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1). Amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 14 A.A.R. 286, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 18 A.A.R. 944, effective June 4, 2012 (Supp. 12-2). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-604. Repealed**Historical Note**

Adopted effective January 31, 1979 (Supp. 79-1). Amended effective June 13, 1980 (Supp. 80-3). Amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 464, effective March 5, 2005 (Supp. 05-1). Repealed by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-605. Reconstruction of FBBs

A manufacturer shall ensure reconstruction of an FBB is consistent with applicable standards prescribed in R4-34-102 and:

1. Existing construction, systems (electrical, plumbing, HVAC, energy, etc.), and components are structurally and otherwise sound and compliant with standards governing at the time of manufacture;
2. New construction, systems, and components comply with applicable standards in R4-34-102;
3. A permanent serial or identification number is affixed to each reconstructed FBB as required under R4-34-603(A);
4. An Arizona Reconstruction Certificate is affixed to each module;
5. The reconstructed FBB complies with R4-34-102.

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1). Amended effective April 21, 1982 (Supp. 82-2). Amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 464, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-606. Rehabilitation of Mobile Homes

- A.** A rehabilitation permit shall be obtained from the Department before any modification of a mobile home.
- B.** The following requirements shall be met for a mobile home to be issued a certificate of compliance:
1. A smoke detector shall be installed in each sleeping room and outside each separate sleeping area in the immediate vicinity of the sleeping rooms. Each smoke detector shall be installed in accordance with its manufacturer's instructions;
 2. The walls, ceilings, and doors of each gas-fired furnace and water-heater compartment shall be lined with 5/16-inch gypsum board except a door to a compartment that opens to the exterior of the mobile home, in which case the door may be all metal construction. All exterior compartments shall seal to the interior of the mobile home;
 3. Each room designated expressly for sleeping purposes shall have at least one outside egress window or an approved exit device. The window or exit shall have a minimum clear dimension of 22 inches, a minimum clear opening of five square feet, and the bottom of the exit is not more than 36 inches above the floor;
 4. The electrical system is tested for continuity to ensure metallic parts are properly bonded, tested for operation to demonstrate all equipment is connected and in working order, and given a polarity check to determine connections are proper. The electrical system is properly protected for the required amperage load. If aluminum conductors are used, all receptacles and switches rated 20 amperes or less and directly connected to the aluminum conductors are marked CO/ALR. Exterior receptacles other than heat tape receptacles are of the ground fault circuit interrupter (GFI) type. Conductors of dissimilar metals (Copper/Aluminum/or Copper Clad Aluminum) are connected in accordance with Section 110-14 of the National Electrical Code incorporated at R4-36-102; and
 5. Gas piping shall be tested with methods incorporated at R4-36-102. All gas furnaces and water heaters shall be installed in compliance with materials incorporated at R4-36-102. If a rehabilitated mobile home is to be relocated following rehabilitation, the gas tests required under this subsection may be performed and inspected at the time of installation at the new location.

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- C. The rehabilitated mobile home shall be inspected by the Department to ascertain compliance with subsection (B).
- D. The Department shall issue a certification of compliance for each rehabilitated mobile home in compliance with subsection (B), and affix an insignia of approval to the exterior wall nearest the point of entrance of the electrical service.
- E. If the Department determines a rehabilitated mobile home does not comply with subsection (B), the Department shall serve a correction notice and require the person served to make corrections within the time specified in the notice. The Department shall determine the time for correction based on the severity of the hazard or violation and the time reasonably needed to make the correction. The Department shall allow at least 30 days for correction unless an imminent safety hazard is found or the correction has been unreasonably delayed, in which case, the Department shall serve an Order to Vacate to the person occupying the rehabilitated mobile home.
- F. The Department shall serve an Order to Vacate on a person occupying a non-rehabilitated mobile home within five days after an inspection of the non-rehabilitated mobile home finds an imminent safety hazard.
1. The Department shall evaluate the production process at the decertified manufacturing facility to ensure the manufacturer's procedures are consistent with the approved plans, standards, and compliance assurance manual at every stage of production.
 2. When the manufacturer successfully completes the recertification process, the Department shall issue Certificates or Labels to the manufacturer.
- G. The Department may conduct regular inspections of retailer lots to ensure compliance with approved plans, standards, and A.R.S. § 41-4048.

Historical Note

Adopted effective June 23, 1980 (Supp. 80-3). Amended effective October 20, 1981 (Supp. 81-5). Amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 464, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 286, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 18 A.A.R. 944, effective June 4, 2012 (Supp. 12-2). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-608. Repealed**Historical Note**

Adopted effective January 20, 1981 (Supp. 81-1). Amended effective October 20, 1981 (Supp. 81-5). Amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

R4-34-609. Repealed**Historical Note**

Adopted effective July 3, 1984 (Supp. 84-4). Amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

R4-34-610. Repealed**Historical Note**

Adopted effective July 3, 1984 (Supp. 84-4). Amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

ARTICLE 7. PLAN APPROVALS**R4-34-701. General**

- A. Before construction of a manufactured home or FBB, a manufacturer shall submit to the office:
1. The compliance assurance manual required by R4-34-702, and
 2. The drawings and specifications required by R4-34-703.
- B. Before performing one of the following, a person shall obtain plan approval:
1. Under R4-34-704(A) for an alteration,
 2. Under R4-34-704(B) for a reconstruction,
 3. Under R4-34-705 to install an attached accessory structure, and
 4. Under R4-34-706 to install an FBB.
- C. Within 20 business days after receiving a plan submitted under subsection (B), the Department shall perform an administrative review of the plan submittal and if incomplete, require the licensee to provide a complete plan submittal. Within 20 busi-
- A. The Department shall conduct manufactured home plant certification under R4-34-102.
- B. Before issuing Certificates, the Department shall certify that a manufacturing facility of FBBs is capable of manufacturing the FBBs to the specifications in the approved drawings and procedures in the approved compliance assurance manual required under R4-34-702.
- C. A manufacturer of FBBs and reconstructed FBBs shall certify compliance with approved plans by affixing a Modular Manufacturer Certificate or Reconstruction Certificate, as appropriate, to each FBB before delivery to a retailer.
- D. Records and reporting: By the 15th of each month:
1. A manufacturer of manufactured homes shall report to the Department affixing HUD labels, complete any other required reports, and establish and maintain records required under R4-34-102; and
 2. An FBB manufacturer shall report to the Department affixing Arizona Modular and Reconstruction Certificates during the previous month.
- E. The Department shall decertify a manufacturing facility if:
1. A serious defect exists in more than one FBB;
 2. An inspector identifies three or more failures to comply with specifications in the approved plans, standards, or compliance assurance manual;
 3. An in-state licensee fails to produce approved units for more than six consecutive months; or
 4. An out-of-state licensee fails to file quarterly inspection reports for six consecutive months.
- F. Before resuming production, a decertified manufacturing facility shall be recertified by the Department.

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ness days after receiving a complete plan submittal, the Department shall approve or disapprove the plan submittal.

- D. A person that submits a plan under subsection (B) shall ensure the plan conforms with the following standards:
1. Each page is at least 8 1/2 X 11 inches;
 2. The font is at least eight point;
 3. The cover page includes an index and provides a 3 X 5 inch blank space near the title block;
 4. The plan and all details and calculations are sealed by an Arizona registered engineer; and
 5. The plan is consistent with all applicable standards incorporated at R4-34-102.

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1).
 Amended effective December 13, 1979 (Supp. 79-6).
 Amended by adding subsection (K) effective July 8, 1981 (Supp. 81-4). Amended subsections (A), (G), and (K), and added subsection (L) effective October 20, 1981 (Supp. 81-5). Correction, subsection (G)(3) (Supp. 81-6).
 Amended subsection (C) effective January 31, 1983 (Supp. 83-1). Amended subsection (B) effective May 23, 1983 (Supp. 83-3). Amended effective April 5, 1985 (Supp. 85-2). Former Section R4-34-701 renumbered to R4-34-301, new Section R4-34-701 renumbered from R4-34-301 and amended effective July 3, 1991 (Supp. 91-1). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 464, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 286, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-702. Compliance Assurance Manuals

A manufacturer of FBBs shall prepare a compliance assurance manual that has all of the following:

1. An 8 1/2 X 11 inch format with page numbers and revision traceability;
2. The manufacturer's name and address of the factory to which the manual applies;
3. A table of contents that identifies key elements in the quality and compliance control process;
4. An organizational chart that shows titles and functions of all positions responsible for any aspect of quality and compliance control;
5. A description of the design-document control process and procedures for ensuring the current approved design package or building plans are available to production, quality, and compliance personnel;
6. A description of procedures for handling materials, including treatment and disposal of rejected materials, in compliance with standards;
7. A description of the FBB-identification system including a unique identifier, such as a serial or identification number, that is permanently affixed to each module of the FBB at the beginning of manufacturing and where the unique identifier is located on the FBB;
8. A drawing showing the layout of the factory and location of the work area for each step in the manufacturing sequence with a description of the scope of work performed at each work area, including off-line processes;
9. An inspection checklist, keyed to the drawing required in subsection (8), that identifies the inspections and tests to be performed at each step in the manufacturing sequence

and title of the position responsible for ensuring inspections and tests are performed;

10. A list that includes step-by-step procedures for ensuring all required tests are performed, the equipment needed to perform each test, and procedures for maintaining test equipment;
11. A description of procedures for maintaining control of certificates, installing certificates on FBBs, and making the monthly report of certificates and title of the position responsible for ensuring these tasks are performed;
12. A description of the procedures for storing completed FBBs at the facility including the manner in which stored FBBs are protected from the elements and other sources of potential damage; and
13. A description of procedures for ensuring building documents are retained and title of the position responsible for ensuring document retention.

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1).
 Amended effective May 9, 1980 (Supp. 80-3). Amended subsections (B), (C), (D) effective October 20, 1981 (Supp. 81-5). Amended by adding subsection (E) effective January 20, 1982 (Supp. 82-1). Amended by adding subsection (C), paragraph (3) and subsection (D), paragraph (3) effective April 30, 1982 (Supp. 82-2). Amended effective April 5, 1985 (Supp. 85-2). Former Section R4-34-702 renumbered to R4-34-302, new Section R4-34-702 renumbered from R4-34-302 and amended effective July 3, 1991 (Supp. 91-1). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 464, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 286, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 18 A.A.R. 944, effective June 4, 2012 (Supp. 12-2). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-703. Drawings and Specifications

- A. A manufacturer of manufactured homes shall submit to the Department drawings and specifications that comply with applicable standards in R4-34-102.
- B. A manufacturer of FBBs or FBB subassemblies shall submit to the Department plans that comply with the applicable standards in R4-34-102. The manufacturer shall ensure the plans provide or have the following information or format attributes:
1. Dimensioned drawings and details identifying process descriptions, component specification lists, shop drawings, and other documents that specify and identify each component, process, assembly operation, and manufacturing step. Include electrical, plumbing, gas, and HVAC systems;
 2. A traceable identification for each component and subassembly listed;
 3. Design analysis calculations for all loads and systems;
 4. The location and process for stamping the permanent serial or identification number on the FBB or subassembly;
 5. The location of the Modular Manufacturer Certificate; and
 6. Dimensional plans and details identifying all components and construction to be field installed.

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1).
 Amended effective December 13, 1979 (Supp. 79-6).

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Amended effective May 9, 1980. Amended effective June 23, 1980 (Supp. 80-3). Amended subsection (G) effective July 29, 1980 (Supp. 80-4). Amended effective October 20, 1981 (Supp. 81-5). Amended subsection (B)(1) effective July 20, 1984 (Supp. 84-4). Amended effective April 5, 1985 (Supp. 85-2). Former Section R4-34-703 renumbered to R4-34-303, new Section R4-34-703 renumbered from R4-34-303 and amended effective July 3, 1991 (Supp. 91-1). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 464, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 286, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 18 A.A.R. 944, effective June 4, 2012 (Supp. 12-2). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-704. Reconstruction Plans

- A. A manufacturer shall comply with the standards in R4-34-102 when preparing a reconstruction plan.
- B. A manufacturer preparing a reconstruction plan shall ensure the plan contains a detailed set of dimensioned drawings and specifications that depict all aspects of the reconstruction, including a plan depicting the original configuration, and contains the serial or identification number of the unit.
- C. A manufacturer shall include with a reconstruction plan a certification statement regarding existing components, construction, and systems indicating they are structurally sound, functional, and do not pose a life safety threat.

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1). Amended subsection (F) effective August 28, 1980 (Supp. 80-4). Amended effective October 20, 1981 (Supp. 81-5). Amended effective April 5, 1985 (Supp. 85-2). Former Section R4-34-704 renumbered to R4-34-304, new Section R4-34-704 renumbered from R4-34-304 and amended effective July 3, 1991 (Supp. 91-1). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 464, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 286, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 18 A.A.R. 944, effective June 4, 2012 (Supp. 12-2). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-705. Accessory Structures

- A. For commercial FBBs, a properly licensed entity or person shall comply with the International Building Code when preparing attached accessory structure plans. For manufactured homes, mobile homes, and residential FBBs, a properly licensed entity or person shall comply with the International Residential Code when preparing attached accessory structure plans.
- B. The Department may approve a design that does not comply with subsection (A) based on a demonstration by an Arizona registered engineer that the design meets standards at least equivalent to those in subsection (A).
- C. A properly licensed entity or person shall submit plans, which are sealed by an Arizona registered engineer, for all attached accessory structures except skirting systems that have manufacturer installation instructions and HVAC systems.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 464, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 286, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-706. FBB Installation

A properly licensed entity or person shall include the following in installation plans submitted to the Department:

1. A site plan that includes the location of the building and all utility lines;
2. A foundation plan that includes:
 - a. A description of the soil class and the soil bearing pressure;
 - b. A description of footings and other foundation supports designed to meet the minimum bearing pressure at the depth required;
 - c. A complete set of drawings indicating dimensions and details of the foundation footing and anchoring; and a complete list of materials with a cross-identification of how materials will be used, in the appropriate view; and
 - d. Calculations, prepared by an Arizona registered engineer, for all load conditions including wind loads for horizontal loads, uplift loads, and overturning; and horizontal and torsional earthquake effects on foundations.
3. Electrical drawings, including the isometric one-line diagram required by R4-34-102, that contain the following information:
 - a. Size and type of conductors, length of feeders, and all amperage;
 - b. Dimensions of gutterways and raceways;
 - c. Complete details of panelboards, switchboards, and distribution centers; and
 - d. All grounding and bonding connections.
4. Plumbing drawings, including one-line diagrams required by R4-34-102 that contain the following information:
 - a. Location of sewer tap, water meter, and gas meter;
 - b. Size, length, and all materials for sewer, water, and gas lines;
 - c. Location of all cleanouts and grade of sewer line;
 - d. Fixture unit calculations for plumbing and gas fixtures;
 - e. Fastening and closure details for connection of multiple modules; and
 - f. Dimensional plans and details for all components and construction to be field installed.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 14 A.A.R. 286, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 18 A.A.R. 944, effective June 4, 2012 (Supp. 12-2). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-707. Designated Flood-prone Area Installation

Before installing a manufactured home, mobile home, or FBB in a designated flood-prone area, an installer shall submit and obtain Department approval of an installation plan that includes the following:

1. A site plan showing the location of the manufactured home, mobile home, or FBB;

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2. A copy of the designated flood-use permit or flood design conditions issued by the local enforcement agency showing the flood zone type and regulatory and base flood elevations;
3. A site-specific foundation plan that is prepared by an Arizona registered engineer and includes:
 - a. A complete set of drawings indicating dimensions and details of the foundation system and anchoring to prevent floatation, collapse, or lateral movement of the structure;
 - b. A complete list of materials cross identified to the drawings in subsection (3)(a) showing how the materials will be used;
 - c. An indication of how to place the structure to ensure the bottom frame of the structure is at or above the regulatory flood elevation;
 - d. An indication of where to place external utilities and equipment to ensure they are at or above the regulatory flood elevation;
 - e. If the structure has an enclosed foundation, an indication of where to place flood vents or other openings; and
 - f. All calculations used to determine all load conditions; and
4. Written approval of the information in subsections (1) through (3) from the local flood-district administrator having authority.
 - H. The permit holder, owner, or contractor shall request all required inspections.
 - I. At the time of a scheduled inspection, the permit holder, owner, or contractor shall ensure all work to be inspected is accessible (opened) and no work is performed beyond the point indicated for each successive inspection without first obtaining approval from the Department.
 - J. The permit holder, owner, or contractor shall ensure approved plans and all applicable manuals are available onsite.
 - K. A special-use permit for an FBB used for an event of 45 days or less shall be obtained from the Department. The special-use permit expires 45 days from the date of issuance. The holder of a special-use permit shall remove the FBB from the site when the permit expires.

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1). Amended effective October 20, 1981 (Supp. 81-5). Former Section R4-34-801 repealed, new Section R4-34-801 renumbered from R4-34-501 and amended effective July 3, 1991 (Supp. 91-1). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 18 A.A.R. 944, effective June 4, 2012 (Supp. 12-2). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

Historical Note

New Section made by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

ARTICLE 8. PERMITS AND INSTALLATION**R4-34-801. Permits**

- A. A properly licensed entity or person shall obtain a permit for the installation of a manufactured home, mobile home, FBB, or attached accessory structure, or rehabilitation of a mobile home.
- B. The Department shall issue or deny a permit within seven business days after the application is received. If a permit is denied, corrections to the application shall be submitted to the Department within 20 business days after the denial.
- C. A properly licensed entity or person shall obtain all required permits, such as zoning, flood plain, and installation, from the Department or local jurisdiction before beginning any installation work. All permits shall be posted in a conspicuous location onsite. The properly licensed entity or person who contracts to perform the installation and a licensed installer who subcontracts to perform the installation shall verify that all required permits have been obtained from the Department and local jurisdiction before beginning the installation.
- D. A local jurisdiction that has entered into agreement with the Department may issue installation permits and conduct inspections.
- E. The Department or a local jurisdiction participating in the installation inspection program shall charge the permit fee expressly authorized under A.R.S. § 41-2144(A)(4). The fee charged by the local jurisdiction shall not exceed the amount established by the Board.
- F. Every permit, except a special-use permit, expires six months after the permit is issued. The Department may extend the permit for good cause if a written request is made to the Department before the permit expires and the fee established by the Board under A.R.S. § 41-2144(A)(4) is paid again.
- G. A licensee or consumer shall obtain a certificate of occupancy from the Department before occupying a manufactured home, mobile home, or FBB.

R4-34-802. General Installation

- A. A properly licensed entity shall complete and affix an Arizona Installation Certificate to a manufactured home, mobile home, or FBB at the end of the unit opposite the hitch and adjacent to the manufacturer certificate or HUD label. The properly licensed entity shall affix the Arizona Installation Certificate before calling the Department for an inspection.
- B. A properly licensed entity shall make a report by the 15th of each month regarding compliance with subsection (A).
- C. Before beginning an installation, a properly licensed entity shall check with the local jurisdiction regarding frost-line requirements governing permanent foundations or utilities.
- D. A properly licensed entity shall install all new manufactured homes, used manufactured homes, and mobile homes according to the materials incorporated by reference in R4-34-102.
- E. Before making an installation, a properly licensed entity shall perform or contract with a qualified professional to assess the site and soil and make site preparations necessary to ensure the site is compatible with the manufactured home, mobile home, or residential single-family FBB to be installed. The entity that actually assesses and prepares the site has primary responsibility for the work performed. The entity that contracts to have the site assessment and preparation done, if different, has secondary responsibility for the work performed.
- F. Installation of a manufactured home, mobile home, or FBB shall be performed only by a properly licensed entity.

Historical Note

Adopted effective January 31, 1979 (Supp. 79-1). Amended subsections (A), (D), (F), and (L) effective October 20, 1981 (Supp. 81-5). Former Section R4-34-802 repealed, new Section R4-34-802 renumbered from R4-34-502 and amended effective July 3, 1991 (Supp. 91-1). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999; new Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-803. Repealed

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 464, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 286, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 18 A.A.R. 944, effective June 4, 2012 (Supp. 12-2). Repealed by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-804. Repealed**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 464, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 286, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 18 A.A.R. 944, effective June 4, 2012 (Supp. 12-2). Repealed by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

R4-34-805. Accessory Structures

- A. "Attached," as used in A.R.S. § 41-2142(1), means fastened by any means to a manufactured home, mobile home, or residential single-family FBB at the time of installation.
- B. An installer or contractor shall install, assemble, or construct each accessory structure in compliance with applicable standards in R4-34-102.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 464, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 286, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 18 A.A.R. 944, effective June 4, 2012 (Supp. 12-2). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

Exhibit 1. Repealed**Historical Note**

Exhibit 1 repealed by final rulemaking at 18 A.A.R. 944, effective June 4, 2012 (Supp. 12-2).

ARTICLE 9. REPEALED**R4-34-901. Repealed****Historical Note**

Adopted effective April 4, 1985 (Supp. 85-2). Former Section R4-34-901 renumbered to R4-34-401, new Section R4-34-901 renumbered from R4-34-1001 and amended effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 6 A.A.R. 47, effective December 8, 1999 (Supp. 99-4).

ARTICLE 10. ADMINISTRATIVE PROCEDURES**R4-34-1001. Rehearing or Review**

- A. A party may amend a motion for rehearing or review filed under A.R.S. § 41-4038 at any time before it is ruled on by the Director. The opposing party may file a response within 15 days after the date the motion or amended motion is filed. The Director may require the parties to file written briefs explaining the issues raised in the motion and provide for oral argument.
- B. The Director may affirm or modify the decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in A.R.S. § 41-4038(D). An order modifying the decision or granting a rehearing shall specify with particularity the grounds on which the modification or rehearing is granted, and any rehearing shall cover only those matters.
- C. When a motion for rehearing or review is based upon affidavits, the affidavits shall be served with the motion. An opposing party or the Attorney General may, within 10 days after service, serve opposing affidavits.
- D. Not later than 15 days after the date of the decision, the Director may grant a rehearing or review on the Director's own initiative for any reason for which the Director might have granted relief on the motion of a party. The Director may grant a motion for rehearing or review, timely served, for a reason not stated in the motion.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 145, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 24 A.A.R. 1499, effective June 30, 2018 (Supp. 18-2).

ARTICLE 11. RENUMBERED**R4-34-1101. Renumbered****Historical Note**

Adopted as an emergency effective March 24, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-2). Former Section R8-2-41 adopted as an emergency now adopted as a permanent rule effective June 24, 1982 (Supp. 82-3). Adopted as an emergency effective October 12, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-5). Emergency expired. Former Section R8-2-41 repealed, new Section R8-2-41 adopted effective April 2, 1985 (Supp. 85-2). Former Section R8-2-41 repealed, new Section R4-34-1101 adopted as an emergency effective March 14, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. Former Section R8-2-41 repealed, new Section R4-34-1101 adopted as a permanent rule with editorial corrections effective November 16, 1988 (Supp. 88-4). Section R4-34-1101 repealed, new Section adopted effective July 20, 1990 (Supp. 90-3). Section R4-34-1101 renumbered to R4-36-201 (Supp. 95-4).

41-4004. Powers and duties of department; work by unlicensed person; inspection agreement; permit

A. The department shall:

1. Establish a state inspection and design approval bureau within the department.
2. Enter into reciprocity agreements and compacts with other states or private organizations that adopt and maintain standards of construction reasonably consistent with those adopted pursuant to this article on determining that such standards are being enforced. The director may void such agreements on determining such standards are not being maintained.
3. Issue a certificate to indicate compliance with the construction and installation requirements of this article.
4. Enter and inspect or investigate premises at reasonable times, after presentation of credentials by the director or personnel of the office or under contract with the office, where units regulated by this article are manufactured, sold or installed, to determine if any person has violated this chapter or the rules adopted pursuant to this chapter.
5. Enter into agreements with local enforcement agencies to enforce the installation standards in their jurisdiction provided the director is monitoring their performance to be consistent with the installation standards of the office.
6. If an inspection reveals that a mobile home entering this state for sale or installation is in violation of this chapter, order its use discontinued and the mobile home or any portion of the mobile home vacated. The order to vacate shall be served on the person occupying the mobile home and copies of the order shall be posted at or on each exit of the mobile home. The order to vacate shall include a reasonable period of time in which the violation can be corrected.
7. If an inspection of a new installation of any mobile home or manufactured home reveals that the natural gas or electrical connections of the installation do not conform to the installation standards promulgated pursuant to this chapter and the nonconformance constitutes an immediate danger to life and property, the inhabitants of the home shall be notified immediately and in their absence a notice citing the violations shall be posted in a conspicuous location. The director may order that the public service corporation, municipal corporation or other entity or individual supplying the service to the unit discontinue such service. If the danger is not immediate, the director shall allow at least twenty-four hours to correct the condition before ordering any discontinuation of service.
8. If construction, installation, rebuilding or any other work is performed in violation of this chapter or any rule adopted pursuant to this chapter, order the work stopped. The order to stop work shall be served on the person doing the work or on the person causing the work to be done. The person served with the order shall immediately cease the work until authorized by the office to continue.
9. Verify written complaints filed with the office by purchasers within one year after the date of purchase or installation of units. Complaints shall be accepted from consumers that allege violations by any dealer, broker, salesperson, installer or manufacturer of this chapter or the rules adopted pursuant to this chapter.
10. On verification of a complaint pursuant to paragraph 9 of this subsection, serve notice to the dealer, broker, salesperson, installer or manufacturer that such verified complaint shall be satisfied as specified by the office.
11. Provide to the board every six months the year-to-date fund balance of and a listing of the year-to-date revenues and expenditures from the mobile home relocation fund established by section 33-1476.02. The information shall be updated and posted on the department's website.

B. Any dealer, broker, salesperson, installer or manufacturer licensed by the office shall respond within thirty days to a notice served pursuant to subsection A, paragraph 10 of this section. Failure to respond is grounds for

disciplinary action pursuant to section 41-4039.

C. If an inspection or an investigation reveals that any work that is required to be performed by a licensee was performed by an unlicensed person required to be licensed pursuant to this chapter, the director, an employee or a person under contract with the office may cite the unlicensed person. The citation may be issued and served pursuant to section 13-3903. The action shall be filed in the justice court in the precinct where the unlicensed activity occurred.

D. The director may enter into agreements with acceptable qualified building inspection personnel or inspection organizations for enforcement of inspection requirements provided the director is monitoring their performance to be consistent with this chapter, rules adopted pursuant to this chapter and the established procedures of the office. If the director determines that the person's or organization's performance is not consistent with this chapter, rules adopted pursuant to this chapter and the established procedures of the office, the person or organization may not enforce the contract and the aggrieved person shall be entitled to a refund of the consideration paid under the agreement.

E. If a mobile or manufactured home or factory-built building is installed without first obtaining an installation permit, the director shall send a written notice to the purchaser specifying that a permit is required. If a permit is not obtained within thirty days after receipt of the written notice, the department shall issue and serve by personal service or certified mail a citation on the purchaser. Service of the citation by certified mail is complete after forty-eight hours after the time of deposit in the mail. On failure of the purchaser to comply with the citation within twenty days after its receipt, the director shall file an action in the justice court in the precinct where installation occurred for violation of this subsection.

41-4010. Powers and duties of board

A. The board shall:

1. Adopt rules imposing minimum construction requirements for factory-built buildings and components thereof that are reasonably consistent with nationally recognized and accepted publications or generally accepted manufacturing practices pertinent to the construction and safety standards for such item to be manufactured. These standards shall include minimum requirements for the safety and welfare of the public.
2. Adopt rules imposing requirements for body and frame design and construction and installation of plumbing, heating and electrical systems for manufactured homes that are consistent with the rules and regulations for construction and safety standards adopted by the United States department of housing and urban development.
3. Adopt rules relating to plan approvals as to requirements for the design, construction, alteration, reconstruction and installation of units or accessory structures as deemed necessary by the board to carry out this chapter.
4. Establish a schedule of fees, payable by persons, licensees or owners of units regulated by this chapter, for inspections, licenses, permits, plan reviews, administrative functions and certificates so that the total annual income derived from such fees will not be less than ninety-five percent and not more than one hundred five percent of the anticipated expenditures for the administration of the activities described in this subsection.
5. Adopt rules relating to the inspection throughout the state by the department of the installation of manufactured homes, mobile homes, factory-built buildings and accessory structures included as part of a sales contract for a manufactured home, mobile home or factory-built building or included in an agreement to move a manufactured home, mobile home or factory-built building.
6. Establish and maintain licensing standards and bonding requirements for all manufacturers of manufactured homes and factory-built buildings regulated pursuant to this chapter.
7. Establish and maintain licensing standards and bonding requirements for all dealers and brokers of manufactured homes, mobile homes and factory-built buildings thereof who sell or arrange the sale of such products within this state.
8. Establish and maintain licensing standards and bonding requirements for all installers of manufactured homes, mobile homes and accessory structures and certified standards for all persons who repair these homes and structures under warranties and who are not employees of the manufacturer.
9. Establish and maintain licensing standards for all salespersons of manufactured homes, mobile homes and factory-built buildings. These standards shall not include educational requirements.
10. Adopt rules consistent with the United States department of housing and urban development procedural and enforcement regulations and enter into such contracts necessary to administer the federal manufactured home regulations.
11. Adopt rules imposing minimum fire and life safety requirements in the categories of fire detection equipment, flame spread for gas furnace and water heater compartments, egress windows, electrical system and gas system for mobile homes entering this state.
12. Adopt rules for inspections and permits for minimum fire and life safety requirements and establish fees for such inspections and permits for mobile homes entering this state.
13. Adopt such other rules as the board deems necessary for the department to carry out this chapter and, to the extent not authorized by other provisions of this section, adopt rules as necessary to interpret, clarify, administer or enforce this chapter.

14. Adopt rules relating to the installation of manufactured homes, mobile homes, factory-built buildings and accessory structures included as part of a sales contract for a used mobile home, new or used manufactured home or new or used factory-built building or part of an agreement to move a used mobile home, new or used manufactured home or new or used factory-built building. This paragraph does not apply to:

- (a) Single wide factory-built buildings that are used for construction project office purposes and that are not used by the public.
- (b) Storage buildings of less than one hundred sixty-eight square feet that are not used by the public.
- (c) Equipment buildings that are not used by the public.

15. Adopt rules relating to acceptable workmanship standards.

16. Adopt rules relating to issuing permits to licensees, owners of units or other persons for the installation of manufactured homes, mobile homes, factory-built buildings and accessory structures.

17. Adopt rules including a requirement that a permit shall be obtained before the installation of a mobile or manufactured home.

18. Establish standards for the permanent foundation of a manufactured home, mobile home or factory-built building.

B. In adopting rules pursuant to subsection A, paragraph 3 of this section, the board shall consider for adoption any amendments to the codes and standards referred to in subsection A, paragraphs 1 and 2 of this section. If the board adopts the amendments to such codes and standards, the department shall notify the manufacturers licensed pursuant to article 4 of this chapter ninety or more days before the effective date of such amendments.

C. Chapter 6 of this title does not apply to the setting of fees under subsection A, paragraph 4 of this section.

D. Rules adopted pursuant to subsection A, paragraph 14 of this section shall be standard throughout this state and may be enforced by the local enforcement agencies on installation to ensure a standard of safety. The board may make an exception to the standard if, on petition by a local jurisdiction participating in the installation inspection program, local conditions justify the exemption or it is necessary to protect the health and safety of the public. On its own motion, the board may revise or repeal any exception.

DEPARTMENT OF ECONOMIC SECURITY (F19-0603)
Title 6, Chapter 9, All Articles, Appellate Service Administration



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 4, 2019

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

FROM: Council Staff

DATE: May 6, 2019

SUBJECT: DEPARTMENT OF ECONOMIC SECURITY (F19-0603)
Title 6, Chapter 9, Appellate Services Administration

This Five Year Review Report (5YRR) from the Department of Economic Security (Department) relates to two rules in Title 6, Chapter 9 regarding the Appellate Services Administration. R6-9-301 defines terms and R6-9-302 describes under what conditions the Appellate Services Administration may provide electronic copies of documents in lieu of conventional delivery, and how such delivery shall be made.

This is the first 5YRR for these rules, which were created in 2013.

Proposed Action

The Department received an exemption from the rulemaking moratorium on September 24, 2018 to consolidate the appeals process rules contained in various sections of the Administrative Code. The Department indicates that the elements of due process are consistent across multiple programs for which Appellate Services provides hearings. It notes that a single source of hearing procedure rules will provide better service and understanding to customers and stakeholders. The Department anticipates completing this rulemaking in May 2020.

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

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

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

Stakeholders include the Department and businesses or consumers who receive documents from the Department. No economic, small business, and consumer impact statement is available from the last rulemaking of Article 3. However, the Department states that the rulemaking provided a postage cost savings to the Department without any economic impact on businesses or consumers. The rulemaking provided the option for businesses and consumers to consent to receive documents electronically, resulting in faster service and less cost.

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

The electronic transmission of documents has a positive impact on state revenues. Electronic transmission in lieu of delivery via the U.S. Postal Service results in reduced mailing costs. In addition, fewer staff are needed to electronically transmit documents than to manually print and mail the same documents.

The Department believes that the rules impose the least burden and costs to persons subject to these rules, including paperwork and other compliance costs.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No. The Department has not received written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. The Department indicates that the rules are clear, concise, understandable, and effective. The rules are consistent with other rules and statutes.

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

Yes. The Department indicates that the rules are enforced as written.

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

Not applicable. There is no corresponding federal law.

8. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

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

9. Conclusion

Council staff finds that the rules are clear, concise, understandable, and effective. As indicated above and in the report, the Department intends to conduct a rulemaking to consolidate appellate hearing procedure rules by May 2020. Council staff recommends approval of the report.



DEPARTMENT OF ECONOMIC SECURITY

Your Partner For A Stronger Arizona

Douglas A. Ducey
Governor

Michael Traylor
Director

MAR 21 2019

Ms. Nicole Sornsin
Council Chair
Governor's Regulatory Review Council
Department of Administration
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

Dear Ms. Sornsin:

Enclosed is the Arizona Department of Economic Security (Department) Five-Year Review Report on A.A.C. Title 6, Chapter 9, Appellate Services Administration. Included with the report are copies of the authorizing statutes and rules.

Pursuant to A.R.S. § 41-1056(A) and A.A.C. R1-6-301(C)(4), the Department certifies that it is in compliance with A.R.S. § 41-1091.

Thank you for your attention to this report. The Department will be present at the Council meetings to respond to any questions the Council members may have about the report. If you have any questions, please contact Christian Eide, Rules Analyst, Policy and Planning Administration, at (602) 542-9199.

Sincerely,

Michael Traylor
Director

Enclosure

-Preface-

Department of Economic Security

Five – Year Review Reports

A.R.S. § 41-1056 requires that at least once every five years, each agency shall review its administrative rules and produce reports that assess the rules with respect to considerations including the rule's effectiveness, clarity, conciseness and understandability. The reports also describe the agency's proposed action to respond to any concerns identified during the review. The reports are submitted in compliance with the schedule provided by the Governor's Regulatory Review Council. A.R.S. § 18-305, enacted in 2016, requires that statutorily required reports be posted on agency's website.

**Department of Economic Security
Title 6, Chapter 9
Five-Year Review Report**

1. **Authorization of the rule by existing statutes:**

General Statutory Authority: A.R.S. § 41-1954 (A)(3)

Specific Statutory Authority: A.R.S. § 41-1092.01

2. **The objective of each rule:**

Rule	Objective
R6-9-301	This rule defines the terms used in the following section.
R6-9-302	This rule describes under what conditions the Appellate Services Administration may provide electronic copies of documents in lieu of conventional delivery, and how such delivery shall be made.

3. **Are the rules effective in achieving their objectives?** Yes No

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

4. **Are the rules consistent with other rules and statutes?** Yes No

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

5. **Are the rules enforced as written?** Yes No

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency(s) proposal for resolving the issue.

6. Are the rules clear, concise, and understandable? Yes No

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

7. Has the agency received written criticisms of the rules within the last five years? Yes No

If yes, please fill out the table below:

Commenter	Comment	Agency's Response
NA	NA	NA

8. Economic, small business, and consumer impact comparison:

Each of the rules in Article 3 were created effective June 1, 2013. Since no economic, small business, and consumer impact statement is available from the last making of Article 3 rules, the Department is providing an assessment of the actual economic, small business, and consumer impact of the rules pursuant to A. R. S. § 41-1055(C).

- a. Persons who are directly affected by, bear the costs of, or directly benefit from the rules:

Article 3:

This rulemaking provides a postage cost savings to the Department without any economic impact on business or consumers. Providing the option for business and consumers to receive documents electronically, with consent, provides faster service and less cost.

- b. Cost-benefit analysis:

In SFY 2012, prior to the current rules being effective, the Department resolved 79,298 appeals at the cost of \$1.20 per appeal in postage. In SFY 2018, the Department resolved 36,895 appeals at the cost of \$1.21 per appeal. Providing these documents electronically, with the consent of the recipients, allowed for much faster delivery, better service, at less cost to the Department. While first class postage increased from \$.45 per ounce in SFY 2012 to \$.50 per ounce in SFY 2018, the ability to transmit documents electronically allowed the Department to hold postage costs per appeal nearly level during this period. Also, these rules do not directly impact public and private employment and small businesses.

c. The probable cost and benefit to private persons and consumers who are directly affected by the rules:

The rules do not have any negative financial impact upon private persons and consumers, except for the minimal costs that may be associated with their participation in the rulemaking process.

d. Probable effects on state revenues:

State revenues are positively impacted by the electronic transmission of documents instead of the conventional delivery via the U. S. Postal Service due to postage and materials savings. In addition, fewer staff are needed to electronically transmit documents than to manually print, post and mail the same documents.

9. Has the agency received any business competitiveness analyses of the rules?

Yes

No

10. Has the agency completed the course of action indicated in the agency's previous five-year review report?

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

These rules were enacted in June of 2013 and have not been subject to a five-year review until now.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

The Department believes that the rules impose the least burden and costs to persons subject to these rules, including paperwork and other compliance costs.

12. Are the rules more stringent than corresponding federal laws?

Yes

No

Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of the federal law(s)?

There are no federal laws or rules which correspond to these rules. These rules expand accessibility.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

The Department has determined that A.R.S. § 41-1037 does not apply to these rules because they do not require a regulatory permit, license, or agency authorization.

14. Proposed course of action

If possible, identify a month and year by which the agency plans to complete the course of action.

On September 24, 2018, approval was received from the Governor's Office to consolidate the appeals process rules contained in multiple sections of the Arizona Administrative Code. The elements of due process are consistent across multiple programs for which Appellate Services provides hearings. A single source of hearing procedure rules will provide significantly better service and understanding to customers and stakeholders. These rules should be completed in May 2020.

Department of Economic Security - Appellate Service Administration
TITLE 6. ECONOMIC SECURITY

CHAPTER 9. APPELLATE SERVICE ADMINISTRATION

A.R.S. § 41-1954(A)(3)

ARTICLE 1. RESERVED

ARTICLE 2. RESERVED

ARTICLE 3. DECISIONS, HEARINGS, AND ORDERS

Article 3, consisting of Sections R6-9-301 and R6-9-302, made by final rulemaking at 19 A.A.R. 823, effective June 1, 2013 (Supp. 13-2).

Sections

R6-9-301. Definitions

R6-9-302. Electronic Service of Documents by the Appellate Services Administration

R6-9-301. Definitions

1. "ASA" means the Appellate Services Administration within the Arizona Department of Economic Security.
2. "Electronic transmission" means the service of documents via facsimile transmission ("fax") and electronic mail ("email").
3. "On the record" means audio recorded during a formal proceeding conducted by a hearing officer.
4. "Party" means an appellant, appellee, or the Department.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 823, effective June 1, 2013 (Supp. 13-2).

R6-9-302. Electronic Service of Documents by the Appellate Services Administration

A. ASA may transmit documents electronically, rather than by conventional mail, to parties who have consented to electronic service.

B. Consent to Electronic Service.

1. A party may only consent to be electronically served documents by:
 - a. Submission of a written consent to ASA; or
 - b. Consenting on the record.
2. The party consenting to electronic service of documents shall provide ASA with either a valid e-mail address or a fax number for service of documents.
3. The party consenting to electronic service of documents shall also provide ASA with a physical mailing address for ASA to use at its discretion to serve documents. A party may use a post office box as its physical mailing address.

C. Withdrawal of Consent to Electronic Service.

1. A party may withdraw consent to receive documents by electronic means at any time. The withdrawal shall be on the record or in writing to ASA. The withdrawal is effective upon receipt by ASA.
2. ASA shall treat a notice of a change of electronic address as both a withdrawal of the consent to receive documents at the prior address, and as a new consent to receive documents at the new address.
3. ASA shall not send documents by electronic means after a party withdraws consent.
4. ASA shall consider service of a document to have no force or effect if ASA sent the document electronically after a party withdrew consent to receive the document electronically even if the party actually received the electronically transmitted document.

D. ASA shall consider a document sent by ASA and received by a party at the Mountain Standard Time and date ASA transmits the document to the electronic address provided by the party.

E. ASA shall encrypt any document sent by e-mail.

F. Failure of Electronic Service; Effect on Timeliness of Filing.

1. When a party notifies ASA that the party did not receive an e-mail message from ASA, was unable to open or download an attached document, or was otherwise unable to access the document to be served, ASA shall re-send the document.
2. ASA shall calculate any filing deadline that is based on the date ASA electronically sends a document as follows:
 - a. If the party does not receive the original e-mail message due to equipment malfunction, action, or inaction of either ASA or a service provider, then the date of service shall be the date ASA re-sends the documents.
 - b. If the party does not receive the original e-mail message due to the party's own equipment malfunction, action, or inaction:
 - i. The date of service shall be the date of original electronic transmission by ASA, and
 - ii. ASA shall exclude from the calculation the time from when the party gave notice of non-receipt and requested that the document be re-sent until ASA re-sends or mails the document.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 823, effective June 1, 2013 (Supp. 13-2).

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

A. An office of administrative hearings is established.

B. The governor shall appoint the director pursuant to section 38-211. At a minimum, the director shall have the experience necessary for appointment as an administrative law judge. The director also shall possess supervisory, management and administrative skills, as well as knowledge and experience relating to administrative law.

C. The director shall:

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

9. Annually report the following to the governor, the president of the senate and the speaker of the house of representatives by December 1 for the prior fiscal year:

(a) The number of administrative law judge decisions rejected or modified by agency heads.

(b) By category, the number and disposition of motions filed pursuant to section 41-1092.07, subsection A to disqualify office administrative law judges for bias, prejudice, personal interest or lack of expertise.

(c) By agency, the number and type of violations of section 41-1009.

10. Schedule hearings pursuant to section 41-1092.05 upon the request of an agency or the filing of a notice of appeal pursuant to section 41-1092.03.

D. The director shall not require legal representation to appear before an administrative law judge.

E. Except as provided in subsection F of this section, all state agencies supported by state general fund sources, unless exempted by this article, and the registrar of contractors shall use the services and personnel of the office to conduct administrative hearings. All other agencies shall contract for services and personnel of the office to conduct administrative hearings.

F. An agency head, board or commission that directly conducts an administrative hearing as an administrative law judge is not required to use the services and personnel of the office for that hearing.

G. Each state agency, and each political subdivision contracting for office services pursuant to subsection I of this section, shall make its facilities available, as necessary, for use by the office in conducting proceedings pursuant to this article.

H. The office shall employ full-time administrative law judges to conduct hearings required by this article or other laws as follows:

1. The director shall assign administrative law judges from the office to an agency, on either a temporary or a permanent basis, at supervisory or other levels, to preside over contested cases and appealable agency actions in accordance with the special expertise of the administrative law judge in the subject matter of the agency.

2. The director shall establish the subject matter and agency sections within the office that are necessary to carry out this article. Each subject matter and agency section shall provide training in the technical and subject matter areas of the section as prescribed in subsection C, paragraph 7 of this section.

I. If the office cannot furnish an office administrative law judge promptly in response to an agency request, the director may contract with qualified individuals to serve as temporary administrative law judges. These temporary administrative law judges are not employees of this state.

J. The office may provide administrative law judges on a contract basis to any governmental entity to conduct any hearing not covered by this article. The director may enter into contracts with political subdivisions of this state, and these political subdivisions may contract with the director for the purpose of providing administrative law judges and reporters for administrative proceedings or informal dispute resolution. The contract may define the scope of the administrative law judge's duties. Those duties may include the preparation of findings, conclusions, decisions or recommended decisions or a recommendation for action by the political subdivision. For these services, the director shall request payment for services directly from the political subdivision for which the services are performed, and the director may accept payment on either an advance or reimbursable basis.

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

L. The office shall receive complaints against a local government or video service provider as defined in section 9-1401 and shall comply with the duties imposed on the office pursuant to title 9, chapter 13.

41-1954. Powers and duties

A. In addition to the powers and duties of the agencies listed in section 41-1953, subsection E, the department shall:

1. Administer the following services:

(a) Employment services, including manpower programs and work training, field operations, technical services, unemployment compensation, community work and training and other related functions in furtherance of programs under the social security act, as amended, the Wagner-Peyser act, as amended, the federal unemployment tax act, as amended, 33 United States Code, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles.

(b) Individual and family services, which shall include a section on aging, services to children, youth and adults and other related functions in furtherance of social service programs under the social security act, as amended, title IV, except parts B and E, grants to states for aid and services to needy families with children and for child-welfare services, title XX, grants to states for services, the older Americans act, as amended, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles.

(c) Income maintenance services, including categorical assistance programs, special services unit, child support collection services, establishment of paternity services, maintenance and operation of a state case registry of child support orders, a state directory of new hires, a support payment clearinghouse and other related functions in furtherance of programs under the social security act, title IV, grants to states for aid and services to needy families with children and for child-welfare services, title XX, grants to states for services, as amended, and other related federal acts and titles.

(d) Rehabilitation services, including vocational rehabilitation services and sections for the blind and visually impaired, communication disorders, correctional rehabilitation and other related functions in furtherance of programs under the vocational rehabilitation act, as amended, the Randolph-Sheppard act, as amended, and other related federal acts and titles.

(e) Administrative services, including the coordination of program evaluation and research, interagency program coordination and in-service training, planning, grants, development and management, information, legislative liaison, budget, licensing and other related functions.

(f) Manpower planning, including a state manpower planning council for the purposes of the federal-state-local cooperative manpower planning system and other related functions in furtherance of programs under the comprehensive employment and training act of 1973, as amended, and other related federal acts and titles.

(g) Economic opportunity services, including the furtherance of programs prescribed under the economic opportunity act of 1967, as amended, and other related federal acts and titles.

(h) Intellectual disability and other developmental disability programs, with emphasis on referral and purchase of services. The program shall include educational, rehabilitation, treatment and training services and other related functions in furtherance of programs under the developmental disabilities services and facilities construction act, Public Law 91-517, and other related federal acts and titles.

(i) Nonmedical home and community based services and functions, including department designated case management, housekeeping services, chore services, home health aid, personal care, visiting nurse services, adult day care or adult day health, respite sitter care, attendant care, home delivered meals and other related services and functions.

2. Provide a coordinated system of initial intake, screening, evaluation and referral of persons served by the department.

3. Adopt rules it deems necessary or desirable to further the objectives and programs of the department.

4. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

5. Employ and determine the conditions of employment and prescribe the duties and powers of administrative, professional, technical, secretarial, clerical and other persons subject to chapter 4, article 4 and, as applicable, article 5 of this title as may be necessary in the performance of its duties, contract for the services of outside advisors, consultants and aides as may be reasonably necessary and reimburse department volunteers, designated by the director, for expenses in transporting clients of the department on official business.

6. Make contracts and incur obligations within the general scope of its activities and operations subject to the availability of funds.

7. Contract with or assist other departments, agencies and institutions of the state, local and federal governments in the furtherance of its purposes, objectives and programs.

8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.

9. Accept and disburse grants, matching funds and direct payments from public or private agencies for the conduct of programs that are consistent with the overall purposes and objectives of the department.

10. Provide information and advice on request by local, state and federal agencies and by private citizens, business enterprises and community organizations on matters within the scope of its duties subject to the departmental rules on the confidentiality of information.

11. Establish and maintain separate financial accounts as required by federal law or regulations.

12. Advise and make recommendations to the governor and the legislature on all matters concerning its objectives.

13. Have an official seal that shall be judicially noticed.

14. Annually estimate the current year's population of each county, city and town in this state, using the periodic census conducted by the United States department of commerce, or its successor agency, as the basis for such estimates and deliver such estimates to the economic estimates commission before December 15.

15. Estimate the population of any newly annexed areas of a political subdivision as of July 1 of the fiscal year in which the annexation occurs and deliver such estimates as promptly as is feasible after the annexation occurs to the economic estimates commission.

16. Establish and maintain a statewide program of services for persons who are both hearing impaired and visually impaired and coordinate appropriate services with other agencies and organizations to avoid duplication of these services and to increase efficiency. The department of economic security shall enter into agreements for the utilization of the personnel and facilities of the department of economic security, the department of health services and other appropriate agencies and organizations in providing these services.

17. Establish and charge fees for deposit in the department of economic security prelayoff assistance services fund to employers who voluntarily participate in the services of the department that provide job service and retraining for persons who have been or are about to be laid off from employment. The department shall charge only those fees necessary to cover the costs of administering the job service and retraining services.

18. Establish a focal point for addressing the issue of hunger in Arizona and provide coordination and assistance to public and private nonprofit organizations that aid hungry persons and families throughout this state. Specifically such activities shall include:

(a) Collecting and disseminating information regarding the location and availability of surplus food for distribution to needy persons, the availability of surplus food for donation to charity food bank organizations, and the needs of charity food bank organizations for surplus food.

(b) Coordinating the activities of federal, state, local and private nonprofit organizations that provide food assistance to the hungry.

(c) Accepting and disbursing federal monies, and any state monies appropriated by the legislature, to private nonprofit organizations in support of the collection, receipt, handling, storage and distribution of donated or surplus food items.

(d) Providing technical assistance to private nonprofit organizations that provide or intend to provide services to the hungry.

(e) Developing a state plan on hunger that, at a minimum, identifies the magnitude of the hunger problem in this state, the characteristics of the population in need, the availability and location of charity food banks and the potential sources of surplus food, assesses the effectiveness of the donated food collection and distribution network and other efforts to alleviate the hunger problem, and recommends goals and strategies to improve the status of the hungry. The state plan on hunger shall be incorporated into the department's state comprehensive plan prepared pursuant to section 41-1956.

(f) Establishing a special purpose advisory council on hunger pursuant to section 41-1981.

19. Establish an office to address the issue of homelessness and to provide coordination and assistance to public and private nonprofit organizations that prevent homelessness or aid homeless individuals and families throughout this state. These activities shall include:

(a) Promoting and participating in planning for the prevention of homelessness and the development of services to homeless persons.

(b) Identifying and developing strategies for resolving barriers in state agency service delivery systems that inhibit the provision and coordination of appropriate services to homeless persons and persons in danger of being homeless.

(c) Assisting in the coordination of the activities of federal, state and local governments and the private sector that prevent homelessness or provide assistance to homeless people.

(d) Assisting in obtaining and increasing funding from all appropriate sources to prevent homelessness or assist in alleviating homelessness.

(e) Serving as a clearinghouse on information regarding funding and services available to assist homeless persons and persons in danger of being homeless.

(f) Developing an annual state comprehensive homeless assistance plan to prevent and alleviate homelessness.

(g) Submitting an annual report to the governor, the president of the senate and the speaker of the house of representatives on the status of homelessness and efforts to prevent and alleviate homelessness.

20. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

21. Exchange information, including case specific information, and cooperate with the department of child safety for the administration of the department of child safety's programs.

B. If the department of economic security has responsibility for the care, custody or control of a child or is paying the cost of care for a child, it may serve as representative payee to receive and administer social security and United States department of veterans affairs benefits and other benefits payable to such child. Notwithstanding any law to the contrary, the department of economic security:

1. Shall deposit, pursuant to sections 35-146 and 35-147, such monies as it receives to be retained separate and apart from the state general fund on the books of the department of administration.
2. May use such monies to defray the cost of care and services expended by the department of economic security for the benefit, welfare and best interests of the child and invest any of the monies that the director determines are not necessary for immediate use.
3. Shall maintain separate records to account for the receipt, investment and disposition of funds received for each child.
4. On termination of the department of economic security's responsibility for the child, shall release any funds remaining to the child's credit in accordance with the requirements of the funding source or in the absence of such requirements shall release the remaining funds to:
 - (a) The child, if the child is at least eighteen years of age or is emancipated.
 - (b) The person responsible for the child if the child is a minor and not emancipated.

C. Subsection B of this section does not pertain to benefits payable to or for the benefit of a child receiving services under title 36.

D. Volunteers reimbursed for expenses pursuant to subsection A, paragraph 5 of this section are not eligible for workers' compensation under title 23, chapter 6.

E. In implementing the temporary assistance for needy families program pursuant to Public Law 104-193, the department shall provide for cash assistance to two parent families if both parents are able to work only on documented participation by both parents in work activities described in title 46, chapter 2, article 5, except that payments may be made to families who do not meet the participation requirements if:

1. It is determined on an individual case basis that they have emergency needs.
2. The family is determined to be eligible for diversion from long-term cash assistance pursuant to title 46, chapter 2, article 5.

F. The department shall provide for cash assistance under temporary assistance for needy families pursuant to Public Law 104-193 to two parent families for no longer than six months if both parents are able to work, except that additional assistance may be provided on an individual case basis to

families with extraordinary circumstances. The department shall establish by rule the criteria to be used to determine eligibility for additional cash assistance.

G. The department shall adopt the following discount medical payment system for persons who the department determines are eligible and who are receiving rehabilitation services pursuant to subsection A, paragraph 1, subdivision (c) of this section:

1. For inpatient hospital admissions and outpatient hospital services the department shall reimburse a hospital according to the rates established by the Arizona health care cost containment system administration pursuant to section 36-2903.01, subsection G.

2. The department's liability for a hospital claim under this subsection is subject to availability of funds.

3. A hospital bill is considered received for purposes of paragraph 5 of this subsection on initial receipt of the legible, error-free claim form by the department if the claim includes the following error-free documentation in legible form:

(a) An admission face sheet.

(b) An itemized statement.

(c) An admission history and physical.

(d) A discharge summary or an interim summary if the claim is split.

(e) An emergency record, if admission was through the emergency room.

(f) Operative reports, if applicable.

(g) A labor and delivery room report, if applicable.

4. The department shall require that the hospital pursue other third-party payors before submitting a claim to the department. Payment received by a hospital from the department pursuant to this subsection is considered payment by the department of the department's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third party payors or in situations covered by title 33, chapter 7, article 3.

5. For inpatient hospital admissions and outpatient hospital services rendered on and after October 1, 1997, if the department receives the claim directly from the hospital, the department shall pay a hospital's rate established according to this section subject to the following:

(a) If the hospital's bill is paid within thirty days of the date the bill was received, the department shall pay ninety-nine per cent of the rate.

(b) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the department shall pay one hundred per cent of the rate.

(c) If the hospital's bill is paid any time after sixty days of the date the bill was received, the department shall pay one hundred per cent of the rate plus a fee of one per cent per month for each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.

6. For medical services other than those for which a rate has been established pursuant to section 36-2903.01, subsection G, the department shall pay according to the Arizona health care cost containment system capped fee-for-service schedule adopted pursuant to section 36-2904, subsection K or any other established fee schedule the department determines reasonable.

H. The department shall not pay claims for services pursuant to this section that are submitted more than nine months after the date of service for which the payment is claimed.

I. To assist in the location of persons or assets for the purpose of establishing paternity, establishing, modifying or enforcing child support obligations and other related functions, the department has access, including automated access if the records are maintained in an automated database, to records of state and local government agencies, including:

1. Vital statistics, including records of marriage, birth and divorce.
2. State and local tax and revenue records, including information on residence address, employer, income and assets.
3. Records concerning real and titled personal property.
4. Records of occupational and professional licenses.
5. Records concerning the ownership and control of corporations, partnerships and other business entities.
6. Employment security records.
7. Records of agencies administering public assistance programs.
8. Records of the motor vehicle division of the department of transportation.
9. Records of the state department of corrections.
10. Any system used by a state agency to locate a person for motor vehicle or law enforcement purposes, including access to information contained in the Arizona criminal justice information system.

J. Notwithstanding subsection I of this section, the department or its agents shall not seek or obtain information on the assets of an individual unless paternity is presumed pursuant to section 25-814 or established.

K. Access to records of the department of revenue pursuant to subsection I of this section shall be provided in accordance with section 42-2003.

L. The department also has access to certain records held by private entities with respect to child support obligors or obligees, or individuals against whom such an obligation is sought. The information shall be obtained as follows:

1. In response to a child support subpoena issued by the department pursuant to section 25-520, the names and addresses of these persons and the names and addresses of the employers of these persons, as appearing in customer records of public utilities and cable television companies.

2. Information on these persons held by financial institutions.

M. Pursuant to department rules, the department may compromise or settle any support debt owed to the department if the director or an authorized agent determines that it is in the best interest of the state and after considering each of the following factors:

1. The obligor's financial resources.

2. The cost of further enforcement action.

3. The likelihood of recovering the full amount of the debt.

N. Notwithstanding any law to the contrary, a state or local governmental agency or private entity is not subject to civil liability for the disclosure of information made in good faith to the department pursuant to this section.

DEPARTMENT OF HEALTH SERVICES (F19-0604)
Title 9, Chapter 13, Article 2, Newborn Screening



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 4, 2019

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

FROM: Council Staff

DATE: May 6, 2019

SUBJECT: DEPARTMENT OF HEALTH SERVICES (F19-0604)
Title 9, Chapter 13, Article 2, Newborn Screening

This Five Year Review Report (5YRR) from the Department of Health Services (DHS) relates to rules in Title 9, Chapter 13, Article 2 regarding newborn screening. The rules define terms, specify the requirements and procedures for different types of screening, specify the requirements for a first and second specimen collection, specify reporting requirements for specimens, and state the fees for a first and second specimen.

In the previous 5YRR for these rules, the Department indicated that it planned to conduct a rulemaking to clarify that the Arizona State Laboratory is the statutorily designated screening laboratory, and clarify additional minor portions of the rule to ensure medical providers gave the Department the correct information to identify patients and their families. The Department completed this action through a regular rulemaking in 2014.

Proposed Action

The Department proposes to take no action regarding these rules.

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

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

2. **Summary of the agency’s economic impact comparison and identification of stakeholders:**

The Department believes that the economic, small business, and consumer impact statement (EIS) provided in its 2017 regular rulemaking correctly predicted the costs and benefits to stakeholders.

After obtaining an exception from the rulemaking moratorium established by Executive Order 2017-02, the Department amended the rules in 9 A.A.C. 13, Article 2 to add Severe Combined Immunodeficiency (SCID) to the newborn screening panel of conditions and to raise the fee for a first specimen from \$30 to \$36 to cover the costs of adding SCID.

Babies born with SCID fail to develop a functioning immune system. Babies with SCID cannot fight off infections, are repeatedly hospitalized for these life-threatening infections, and may die within the first year of life if undiagnosed and untreated. In the rulemaking, the Department stated that newborn screening can identify SCID, thus allowing a baby to be diagnosed and potentially cured.

In 2018, the Program conducted testing of 79,965 first specimens and 73,014 second specimens. This resulted in 283 babies being diagnosed with congenital disorders. The Department received newborn hearing screening results for 82,076 babies, of whom 5,310 had abnormal test results. In the 5YRR, the Department states that society will benefit from having babies grow up into healthy and productive members of society because of timely identification and treatment of congenital disorders and hearing loss.

The stakeholders include the Department, AHCCCS, third-party payers, health care institutions, health care providers, parents of newborns, and the general public.

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

The Department has determined that the rules impose the least burden and costs to regulated persons, including paperwork and other compliance costs, necessary to achieve their underlying regulatory objectives.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No. The Department has not received any written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules’ clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. The Department indicates that the rules are clear, concise, understandable, effective, and consistent with other rules and statutes.

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

Yes. The Department indicates that the rules are enforced as written.

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

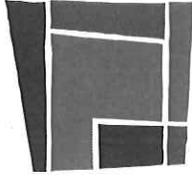
Not applicable. There is no corresponding federal law.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. These rules were adopted prior to July 29, 2010.

9. **Conclusion**

As indicated above and in the report, the Department plans to take no action regarding these rules. Council staff finds that the rules are clear, concise, understandable, and effective. Council staff recommends approval of this report.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

March 22, 2019

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

RE: Report for A.A.C. Title 9, Chapter 13, Article 2 Newborn Screening

Dear Ms. Sornsin:

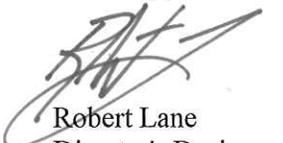
According to the five-year-review report schedule of the Governor's Regulatory Review Council (Council), a report for A.A.C. Title 9, Chapter 13, Article 2, is due to the Council no later than March 29, 2019. The Arizona Department of Health Services (Department) has reviewed 9 A.A.C. 13, Article 2, and is enclosing a report to the Council for these rules.

The Department believes that this report complies with the requirements of A.R.S. § 41-1056. The report contains a summary of the Department's review for all the rules and is in the format of the Council's report template. As described in the report, the Department does not plan to amend the rules in 9 A.A.C. 13, Article 2.

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

If you need any further information, please contact me at (602) 542-1020.

Sincerely,



Robert Lane
Director's Designee

RL:bg
Enclosures

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



ARIZONA DEPARTMENT OF HEALTH SERVICES
FIVE-YEAR-REVIEW REPORT
TITLE 9. HEALTH SERVICES
CHAPTER 13. HEALTH PROGRAM SERVICES
ARTICLE 2. NEWBORN SCREENING
March 2019

1. **Authorization of the rule by existing statutes**

General Statutory Authority: A.R.S. §§ 36-132(A), 36-136(A)(7), and 36-136(G).

Specific Statutory Authority: A.R.S. § 36-694.

2. **The objective of each rule:**

Rule	Objective
R9-13-201	The objective of the rule is to define terms used in Article 2 to enable the reader to understand clearly the requirements of the Article and allow for consistent interpretation.
R9-13-202	The objective of the rule is to specify the congenital disorders for which a bloodspot will be tested.
R9-13-203	The objectives of this rule are to specify: a. The requirements for collection of a blood sample and submission of a specimen collection kit; b. The person who pays the fee specified in R9-13-208; c. The conditions under which the screening laboratory will perform a bloodspot test from which results may be reported; d. The requirements related to home births and the provision of educational materials and information about newborn screening to the parent or guardian of a newborn or infant.
R9-13-204	The objective of the rule is to specify the requirements for collecting a first specimen.
R9-13-205	The objective of the rule is to specify the requirements for collecting a second specimen.
R9-13-206	The objectives of the rule are to specify: a. The requirements for reporting results of a bloodspot test; b. The requirements for sending to the Department the results of a test ordered subsequent to an abnormal result on a bloodspot test; and c. The confidentiality of bloodspot test results.

R9-13-207	The objective of the rule is to specify the requirements for reporting information related to a hearing test conducted on a newborn and to any subsequent test on the newborn or infant, which enables the Department to monitor the effectiveness and efficiency of hearing testing and follow up on abnormal results.
R9-13-208	The objective of the rule is to specify the fees for a first specimen and a second specimen.

3. **Are the rules effective in achieving their objectives?** Yes No

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation

4. **Are the rules consistent with other rules and statutes?** Yes No

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation

5. **Are the rules enforced as written?** Yes No

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.

Rule	Explanation

6. **Are the rules clear, concise, and understandable?** Yes No

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

If yes, please fill out the table below:

Commenter	Comment	Agency's Response

8. **Economic, small business, and consumer impact comparison:**

Annual cost/revenue changes are designated as minimal when \$1,500 or less, moderate when between \$1,500 and \$15,000, and substantial when \$15,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification. The Department anticipates that persons affected by these rules include the Department; health insurance providers, including AHCCCS; hospitals; midwives; and the general public.

In 2018, the Legislature appropriated \$7,643,100 to run the Program and the Program received a total of \$6,252,239 in fees. The program's total operating cost was \$7,343,299. Though actual operated costs exceeded this amount, the Department was able to reduce operating costs through an indirect waiver, federal grant funds, program cuts, and unexpected vacancy savings. The Program conducted testing of 79,965 first specimens and 73,014 second specimens in 2018, which resulted in 283 babies being diagnosed with congenital disorders. The Department received newborn hearing screening results for 82,076 babies, of whom 5,310 had abnormal test results.

As part of a 2015 exempt rulemaking, the Department provided notice that the Department may include screening for SCID as part of a newborn bloodspot test when the Department has funding available to cover its costs for activities related to screening for SCID. SCID is the most serious of a group of genetic disorders known as "Primary Immunodeficiency." Babies born with SCID fail to develop a functioning immune system, leaving them with no defense against the multitude of disease-causing germs an individual encounters every day. The initial implementation of SCID for the first year was offset by the Health, Resource and Services Administration's federal grant administered by the Association of Public Health Laboratories in the amount of \$285,624. With newborn screening, SCID can be identified, and a baby diagnosed can be potentially cured through a bone marrow transplant.

In 2017, through a regular rulemaking and pursuant to Laws 2017, Ch. 339, the Department increased the fee cap for the first newborn screening test from \$30 to \$36, which enabled the Department to allow for SCID testing as part of newborn screening. AHCCCS was expected to incur as much as a substantial cost increase due to the fee increase for first specimens. According to CY 2016 birth data from the Department's Health Status and Vital Statistics group, AHCCCS covered approximately 51.64% of births. The cost for a first specimen is built into the birth-package fee that AHCCCS negotiates with hospitals. An increase in the fee for a first specimen may cause hospitals to negotiate a higher birth-package fee from AHCCCS. If AHCCCS increases the cost of every birth package to account for the fee increase, the Department expected AHCCCS to incur approximately between \$257,000 and \$307,000 in additional costs annually. The Department expected this cost to be offset by savings experienced by detecting the disease at birth, which can save nearly \$2 million in treatment costs for each case.

Third-party payors, including private insurance plans, military health care facilities, Indian Health Service, and tribal health care facilities, paid for approximately 41.71% of births in Arizona in CY 2016, based on data from the Department's Health Status and Vital Statistics group. Third-party payors as a whole were expected to incur a substantial cost increase of approximately \$208,000 due to the fee increase for first specimens if all

hospitals negotiated a higher birth-package fee from all third-party payors. The cost incurred by a specific third-party payor would vary depending on the number of covered births and could range from minimal (for a third-party payor with fewer than 250 covered newborns) to substantial (for a third-party payor with 2,500 or more covered newborns) if the third-party payor increased the amount paid for all birth packages. The Department expected this cost to be offset by the savings of nearly \$2 million in treatment costs for each case due to detecting the disease at birth.

In CY 2017, approximately 82,477 first specimens were submitted by hospitals and birthing centers, which were billed the fee in R9-13-208 for a first specimen. The number submitted by a single health care facility ranged from one to 6,943. The Department anticipated that a hospital or birthing center may incur minimal-to-substantial costs due to the fee increase for a first specimen, depending on the number of first specimens submitted and whether the increased cost for a first specimen was offset by a corresponding increase in the birth-package fee paid to the hospital or birthing center by AHCCCS or third-party payors.

Midwives as a whole submit fewer than 300 first specimens per year. The number of first specimens submitted by individual midwives in CY 2016 ranged from one to 28. The additional costs incurred by a midwife for submitting a first specimen were expected to vary with the number of first specimens submitted by the midwife, and may range from none-to-minimal. Most of these additional costs may be reimbursed by parents.

Parents paid for about 6.65% of births (percentage of self-paid births plus births for which the payor was unknown) in Arizona in CY 2016, according to data from the Department's Health Status and Vital Statistics group. The cost to an individual parent for increased fees for first specimens was expected to be minimal. The Department anticipated that a parent of a baby with a third-party payor may incur none-to-minimal costs associated with an increase in insurance premiums if the third-party payor passes costs associated with the fee increase on to policyholders. The testing and follow-up activities for SCID were expected to provide a significant benefit to the parent of a baby tested through newborn screening. A parent of a baby identified through newborn screening and diagnosed early were expected to receive up to a substantial benefit from targeted diagnostic testing and treatment for the baby made possible through early identification.

Society in general was expected to receive a significant benefit from having a baby grow up into a healthy and productive member of society because of timely identification and treatment of congenital disorders and hearing loss.

The Department believes that the economic analysis provided in the 2017 regular rulemaking correctly predicted costs and benefits to stakeholders.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ___ No X

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

Yes. In the previous Five-Year Review Report, the Department planned to conduct a rulemaking in order to clarify that the Arizona State Laboratory is the statutorily designated screening laboratory, and clarify additional minor portions of the rule to ensure medical providers gave the Department the correct information to identify patients and their families. The Department completed this action through a regular rulemaking in 2014.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department has determined that the rules impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objectives.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?

The rules are not related to federal laws.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

These rules were adopted before July 29, 2010.

14. **Proposed course of action**

If possible, please identify a month and year by which the agency plans to complete the course of action.

The Department does not plan to take any action on these rules at this time.

TITLE 9. HEALTH SERVICES

**CHAPTER 13. DEPARTMENT OF HEALTH SERVICES
HEALTH PROGRAMS SERVICES**

ARTICLE 2. NEWBORN AND INFANT SCREENING

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 9. HEALTH SERVICES

CHAPTER 13. DEPARTMENT OF HEALTH SERVICES - HEALTH PROGRAMS SERVICES

ARTICLE 2. NEWBORN AND INFANT SCREENING

1. An identification of the rulemaking

Arizona Revised Statutes (A.R.S.) § 36-694 contains requirements for ordering tests for certain congenital disorders and reporting congenital disorder test results and hearing test results to the Department, and establishes a newborn screening program, a central database for information about newborns and infants who are tested for congenital disorders or hearing loss, an educational program and follow-up services, and a newborn screening program committee. Current rules in Arizona Administrative Code (A.A.C.) Title 9, Chapter 13, Article 2, specify the congenital disorders being tested for, the information required to be submitted when critical congenital heart defect screening is performed or a bloodspot specimen is collected from a newborn or infant, the person responsible for collecting the specimen and when the specimen should be collected, reporting requirements for a bloodspot test, reporting requirements for hearing tests, and fees. As part of a 2015 exempt rulemaking, which added the reporting of critical congenital heart defect screening, the Department included in the rules in 9 A.A.C. 13, Article 2, notice that the Department may include screening for severe combined immunodeficiency (SCID) as part of a newborn and infant bloodspot test when the Department has funding available to cover the Department's costs for activities related to screening for SCID. Babies born with SCID, the most serious of a group of genetic disorders known as "primary immunodeficiency," fail to develop a functioning immune system. Although these babies appear healthy at birth, they cannot fight off infections, are repeatedly hospitalized for these life-threatening infections, and may die before their first birthday if undiagnosed and untreated. With newborn screening, SCID can be identified, and a baby diagnosed and potentially cured. Currently, 44 states include SCID in their newborn screening panel for all newborns, one state offers screening for SCID to select populations, two states anticipate including SCID in their newborn screening panels later this year, and three do not offer screening for SCID. Laws 2017, Ch. 339 increased the fee cap for the first specimen of a newborn and infant screening test from \$30 to \$36. After obtaining an exception from the rulemaking moratorium established by Executive Order 2017-02, the Department is amending the rules in 9 A.A.C. 13, Article 2 to add SCID to the newborn screening panel of conditions and raise the fee for a first specimen from \$30 to \$36 to cover costs of adding SCID.

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

a. Cost bearers

- The Department
- AHCCCS
- Third-party payors, including Indian Health Service and insurance companies
- Health care institutions, including hospitals and birthing centers
- Health care providers, including physicians and midwives
- Parents of newborns

b. Beneficiaries

- The Department
- AHCCCS
- Third-party payors, including Indian Health Service and insurance companies
- Health care institutions, including hospitals and birthing centers
- Health care providers, including physicians and midwives
- Parents of newborns
- Society as a whole

3. Cost/Benefit Analysis

This analysis covers costs and benefits associated with the rule changes to add SCID as part of a newborn and infant bloodspot test, raise the fee for a first specimen from \$30 to \$36, and make other clarifying changes. The calculations used throughout this analysis assume approximately 86,000 births and 83,200 first specimens being received and billed by the Department. Although the birth rate may change, the projected costs and benefits should both vary in a similar fashion with the birth rate, since the screening tests should be offered to all newborns. Thus, the figures given should be comparable, regardless of their absolute size.

Annual cost/revenue changes are designated as minimal when \$1,500 or less, moderate when between \$1,500 and \$15,000, and substantial when \$15,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification. A summary of the economic impact of the rules is given in the Table below, while the economic impact is explained more fully in the sections following the Table.

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Revenue	Decreased Cost/ Increased Revenue
A. State and Local Government Agencies			
Department	Increasing the fee for a first specimen Testing bloodspot specimens for SCID	Substantial Substantial	Substantial Significant
AHCCCS	Increasing the fee for a first specimen Having babies with SCID diagnosed earlier, when the disorder may be cured	Substantial None	None Substantial
B. Privately Owned Businesses			
Third-party payors, including Indian Health Service and insurance companies	Increasing the fee for a first specimen Having babies with SCID diagnosed earlier, when the disorder may be cured	Minimal-to substantial None	None Substantial
Health care institutions, including hospitals and birthing centers	Increasing the fee for a first specimen Having babies with SCID diagnosed earlier, when the disorder may be cured	Minimal-to-substantial Moderate-to-substantial	None Significant
Health care providers (midwives)	Increasing the fee for a first specimen	Minimal	Significant
C. Consumers			
Parents of newborns or infants tested through NBS	Increasing the fee for a first specimen Having a baby screened for SCID	None-to-minimal None	None Significant/substantial
General public	Having babies with SCID diagnosed earlier, when the disorder may be cured	None	Significant/substantial

- **The Department**

For many congenital disorders, early detection and treatment are critical in preventing death or a lifetime of disability due to the congenital disorder. The Newborn and Infant Screening Program (NBS) within the Department currently provides bloodspot testing for 28 congenital disorders, through the Arizona State Laboratory, and follow-up for newborns and infants who had an abnormal screening test result for one of the 28 congenital disorders, a critical congenital heart defect, or hearing loss. As required by A.R.S. § 36-694, NBS also maintains a central database of information about newborns

and infants who are tested for hearing loss or congenital disorders, and provides an educational program for hospitals, health care providers, and parents.

Until recently both the fee for a first specimen and the fee for a second specimen were capped in statute. Laws 2012, Ch. 299, § 2, removed the statutory fee cap for a second specimen from A.R.S. § 36-694, allowing the Department to establish a new fee for a second specimen through rulemaking. In a rulemaking that was approved by the Governor's Regulatory Review Council (Council) and became effective April 2014, the Department raised the fee for a second specimen from \$40, which had been established through a rulemaking effective April 2006, to \$65 to enable NBS to continue to function. Although there is still a statutory fee cap for a first specimen, Laws 2017, Ch. 339, increased the fee cap for a first specimen from \$30 to \$36.

As part of NBS, the demographic data entry section enters information from a submitted specimen collection kit into a database system for linking with test results. Scientists in the Arizona State Laboratory review submitted specimens for acceptability, perform laboratory testing, maintain records of the tests performed, and conduct quality control studies of laboratory methods and practices. The follow-up section of NBS is responsible for promptly notifying physicians of abnormal bloodspot test results, linking physicians to appropriate specialty consultation services to ensure appropriate confirmatory testing, and verifying that infants with abnormal bloodspot test results and confirmatory results are under a physician's care. The follow-up section also receives newborn and infant hearing test results and tracks infants who do not pass these tests in order to assist families with obtaining further confirmatory hearing testing and, when a hearing loss is confirmed, early intervention services. Results of newborn and infant critical congenital heart defect screening are collected and forwarded to the Department's Birth Defects Monitoring Program. The education section of NBS provides educational outreach, educational materials, and training to the professional healthcare and lay communities about NBS and its requirements. Other components of the program include data management and billing. The data management component analyzes, evaluates, and reports program data, trends, and performance measures. Billing is addressed below. NBS also incurs expenses that represent expenditures that apply to the entire program (general program management), such as salaries for management and medical director, program database annual maintenance, specimen collection kits, statewide courier, utilities, and eProcurement.

Until late 2015, the Department billed the applicable person, according to R9-13-203(D) and (E) and R9-13-208 for NBS. As of April 2016, the Department contracts with a private company, Midwest Medical Practice Management, Inc. (MMPMI) to bill for NBS. MMPMI spent the first few months of the contract billing for specimens submitted during the November 2015 to April 2016 gap during which no billing was performed. Because of the gap in billing and the fact that specimen fees

billed in one fiscal year may be collected in the next fiscal year, the most accurate indication of the revenue generated by billing for NBS specimens would be the average of the amounts billed and amounts collected during fiscal years 2015 through 2017, the three fiscal years during which the new fee for a second specimen has been in effect. During fiscal years 2015 through 2017, the Department, either in-house or by contract, billed an average of \$7,298,960 for newborn and infant screening and collected an average of approximately \$7,186,511 in specimen fees, as shown in Appendix A. These fees are deposited into the newborn screening program fund, established under A.R.S. § 36-694.01, from which the Legislature appropriates funds for the operation of NBS. During fiscal year 2017, the Department received an appropriation of \$7,130,100 from the newborn screening fund to support NBS, of which \$3,318,516 was budgeted to support the laboratory section of NBS, \$920,347 was budgeted to support the follow-up section of NBS, \$142,496 was budgeted to support the education section of NBS, \$800,815 was budgeted to support general program management activities, \$821,310 was budgeted to support billing, and \$672,492 was budgeted for agency indirect and ITS direct costs.

As part of this rulemaking, the Department plans to add SCID to the newborn screening panel of conditions and raise the fee for a first specimen from \$30 to \$36 to help cover the costs of adding SCID. While the Department expects the \$6 fee increase for a first specimen will not be sufficient to cover all costs associated with testing for SCID, it should be sufficient to enable the Department to begin testing, as described below. The Department expects to cover the shortfall through a combination of appropriation increase requests, indirect waivers, and/or cuts to other areas of the NBS operating budget. According to a 2014 estimate, SCID occurs in approximately 1 in 58,000 births, with a higher incidence (as high as 1 in 2,500 births) found in the Navajo population. All but a few states in the United States currently test for SCID as part of their newborn screening programs. Through early detection of this congenital disorder, a baby may be cured of SCID through a bone marrow transplant, which has a high success rate if performed within the first 3.5 months of life. Bone marrow transplants become less successful the older and sicker a baby becomes. Additional treatments, such as gene therapy and enzyme replacement therapy, are also being developed and used. The Department anticipates that adding SCID to newborn and infant screening and making the accompanying clarifications to the rules may provide a significant benefit to the Department as an improvement in public health.

The Department anticipates routinely testing only first specimens for SCID because SCID should be tested for as early as possible and, unlike tests for some congenital disorders, the test result does not depend on the newborn's nutritional status. However, if a newborn has an abnormal result on a first specimen that cannot be confirmed on the same sample or is from a premature or sick infant in a NICU, if the test results are inconclusive, or if a test cannot be performed on a first specimen due to

technical difficulties, the Department anticipates that the second specimen for a newborn will be tested for SCID as well. Since test results from second specimens may be available before a parent is aware of the results from a first specimen, this process may reduce costs to the Department, health care providers, and parents and reduce the stress on parents from false positive results.

The Department expects the addition of SCID to the newborn screening panel of conditions to increase the cost to the Department for testing first specimens, for testing some second specimens for SCID, for follow-up on the abnormal or inconclusive test results of these tests, and for providing education about SCID. Since the billing contract includes payment based on the amount collected, costs for billing are also expected to increase. During CY 2016, the Department received 82,771 first specimens for bloodspot testing, representing approximately 96.7% of births. As shown in Appendix A, during FY 2017, the Department received 81,738 first specimens and billed the health care facility or health care provider submitting the first specimen to the Department \$2,452,140 according to R9-13-203(D). During FY 2017, the Department collected \$3,777,645 from first specimen fees, which includes revenue received during FY 2017 from first specimens submitted during FY 2016.

The Department plans to test bloodspot specimens for SCID using “T-cell receptor excision circles” (TRECs). TRECs are pieces of DNA that are formed in the thymus when immune-competent T-cells are developing and may be measured by a technique called polymerase chain reaction (PCR). Normal blood specimens have about one TREC per 10 T-cells, but this number is greatly reduced or absent in a newborn with SCID. Premature babies have a lower number of TRECs than a full-term baby, so these newborns might be expected to have a higher false positive rate when testing for SCID. The Department is not aware of any published report of a baby diagnosed with SCID who had a negative TREC screening result (false negative result). Testing for SCID will be performed using a commercially available kit. This kit has received FDA clearance and will be easy to integrate into the Arizona State Laboratory’s existing workflow and laboratory information management system. While other testing methods may be available, they are laboratory-developed tests that require a longer, more extensive validation period that can take up to six months to implement. Information about equipment and supplies that will be required to implement SCID testing is provided in Appendix B.

When notified of an abnormal test results, the follow-up section of NBS will notify the primary care physician and, if the newborn is not still in the hospital, the family of a newborn with an abnormal SCID bloodspot test result of the need for diagnostic testing for SCID. The information conveyed by follow-up staff will be based on instructions from immunologists contracted with the Department to provide expert consultation and guidance. Follow-up for premature newborns will consist of requesting the second specimen to be collected at or after 37 weeks gestational age or before discharge, whichever is later, and submitted to the Department for testing. A second abnormal result

for a premature newborn would also trigger a recommendation for diagnostic testing. If notified of an inconclusive result for SCID on a first specimen, the follow-up section will request a second specimen to be collected within a week and submitted to the Department and tested for SCID. The Department anticipates detecting two to three SCID cases per year. Because low TREC levels may be indicative of other immunodeficiencies or immunosuppressive drug use, the Department expects that an unknown number of other harmful, if not fatal, conditions may also be detected in newborns who receive diagnostic testing after an abnormal bloodspot test result for SCID.

The Department plans to incorporate education about the importance of SCID screening into general outreach activities. The Department has already added information about SCID to the NBS webpages and new materials about SCID, including a parent brochure, have been developed and will be available free of charge to hospitals and health care providers for distribution to parents. In addition, a targeted outreach campaign to obstetricians serving Native Americans is underway and will continue through 2017-2018.

The billing company, MMPMI, is contracted to receive 10% of the total amount collected for each specimen. Since the current billing costs are based on a first specimen fee of \$30, increasing the fee to \$36 will result in MMPMI receiving a possible increase of \$0.60 per first specimen fee collected for an estimated increased billing cost to the Department of \$49,920 ($83,200 \times \0.60).

In total, the Department estimates that the addition of SCID testing on a first specimen may directly cause an additional \$693,365 in costs to the Department, averaged over five years, including an additional \$537,978 in costs for the laboratory section, an additional \$106,876 in costs for the follow-up section, and the remainder attributed to increased Indirect and ITS Direct charges. The increase in billing costs of \$49,920 is directly attributable to the fee increase, rather than to the addition of SCID testing, although the fee increase is tied to the addition of SCID. The figures above pertain to SCID-specific/related costs and do not include other budget changes for non-SCID reasons, which are also included in the budgets shown in Appendix B.

By increasing the fee for a first specimen from \$30 to \$36, the Department anticipates the additional amount billed per year for first specimens, assuming that 96.7% of all newborns have a first specimen collected (based on historical data), to be:

86,000 births \times 96.7%, or approximately 83,200 first specimens;

83,200 first specimens \times \$6 fee increase for first specimens = \$499,200.

Thus, the theoretical total additional amount that will be billed annually is \$499,200. Thus, the Department anticipates a substantial increase in revenues, with collections from first specimens estimated to approximate the amount billed.

The Department anticipates using these funds as follows:

SCID-specific costs:

\$102,487 plus \$41,302 (ERE) Two new staff:

- Public Health Scientist with a molecular biology background to perform and oversee SCID testing, reporting, and training of other laboratory staff

Currently, only one employee in the NBS laboratory has the experience necessary to oversee the implementation of SCID testing and is covering two positions, including DNA testing for cystic fibrosis. The new staff scientist will work with the current employee to implement and oversee the new SCID platform, integrate cystic fibrosis DNA testing as part of a new molecular testing section, evaluate alternative molecular platforms for current and future testing and perform daily testing, reporting, and training.

- Blood-spot Follow-up Specialist to perform follow-up activities for abnormal or inconclusive results

SCID is a very time-sensitive disorder that requires close follow-up because all case management activities must be completed before an affected newborn receives any vaccines (generally prior to two months of age). Delays in diagnosis and treatment increase the opportunity for common and opportunistic infections that can be life-threatening to an affected newborn (e.g., cytomegalovirus transmission through breast milk).

\$49,332

Immunology consultant contracts (Phoenix and Tucson)

Contracted immunologists will provide technical guidance to NBS in developing follow-up protocols, laboratory cutoffs, and educational materials and serve as a technical resource to primary care physicians. In order to provide statewide coverage (geographically), we selected one immunologist in each of these cities to balance the overall workload. As SCID is a time-sensitive disorder, we must ensure that the health care providers for presumptively identified patients have rapid access to clinical support.

\$451,733

Laboratory reagents and consumables for SCID testing

Reagent costs (\$5.60 per specimen) also cover the leasing costs for all associated laboratory equipment and service (thermocyclers and EnLite readers). Other consumable supplies include pipettes, pipette tips, plates, etc. The additional costs for SCID testing on second specimens is estimated to be approximately \$2,000,

assuming a repeat testing rate similar to the rate Utah's NBS is experiencing (0.477%), which will be absorbed by the Department.

\$11,126	ITS Direct
<u>\$37,385</u>	Indirect
Subtotal \$693,365	

SCID-related costs:

\$49,920	Billing costs
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The increase in billing costs is directly due to the fee increase, but is tied to the addition of SCID.

Total \$743,285

- **AHCCCS**

According to CY 2016 birth data from the Department's Health Status and Vital Statistics group, AHCCCS was the party paying for delivery for 44,212 of the 85,620 babies born in Arizona in CY 2016, 51.64% of all births. Based on historical data, the Department expects to receive first specimens for 96.7% of these newborns, submitted by the health care facility where the birth occurred, and to bill the health care facility for the first specimen. AHCCCS pays for births through negotiated "birth packages" with Arizona's hospitals and birthing centers. Therefore, if AHCCCS increases the amount paid by AHCCCS to a hospital or birthing center for each birth package to correspond with the increase in the fee for a first specimen, the Department would expect AHCCCS to incur the following cost increase for their members due to the fee increase:

Calculated based on the number of births with AHCCCS paying for delivery:

$86,000 \times 51.64\% = 44,410$ births with AHCCCS as the party paying for delivery

$44,410 \times 96.7\% = 42,945$ first specimens from these newborns

$42,945 \times \$6 = \$257,670$

Calculated based on the amount collected from an AHCCCS health plan for second specimens during FY 2017:

\$2,480,995 collected from AHCCCS health plans compared with the total amount collected for all second specimens (\$4,034,821) = 61.5% of all paid second specimens

$86,000 \times 96.7\% = 83,162$ first specimens from all newborns

$83,162 \times 61.5\% = 51,145$

$51,145 \times \$6 = \$306,870$

Thus, AHCCCS may bear as much as a substantial increase in costs from birth packages renegotiated due to the increased fee for first specimens in the new rules.

The Department anticipates that AHCCCS may also receive a substantial benefit from the rulemaking. As mentioned above, babies born with SCID do not have a functioning immune system,

leaving them at risk for developing infections from the disease-causing germs around us every day. With newborn screening, SCID can be identified and a baby diagnosed while the baby is still protected by maternal antibodies and life-threatening infections have not yet occurred. The most common treatment for SCID has been a bone marrow transplant, which can cure the disorder by re-establishing a competent immune system in a baby with SCID. A bone marrow transplant performed before 3.5 months of age has been found to have a 95% success rate, while a success rate of 70% or less has been found for babies transplanted after that age. Because babies with SCID who are not diagnosed through newborn screening are repeatedly hospitalized for life-threatening infections, a baby with SCID who is an AHCCCS member will cause AHCCCS to incur substantial costs, and may die before the baby's first birthday if undiagnosed and untreated. If diagnosed once symptoms occur, the medical care for a single baby may cost an average of \$2.2 million, which includes an estimated cost of a late bone marrow transplant of approximately \$360,000, according to a 2011 estimate. Medical care for one baby with an early SCID diagnosis costs approximately \$250,000, which includes the cost of an early bone marrow transplant of approximately \$120,000. Therefore, the Department anticipates that AHCCCS may receive a substantial cost savings if at least one AHCCCS member with SCID is identified through NBS over a four-year period. Since one of the early symptoms of SCID is failure-to-thrive, AHCCCS may also receive a moderate-to substantial benefit from having diagnostic testing of a baby with a positive SCID screening result targeted at a compromised immune system, rather than paying for expensive, less-specific testing performed, as part of a "diagnostic odyssey," for a sick baby while trying to determine a diagnosis.

- **Third-party payors**

Third-party payors, including private insurance plans, military health care facilities, Indian Health Service, and tribal health care facilities, paid for approximately 41.71% of births in Arizona in 2016, based on data from the Department's Health Status and Vital Statistics group. As with AHCCCS, third-party payors pay for births through negotiated birth packages with hospitals and birthing centers. Therefore, if a third party payor increases the amount paid to a hospital or birthing center for a birth package to account for the increase in the fee for a first specimen, the Department would expect the third party payor to incur a corresponding increased cost due to the rulemaking. If the Department receives first specimens for 96.7% of these newborns, based on historical data, the Department would expect third-party payors as a whole to incur the following cost increase due to the new fee for newborns insured through the third-party payor, assuming that all third-party payors increase the amounts paid to all hospitals or birthing centers for a birth package:

$86,000 \times 41.71\% = 35,871$ births with a third-party payor as the party paying for delivery

$35,871 \times 96.7\% = 34,687$ first specimens from these newborns

$34,687 \times \$6 = \$208,122$

A third-party payor that did not increase the amount paid to a “health care facility” for a birth package would not incur any increased costs for first specimens submitted by the health care facility. The increased cost to an individual affected third-party payor may range from minimal (for a third-party payor with fewer than 250 covered newborns) to substantial (for a third-party payor with 2,500 or more covered newborns) if the third-party payor increased the amount paid for a birth package. Based on FY 2017 information, only four third-party payors would have incurred a substantial increased cost if the fee increase had been in effect in FY 2017. Third-party payors may pass the costs of the increased fee for a first specimen on to policy holders as increased insurance premiums or otherwise recoup these costs. The Department estimates that the additional costs to third-party payors from the increased fee may essentially be offset from these funding sources.

As for AHCCCS, the Department anticipates that a third-party payor may receive a substantial cost savings if at least one baby with SCID, insured through the third-party payor, is identified through NBS over a seven-year period.

- **Health care institutions**

First specimens are required to be collected from a newborn before the newborn is 72 hours old, and the Department bills the person submitting the first specimen the fee established in rule for a first specimen. Therefore, the health care institutions that could be expected to incur an increase in costs due to the fee increase include hospitals providing maternity services and birthing centers, which meet the definition of “health care facility” in R9-13-201. In CY 2016, approximately 82,477 first specimens were submitted by a health care facility, with the number submitted by a single health care facility ranging from one to 6,943. If a birth occurring at a health care facility is paid through AHCCCS or a third-party payor and AHCCCS or the third-party payor increases the amount of a birth package to account for the fee increase for a first specimen, the increased fee would have no economic effect on the health care facility. If a birth occurring at the health care facility is not paid through AHCCCS or a third-party payor or if AHCCCS or a third-party payor does not increase the amount of a birth package to account for the fee increase for a first specimen, the Department anticipates that health care facilities as a whole may incur as much as \$499,200 in increased costs due to the fee increase ($83,200 \times \$6 = \$499,200$) if no AHCCCS health plan or third-party payor increases the amount for a birth package for any health care facility. Based on the number of first specimens submitted by health care facilities in CY 2016, a health care facility could incur as much as \$41,658 in additional costs ($6,943 \times \$6 = \$41,658$) if there is no increase in the amount of any birth package.

A hospital or outpatient treatment center that is authorized to provide services required by a patient with SCID may also be affected by the addition of SCID to the newborn screening panel of

conditions as part of the rulemaking. A baby, identified through NBS as having SCID and cured of the condition, would avoid life-threatening infections that would otherwise have sent the baby to the hospital or outpatient treatment center for treatment of the infection, decreasing the revenue to these health care institutions. The Department anticipates that a hospital or outpatient treatment center may incur a moderate-to-substantial decrease in revenue if a baby with SCID is identified through NBS and avoids treatment by the hospital or outpatient treatment center for a life-threatening infection. Similarly, a hospital providing bone-marrow transplants or other treatments that may be provided to a patient with SCID may incur a substantial decrease in revenue from the relatively less expensive early treatment of SCID in a baby diagnosed through NBS. However, a hospital or outpatient treatment center may also receive a significant benefit in knowing that a baby, who was identified through NBS with SCID and who has been treated and cured, is healthy and has not died from an infection due to SCID.

- **Health care providers (midwives)**

Midwives as a whole submit fewer than 300 first specimens per year for the newborns they deliver from their clients and are the only health care providers who have submitted first specimens, according to Department records. If a similar number of first specimens is submitted by midwives in upcoming years, the Department would expect midwives as a whole to incur approximately \$1,800 in increased costs due to the new fee for newborns delivered by a midwife. The number of first specimens submitted by individual midwives in CY 2016 ranged from one to 28. Therefore, the increased cost to an individual midwife is expected to be minimal ($28 \times \$6 = \168). A midwife may also pass the costs of the increased fee for a first specimen on to clients as increased midwifery fees. A midwife may also receive a significant benefit in knowing that a baby, delivered by the midwife, identified through NBS with SCID, treated, and cured, is healthy and has not died from an infection due to SCID.

- **Parents of newborns**

Parents paid for about 6.65% of births (percentage of self-paid births plus births for which the payor was unknown) in Arizona in CY 2016, according to data from the Department's Health Status and Vital Statistics group. A parent paying a health care facility or health care provider for the delivery of the newborn would likely have the fee for newborn and infant screening included in the fee charged by the health care facility or health care provider for the delivery. If parents pay for a similar number of births in upcoming years and the health care facility or health care provider passes the increased fee for a first specimen on to a parent, the Department would expect parents as a whole to incur the following cost increase due to the increase in the fee for a first specimen:

$$86,000 \times 6.65\% = 5,719 \text{ births paid for by a parent}$$

$5,719 \times 96.7\% = 5,530$ first specimens from these newborns

$5,530 \times \$6 = \$33,182$

A parent may also incur an increase in the premium paid to a third-party payor that passes the increased fee for first specimens on to policyholders. The Department expects the increased cost to an individual parent to be at most minimal, either directly from the first specimen fee increase or indirectly through an increase in a health insurance premium.

The tests used for newborn and infant screening have a high sensitivity, and the cut-off values for a positive test result are set to ensure that, while there may be false positive results, a false negative result (a negative test result from a baby that really has the condition tested for) is very rare. As mentioned above, the Department is not aware of any published report of a baby diagnosed with SCID who had a false negative result for SCID. With the addition of SCID to the newborn screening panel of conditions, a parent of a newborn with a negative test result may receive a significant benefit in knowing that the newborn is extremely likely not to have SCID.

A parent of a newborn with a positive test result may experience stress due to the uncertainty about the health of the parent's newborn and will need to obtain diagnostic testing to determine if the newborn has SCID, another condition that may cause a reduction in TREC's, or a false positive result. However, the parent of a baby with SCID or another condition that may cause a reduction in TREC's may receive a significant and perhaps up to a substantial benefit from having the condition diagnosed early, through targeted testing, rather than undergo months of stress, have the baby undergo a multitude of tests to try to obtain a diagnosis, and experience the monetary and emotional toll of having a sick child. The Department does not plan to contact a parent about a positive/inconclusive test result for SCID on a first specimen if the newborn is still in the hospital because of prematurity or another issue, and will be requesting a second specimen from the hospital that will be tested for SCID. Because the Department will also test a routine second specimen for SCID if the test for SCID on a first specimen is inconclusive, the number of parents experiencing stress due to being informed of an inconclusive result on a first specimen, and the length of time a parent may wait before receiving another result, will be minimized. Although the Department has limited information upon which to base an estimate, the Department anticipates that three newborns will be diagnosed with SCID per year, and fewer than 200 parents per year will be contacted about inconclusive test results.

- **General public**

As mentioned above, a baby with SCID cannot fight off infections, is repeatedly hospitalized for these life-threatening infections, and may die before the baby's first birthday if undiagnosed and untreated. Society in general will receive a significant benefit from having a baby grow up into a healthy and productive member of society because of timely identification and treatment of SCID.

Unlike most of the conditions diagnosed through newborn and infant screening, a baby with SCID may be cured of the condition, not just require life-long treatment in order to remain healthy. According to a health economist at the Centers for Disease Control and Prevention (CDC), (<https://blogs.cdc.gov/genomics/2016/03/15/scid/>), screening for SCID is cost beneficial, with the benefits expected to be \$5.31 per \$1 in screening costs. Therefore, the Department anticipates that society in general may receive up to a substantial benefit from the addition of SCID to newborn and infant screening.

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

Public and private employment in the State of Arizona is not expected to be affected due to the changes in the rules.

5. A statement of the probable impact of the rules on small business

a. Identification of the small businesses subject to the rules

Small businesses subject to the rule may include small hospitals, outpatient treatment centers, small insurance carriers, and midwives.

b. The administrative and other costs required for compliance with the rules

The fee increase may impose an increased cost to a small hospital or birthing center that does not receive an increase in the fee for a birthing package from AHCCCS or a third-party payor and does not pass the increased cost for a first specimen on to a parent. The fee increase may impose an increased cost to a midwifery practice that does not pass the increased cost for a first specimen on to a parent. The fee increase may impose an increased cost on a small insurance carrier or other third-party payor that covers newborn and infant screening for a newborn or infant, which may be offset by higher premiums or lower medical costs for babies diagnosed with SCID through NBS, rather than once symptoms arise and additional medical treatment is required. Additional information is provided under paragraph 3.

c. A description of the methods that the agency may use to reduce the impact on small businesses

The Department provides outpatient treatment centers, midwives, and other free-standing small healthcare-related facilities with free, in-person training upon request. These small businesses, as well as other health care institutions and health care providers, also have access to free parent and provider brochures and other materials in English and Spanish and can request assistance with establishing their facility as a screening location for newborns/infants. Training includes a “getting started” packet covering collection technique, timing, drying, and shipping for specimens, as well as information for families related to disorders tested for

through NBS. Additionally, resources are provided related to hearing screening, insurance reimbursement, and other administrative tasks associated with appropriate screening and education to families. Family support resources are also offered, and a review of the website is provided to ensure stakeholders know how to access information as needed. Except as described above and in paragraph 3 for testing routine of second specimens from babies with an inconclusive result for SCID on a first specimen, the Department is unaware of another method that may be used to reduce the impact on small businesses.

d. The probable costs and benefits to private persons and consumers who are directly affected by the rules

If the parents of a newborn or infant have no health care insurance for the newborn or infant, the parents may bear the cost of the fee increase for a first specimen. However, the parents will benefit from the knowledge that the parent's newborn does not have SCID or, if the newborn is diagnosed with SCID after a positive newborn and infant screening test, from early diagnosis and treatment/cure to avoid a stressful diagnostic odyssey, costly medical expenses, and the death of the baby. Additional information is provided under paragraph 3.

6. A statement of the probable effect on state revenues

The funds generated through newborn screening fees are placed into a newborn screening fund, from which the Legislature appropriates funds to run NBS within the Department. The Department estimates that approximately \$500,000 in additional monies (\$6 X 83,200) may be deposited into the newborn screening fund as a result of this rulemaking. An additional \$544,800 was appropriated to the Department from the fund, based on the difference between FY 2017 and FY 2018 appropriations as shown in Appendix B, for the Department to use to implement screening for SCID and follow-up on abnormal test results, as described in paragraph 3.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking

There are no less intrusive or less costly alternatives for achieving the purpose of the rule.

8. A description of any data on which the rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data

The financial data used to develop this document was obtained, as cited, from the Department's newborn screening database, vital statistics data, and financial records and projections, not from any outside data. Information about SCID was obtained from published research and review articles in scientific and medical journals. As such, the Department believes the data is acceptable.

APPENDIX A- Current Rules

TITLE 9. HEALTH SERVICES

CHAPTER 13. DEPARTMENT OF HEALTH SERVICES - HEALTH PROGRAMS SERVICES

ARTICLE 2. NEWBORN AND INFANT SCREENING

R9-13-201. Definitions

In this Article, unless otherwise specified:

1. “Abnormal result” means an outcome that deviates from the range of values established by:
 - a. The Department for an analysis performed as part of a bloodspot test or for a hearing test, or
 - b. A health care facility or health care provider for critical congenital heart defect screening.
2. “Admission” or “admitted” means the same as in A.A.C. R9-10-101.
3. “AHCCCS” means the Arizona Health Care Cost Containment System.
4. “Argininosuccinic acidemia” means a congenital disorder characterized by an inability to metabolize the amino acid argininosuccinic acid due to defective argininosuccinate lyase activity.
5. “Arizona State Laboratory” means the entity operated according to A.R.S. § 36-251.
6. “Audiological equipment” means an instrument used to help determine the presence, type, or degree of hearing loss by:
 - a. Providing ear-specific and frequency-specific stimuli to an individual; or
 - b. Measuring an individual’s physiological response to stimuli.
7. “Audiologist” means the same as in A.R.S. § 36-1901.
8. “Beta-ketothiolase deficiency” means a congenital disorder characterized by an inability to metabolize 2-methyl-acetoacetyl-CoA due to defective mitochondrial acetoacetyl-CoA thiolase activity.
9. “Biotinidase deficiency” means a congenital disorder characterized by defective biotinidase activity that causes abnormal biotin metabolism.
10. “Birth center” means a health care facility that is not a hospital and is organized for the purpose of delivering newborns.
11. “Blood sample” means capillary or venous blood, but not cord blood, applied to the filter paper of a specimen collection kit.
12. “Bloodspot test” means multiple laboratory analyses performed on a blood sample to screen for the presence of congenital disorders listed in R9-13-203.

APPENDIX A- Current Rules

13. “Carnitine uptake defect” means a congenital disorder characterized by a decrease in the amount of free carnitine due to defective sodium ion-dependent carnitine transporter OCTN2 activity.
14. “Citrullinemia” means a congenital disorder characterized by an inability to convert the amino acid citrulline and aspartic acid into argininosuccinic acid due to defective argininosuccinate synthetase activity.
15. “Classic galactosemia” means a congenital disorder characterized by abnormal galactose metabolism due to defective galactose-1-phosphate uridylyltransferase activity.
16. “Congenital adrenal hyperplasia” means a congenital disorder characterized by decreased cortisol production and increased androgen production due to defective 21-hydroxylase activity.
17. “Congenital disorder” means an abnormal condition present at birth, as a result of heredity or environmental factors, that impairs normal physiological functioning of a human body.
18. “Congenital hypothyroidism” means a congenital disorder characterized by deficient thyroid hormone production.
19. “Critical congenital heart defect” means a heart abnormality or condition present at birth that places a newborn or infant at significant risk of disability or death if not diagnosed soon after birth.
20. “Cystic fibrosis” means a congenital disorder caused by defective functioning of a transmembrane regulator protein and characterized by damage to and dysfunction of various organs, such as the lungs, pancreas, and reproductive organs.
21. “Department” means the Arizona Department of Health Services.
22. “Diagnostic evaluation” means a hearing test performed by an audiologist or a physician to determine whether hearing loss exists, and, if applicable, determine the type or degree of hearing loss.
23. “Discharge” means the termination of inpatient services to a newborn or an infant.
24. “Disorder” means a disease or medical condition that may be identified by a laboratory analysis.
25. “Document” means to establish and maintain information in written, photographic, electronic, or other permanent form.
26. “Educational materials” means printed or electronic information provided by the Department, explaining newborn and infant screening, any of the congenital disorders listed in R9-13-203, hearing loss, or critical congenital heart defect.

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27. “Electronic” means the same as in A.R.S. § 44-7002.
28. “First specimen” means the initial specimen that is collected from a newborn who is less than five days of age and sent to the Arizona State Laboratory for testing and recording of demographic information.
29. “Glutaric acidemia type I” means a congenital disorder characterized by an accumulation of glutaric acid due to defective glutaryl-CoA dehydrogenase activity.
30. “Guardian” means an individual appointed by a court under A.R.S. Title 14, Chapter 5, Article 2.
31. “Health care facility” means a health care institution defined in A.R.S. § 36-401 where obstetrical care or newborn care is provided.
32. “Health care provider” means a physician, physician assistant, registered nurse practitioner, or midwife.
33. “Health-related services” means the same as in A.R.S. § 36-401.
34. “Hearing screening” means a hearing test to determine the likelihood of hearing loss in a newborn or infant.
35. “Hearing test” means an evaluation of each of a newborn’s or an infant’s ears, using audiological equipment to:
 - a. Screen the newborn or infant for a possible hearing loss;
 - b. Determine that the newborn or infant does not have a hearing loss; or
 - c. Diagnose a hearing loss in the newborn or infant, including determining the type or degree of hearing loss.
36. “Hemoglobin S/Beta-thalassemia” means a sickle cell disease in which an individual has one sickle cell gene and one gene for beta thalassemia, another inherited hemoglobinopathy.
37. “Hemoglobin S/C disease” means a sickle cell disease in which an individual has one sickle cell gene and one gene for another inherited hemoglobinopathy called hemoglobin C.
38. “Hemoglobinopathy” means a congenital disorder characterized by abnormal production, structure, or functioning of hemoglobin.
39. “Home birth” means delivery of a newborn, outside a health care facility, when the newborn is not hospitalized within 72 hours of delivery.
40. “Homocystinuria” means a congenital disorder characterized by abnormal methionine and homocysteine metabolism due to defective cystathione-β-synthase activity.
41. “Hospital” means the same as in A.A.C. R9-10-101.

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42. “Hospital services” means the same as in A.A.C. R9-10-201.
43. “3-Hydroxy-3-methylglutaric aciduria” means a congenital disorder characterized by the accumulation of 3-hydroxy-3-methylglutaric acid due to a defective 3-hydroxy-3-methylglutaryl-CoA lyase activity.
44. “Identification code” means a unique set of numbers or letters, or a unique set of both numbers and letters, assigned by the Department to a health care facility, a health care provider, an audiologist, or another person submitting specimen collection kits to the Arizona State Laboratory or hearing test results to the Department.
45. “Infant” means the same as in A.R.S. § 36-694.
46. “Inpatient” means an individual who:
 - a. Is admitted to a hospital,
 - b. Receives hospital services for 24 consecutive hours, or
 - c. Is admitted to a birth center.
47. “Inpatient services” means medical services, nursing services, or other health-related services provided to an inpatient in a health care facility.
48. “Isovaleric acidemia” means a congenital disorder characterized by an accumulation of isovaleric acid due to defective isovaleryl-CoA dehydrogenase activity.
49. “Long-chain 3-hydroxy acyl-CoA dehydrogenase deficiency” means a congenital disorder characterized by an inability to metabolize fatty acids that are 12 to 16 carbon atoms in length due to defective long-chain 3-hydroxy acyl-CoA dehydrogenase activity.
50. “Maple syrup urine disease” means a congenital disorder of branched chain amino acid metabolism due to defective branched chain-keto acid dehydrogenase activity.
51. “Medical services” means the same as in A.R.S. § 36-401.
52. “Medium chain acyl-CoA dehydrogenase deficiency” means a congenital disorder characterized by an inability to metabolize fatty acids that are 6 to 10 carbon atoms in length due to defective medium-chain acyl-CoA dehydrogenase activity.
53. “3-Methylcrotonyl-CoA carboxylase deficiency” means a congenital disorder characterized by an accumulation of 3-methylcrotonyl-glycine due to defective 3-methylcrotonyl-CoA carboxylase activity.
54. “Methylmalonic acidemia (Cbl A,B)” means a congenital disorder characterized by an accumulation of methylmalonic acid due to defective activity of methylmalonyl-CoA racemase or adenosylcobalamin synthetase.

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55. “Methylmalonic acidemia (mutase deficiency)” means a congenital disorder characterized by an accumulation of methylmalonic acid due to defective methylmalonyl-CoA mutase activity.
56. “Midwife” means an individual licensed under A.R.S. Title 36, Chapter 6, Article 7, or certified under A.R.S. Title 32, Chapter 15.
57. “Multiple carboxylase deficiency” means a congenital disorder characterized by an inability to transport or metabolize biotin that leads to defective activity of propionyl-CoA carboxylase, beta-methylcrotonyl-CoA carboxylase, and pyruvate carboxylase.
58. “Newborn” means the same as in A.R.S. § 36-694.
59. “Newborn care” means medical services, nursing services, and health-related services provided to a newborn.
60. “Nursing services” means the same as in A.R.S. § 36-401.
61. “Obstetrical care” means medical services, nursing services, and health-related services provided to a woman throughout her pregnancy, labor, delivery, and postpartum.
62. “Organ” means a somewhat independent part of a human body, such as a salivary gland, kidney, or pancreas, which performs a specific function.
63. “Parent” means a natural, adoptive, or custodial mother or father of a newborn or an infant.
64. “Parenteral nutrition” means the feeding of an individual intravenously through the administration of a formula containing glucose, amino acids, lipids, vitamins, and minerals.
65. “Person” means the state, a municipality, district, or other political subdivision, a cooperative, institution, corporation, company, firm, partnership, individual, or other legal entity.
66. “Phenylketonuria” means a congenital disorder characterized by abnormal phenylalanine metabolism due to defective phenylalanine hydroxylase activity.
67. “Physician” means an individual licensed under A.R.S. Title 32, Chapters 13, 14, 17, or 29.
68. “Physician assistant” means an individual licensed under A.R.S. Title 32, Chapter 25.
69. “Propionic acidemia” means a congenital disorder characterized by an accumulation of glycine and 3-hydroxypropionic acid due to defective propionyl-CoA carboxylase activity.
70. “Pulse oximetry” means a non-invasive method of measuring the percentage of hemoglobin in the blood that is saturated with oxygen using a device approved by the

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U.S. Food and Drug Administration for use with newborns or infants less than six weeks of age.

71. “Registered nurse practitioner” means the same as in A.R.S. § 32-1601.
72. “Second specimen” means a specimen that is sent to the Arizona State Laboratory for testing and recording of demographic information, after being collected:
 - a. From a newborn after a first specimen; or
 - b. From an individual at least five days and not older than one year of age, regardless of whether a first specimen was collected.
73. “Severe combined immunodeficiency” means a congenital disorder usually characterized by a defect in both the T- and B-lymphocyte systems, which typically results in the onset of one or more serious infections within the first few months of life.
74. “Sickle cell anemia” means a sickle cell disease in which an individual has two sickle cell genes.
75. “Sickle cell disease” means a hemoglobinopathy characterized by an abnormally shaped red blood cell resulting from the abnormal structure of the protein hemoglobin.
76. “Sickle cell gene” means a unit of inheritance that is involved in producing an abnormal type of the protein hemoglobin, in which the amino acid valine is substituted for the amino acid glutamic acid at a specific location in the hemoglobin.
77. “Specimen” means a blood sample obtained from and demographic information about a newborn or an infant.
78. “Specimen collection kit” means a strip of filter paper for collecting a blood sample attached to a form for obtaining the information specified in R9-13-203(B)(3) about a newborn or an infant.
79. “Transfer” means a health care facility or health care provider discharging a newborn and sending the newborn to a hospital for inpatient medical services without the intent that the patient will be returned to the sending health care facility or health care provider.
80. “Transfusion” means the infusion of blood or blood products into the body of an individual.
81. “Trifunctional protein deficiency” means a congenital disorder characterized by an inability to metabolize fatty acids that are 12 to 18 carbon atoms in length due to defective mitochondrial trifunctional protein activity.
82. “Tyrosinemia type I” means a congenital disorder characterized by an accumulation of the amino acid tyrosine due to defective fumarylacetoacetate hydrolase activity.

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83. “Verify” means to confirm by obtaining information through a source such as the newborn screening program, a health care provider, a health care facility, or a documented record.
84. “Very long-chain acyl-CoA dehydrogenase deficiency” means a congenital disorder characterized by an inability to metabolize fatty acids that are 14 to 18 carbon atoms in length due to defective very long-chain acyl-CoA dehydrogenase activity.
85. “Working day” means 8:00 a.m. through 5:00 p.m. Monday through Friday, excluding state holidays.

R9-13-202. Newborn and Infant Critical Congenital Heart Defect Screening

- A.** A health care facility’s designee, a health care provider, or a health care provider’s designee shall order critical congenital heart defect screening using pulse oximetry for a newborn to be performed:
 1. Between 24 and 48 hours after birth according to the health care facility’s or health care provider’s policies and procedures, or
 2. As late as possible before discharge according to the health care facility’s or health care provider’s policies and procedures if the newborn is discharged earlier than 24 hours after birth.
- B.** Before critical congenital heart defect screening is performed on a newborn, a health care facility’s designee, a health care provider, or a health care provider’s designee shall provide educational materials to the newborn’s parent or guardian.
- C.** When critical congenital heart defect screening is ordered for a newborn, a health care facility’s designee, a health care provider, or a health care provider’s designee shall submit, in a format specified by the Department, the following information:
 1. The newborn’s name, gender, race, ethnicity, medical record number, and, if applicable, AHCCCS identification number;
 2. Whether the newborn is from a single or multiple birth;
 3. If the newborn is from a multiple birth, the birth order of the newborn;
 4. The date and time of birth, and the newborn’s weight at birth;
 5. The identification code or the name and address of the health care facility or health care provider submitting the information;
 6. Except as provided in subsection (C)(7), the mother’s first and last names, date of birth, name before first marriage, mailing address, telephone number, and, if applicable, AHCCCS identification number;

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7. If the newborn's mother does not have physical custody of the newborn, the first and last names, mailing address, and telephone number of the person who has physical custody of the newborn;
8. The date, time, and result of the critical congenital heart defect screening;
9. If critical congenital heart defect screening was not performed, the reason critical congenital heart defect screening was not performed;
10. If the newborn was transferred to another health care facility or health care provider before the critical congenital heart defect screening was performed, the name, address, and telephone number of the health care facility or health care provider to which the newborn was transferred; and
11. Whether the newborn has a medical condition that may affect the critical congenital heart defect screening results.

D. In addition to the information in subsection (C), if the reported result of critical congenital heart defect screening for a newborn or infant is abnormal, a health care facility's designee, a health care provider, or a health care provider's designee shall submit to the Department, upon request and in a format specified by the Department, the following information:

1. The dates, times, values of all critical congenital heart defect screening results;
2. The dates, times, and results of any subsequent tests performed as a result of critical congenital heart defect screening;
3. The name, address, and telephone number of the contact person for the health care facility, health care provider, or other person performing the subsequent tests; and
4. If a medical condition is found as a result of critical congenital heart defect screening or subsequent tests, the type of medical condition found and the name of the health care provider who will be responsible for the coordination of medical services for the newborn or infant after the newborn or infant is discharged.

R9-13-203. Newborn and Infant Bloodspot Tests

A. A bloodspot test shall screen for the following congenital disorders:

1. 3-Hydroxy-3-methylglutaric aciduria,
2. 3-Methylcrotonyl-CoA carboxylase deficiency,
3. Argininosuccinic acidemia,
4. Beta-ketothiolase deficiency,
5. Biotinidase deficiency,
6. Carnitine uptake defect,

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7. Citrullinemia,
8. Classic galactosemia,
9. Congenital adrenal hyperplasia,
10. Congenital hypothyroidism,
11. Cystic fibrosis,
12. Glutaric acidemia type I,
13. Hemoglobin S/Beta-thalassemia,
14. Hemoglobin S/C disease,
15. Homocystinuria,
16. Isovaleric acidemia,
17. Long-chain 3-hydroxy acyl-CoA dehydrogenase deficiency,
18. Maple syrup urine disease,
19. Medium chain acyl-CoA dehydrogenase deficiency,
20. Methylmalonic acidemia (Cbl A,B),
21. Methylmalonic acidemia (mutase deficiency),
22. Multiple carboxylase deficiency,
23. Phenylketonuria,
24. Propionic acidemia,
25. Severe combined immunodeficiency,
26. Sickle cell anemia,
27. Trifunctional protein deficiency,
28. Tyrosinemia type I, and
29. Very long-chain acyl-CoA dehydrogenase deficiency.

B. When a bloodspot test is ordered for a newborn or an infant, a health care facility's designee, a health care provider, or the health care provider's designee shall:

1. Only use a specimen collection kit supplied by the Department;
2. Collect a blood sample from the newborn or infant on a specimen collection kit;
3. Complete the following information on the specimen collection kit:
 - a. The newborn's or infant's name, gender, race, ethnicity, medical record number, and, if applicable, AHCCCS identification number;
 - b. The newborn's or infant's type of food or food source;
 - c. Whether the newborn or infant is from a single or multiple birth;
 - d. If the newborn or infant is from a multiple birth, the birth order of the newborn or infant;

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- e. Whether the newborn or infant has a medical condition that may affect the bloodspot test results;
 - f. Whether the newborn or infant received a blood transfusion and, if applicable, the date of the last blood transfusion;
 - g. The date and time of birth, and the newborn's or infant's weight at birth;
 - h. The date and time of blood sample collection, and the newborn's or infant's weight when the blood sample is collected;
 - i. The identification code or the name and address of the health care facility or health care provider submitting the specimen collection kit;
 - j. The name, address, and telephone number or the identification code of the health care provider responsible for the management of medical services provided to the newborn or infant;
 - k. Except as provided in subsection (B)(3)(l), the mother's first and last names, date of birth, name before first marriage, mailing address, telephone number, and if applicable, AHCCCS identification number; and
 - l. If the newborn's or infant's mother does not have physical custody of the newborn or infant, the first and last names, mailing address, and telephone number of the person who has physical custody of the newborn or infant; and
4. Submit the specimen collection kit to the Arizona State Laboratory no later than 24 hours or the next working day after the blood sample is collected.
- C.** A health care facility or a health care provider submitting a first specimen to the Arizona State Laboratory shall pay the Department the fee in R9-13-208(A).
- D.** A person who submits a second specimen to the Arizona State Laboratory shall:
1. Pay the fee in R9-13-208(B) to the Department, or
 2. Provide the following information to the Arizona State Laboratory for billing purposes:
 - a. The name, mailing address, and telephone number of the newborn's or infant's parent or the individual responsible for paying, if not the parent; and
 - b. If the individual responsible for paying has health care insurance for the newborn or infant, information about the health care insurance, including:
 - i. The policyholder's name;
 - ii. The name and billing address of the health care insurance company;
 - iii. The member identification number;
 - iv. The group number, if applicable; and
 - v. The effective date of the health care insurance; or

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- c. That the individual responsible for paying has no health care insurance for the newborn or infant.
- E.** When a health care insurance company or an individual responsible for paying is identified as specified in subsection (D)(2), the health care insurance company or the individual responsible for paying shall pay the Department the fee in R9-13-208(B).
- F.** When a home birth not attended by a health care provider is reported to a local registrar, a deputy local registrar, or the state registrar under A.R.S. § 36-333:
 - 1. The local registrar, deputy local registrar, or state registrar shall notify the local health department of the county where the birth occurred; and
 - 2. The local health department's designee shall collect a specimen from the newborn or infant according to the requirements in R9-13-204(A)(2) or R9-13-205(C).
- G.** A health care facility's designee, a health care provider, or the health care provider's designee shall ensure that:
 - 1. Educational materials are provided to the parent or guardian of a newborn or an infant for whom a bloodspot test is ordered, and
 - 2. The newborn's or infant's parent or guardian is informed of the requirement for a second specimen if the second specimen has not been collected.
- H.** For a home birth, a health care provider or the health care provider's designee shall provide educational materials to the parent or guardian of a newborn or an infant for whom a bloodspot test is ordered.

R9-13-204. First Specimen Collection

- A.** When a newborn is born in a hospital, the hospital's designee shall collect a first specimen from the newborn according to whichever of the following occurs first:
 - 1. Unless specified otherwise by a physician, physician assistant, or registered nurse practitioner, before administering a transfusion or parenteral nutrition;
 - 2. When the newborn is at least 24 but not more than 72 hours old; or
 - 3. Before the newborn is discharged, unless the newborn:
 - a. Is transferred to another hospital before the newborn is 48 hours old; or
 - b. Dies before the newborn is 72 hours old.
- B.** If a newborn is admitted or transferred to a hospital before the newborn is 48 hours old, the receiving hospital's designee shall:
 - 1. Verify that the first specimen was collected before admission or transfer, or

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2. Collect a first specimen from the newborn according to the requirements in subsection (A).
- C.** When a newborn is born in a birth center, the birth center's designee shall collect a first specimen from the newborn according to sub-sections (A)(1) or (A)(2).
- D.** For a home birth attended by a health care provider, the health care provider or the health care provider's designee shall collect a first specimen from the newborn according the requirements in subsection (A)(2).

R9-13-205. Second Specimen Collection

- A.** After a newborn's or an infant's discharge from a health care facility or after a home birth, a health care provider or the health care provider's designee shall:
1. Collect a second specimen from the newborn or infant not older than one year of age at the time of the newborn's or infant's first visit to the health care provider, or
 2. Verify that a health care facility or different health care provider has collected a second specimen from the newborn or infant.
- B.** If a newborn is an inpatient of a health care facility at 5 days of age, the health care facility's designee shall collect a second specimen from the newborn:
1. When the newborn is at least 5 but not more than 10 days old; or
 2. If the newborn is discharged from the health care facility when the newborn is at least 5 but not more than 10 days old, before discharge.
- C.** For a home birth that is not attended by a health care provider, a local health department's designee shall collect a specimen from a newborn or an infant if the local health department's designee has not verified that a second specimen has already been collected from the newborn or infant.

R9-13-206. Reporting Requirements for Specimens

- A.** The Arizona State Laboratory shall report, in written or electronic format, to the health care provider and, if applicable, health care facility identified on a specimen collection kit:
1. The results of a bloodspot test on a specimen; or
 2. For a specimen that does not meet quality standards established by the Arizona State Laboratory in compliance with 42 CFR § 493.1200:
 - a. That a bloodspot test was not performed on the specimen; and
 - b. The reason the bloodspot test was not performed.

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- B. A health care facility's designee, a health care provider, or the health care provider's designee, who orders a subsequent test on a newborn or an infant in response to an abnormal result on a bloodspot test, shall send the results of the subsequent test in writing to the Department, if the subsequent test is not performed by the Arizona State Laboratory.
- C. Bloodspot test results are confidential subject to the disclosure provisions of 9 A.A.C. 1, Article 3, and A.R.S. §§ 12-2801 and 12-2802.

R9-13-207. Newborn and Infant Hearing Tests

- A. Before a hearing test is performed on a newborn or infant, a health care facility's designee, a health care provider, or the health care provider's designee shall provide educational materials to the newborn's or infant's parent or guardian.
- B. A health care facility's designee, a health care provider, or the health care provider's designee shall order hearing testing for a newborn or infant to be performed according to the health care facility's or health care provider's policies and procedures that includes:
 - 1. An initial hearing screening ordered to be performed within 30 days after birth or before discharge;
 - 2. A second hearing screening ordered to be performed within 30 days after birth if an abnormal result is obtained in one or both of a newborn's or infant's ears on the initial hearing screening; and
 - 3. Diagnostic evaluation ordered to be performed:
 - a. If a newborn or infant has an abnormal result in one or both ears on the second hearing screening;
 - b. If a newborn or infant has been admitted to the Neonatal Intensive Care Unit for five days or more and has an abnormal initial hearing screening;
 - c. If a newborn or infant has a medical condition that makes diagnostic evaluation more appropriate; or
 - d. As clinically indicated.
- C. When an initial hearing test is performed on a newborn or infant, a health care facility's designee, a health care provider, or the health care provider's designee shall submit to the Department, as specified in subsection (G), the following information:
 - 1. The newborn's or infant's name, date of birth, gender, and medical record number;
 - 2. Whether the newborn or infant is from a single or multiple birth;
 - 3. If the newborn or infant is from a multiple birth, the birth order of the newborn or infant;
 - 4. The first and last names and date of birth of the newborn's or infant's mother;

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5. The name and identification code of the health care facility of birth;
6. The name and identification code of the health care facility where the initial hearing test was performed or of the health care provider who performed the initial hearing test;
7. The date of the initial hearing test;
8. Whether or not the initial hearing test was performed when the newborn or infant was an inpatient;
9. The audiological equipment used for the initial hearing test and the type of initial hearing test performed; and
10. The initial hearing test result for each of the newborn's or infant's ears.

D. In addition to the information in subsection (C), if the reported results of an initial hearing test on a newborn or infant include an abnormal result, a health care facility's designee, a health care provider, or the health care provider's designee shall submit to the Department, as specified in subsection (G), the following information:

1. Except as provided in subsection (D)(2), the mother's name before first marriage, mailing address, and telephone number;
2. If the newborn's or infant's mother does not have physical custody of the newborn or infant, the first and last names, mailing address, and telephone number of the person who has physical custody of the newborn or infant;
3. The name of the health care provider who will be responsible for the coordination of medical services for the newborn or infant after the newborn or infant is discharged from the health care facility;
4. The name and telephone number of the person to whom the newborn's or infant's mother or other person who has physical custody of the newborn or infant was referred for a subsequent hearing test;
5. The date of the appointment for a subsequent hearing test, if available; and
6. The health care facility where a subsequent hearing test is scheduled to be performed or the name and address of the health care provider who is scheduled to perform the subsequent test, if available.

E. When a subsequent hearing test is performed on a newborn or an infant after an initial hearing test, the designee of the health care facility, health care provider, or other person that performs the subsequent hearing test shall submit to the Department, as specified in subsection (G), the following information:

1. The newborn's or infant's name, date of birth, and gender;
2. Whether the newborn or infant is from a single or multiple birth;

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3. If the newborn or infant is from a multiple birth, the birth order of the newborn or infant;
 4. The first and last names and date of birth of the newborn's or infant's mother;
 5. The name of the health care facility of birth, if known;
 6. The name of the health care facility where the subsequent hearing test was performed, or the name and address of the health care provider who performed the subsequent hearing test;
 7. The date of the subsequent hearing test;
 8. The audiological equipment used for the subsequent hearing test and type of hearing test performed;
 9. The result, including a quantitative result if applicable, for each of the newborn's or infant's ears on the subsequent hearing test;
 10. The name, address and telephone number of the contact person for the health care facility, health care provider, or other person that performed the subsequent hearing test, if different from the person specified in subsection (E)(6); and
 11. If the subsequent hearing test was a diagnostic evaluation:
 - a. Whether the newborn or infant has a hearing loss and, if so, the type and degree of hearing loss;
 - b. A copy of the narrative that describes the hearing test performed on the newborn or infant to determine that the newborn or infant does not have a hearing loss or diagnose a hearing loss in the newborn or infant, the results of the hearing test, and the analysis of the hearing test results by the audiologist or physician who performed the hearing test;
 - c. Whether the newborn or infant has a medical condition that may affect the hearing test results; and
 - d. Whether the newborn or infant has been referred to early intervention services, including a date of referral.
- F.** In addition to the information in subsection (E), if the reported results of a subsequent hearing test on a newborn or infant include an abnormal result, the person submitting the report on the subsequent hearing test shall submit to the Department, as specified in subsection (G), the following information:
1. Except as provided in subsection (F)(2), the mailing address and telephone number of the newborn's or infant's mother;

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2. If the newborn's or infant's mother does not have physical custody of the newborn or infant, the first and last names, mailing address, and telephone number of the person who has physical custody of the newborn or infant;
 3. The name of the health care provider who is responsible for the coordination of medical services for the newborn or infant; and
 4. If applicable, the name and phone telephone number of the person to whom the newborn's or infant's parent was referred for further hearing tests, evaluation services, specialty care, or early intervention.
- G.** A health care facility's designee, health care provider, health care provider's designee, or other person required to report under subsections (C), (D), (E), or (F) shall submit, in an electronic format specified by the Department, the information specified in subsections (C), (D), (E), or (F) for hearing tests performed each week by the sixth day of the subsequent week.

R9-13-208. Fees

- A. The fee for a first specimen is \$36.00.
- B. The fee for a second specimen is \$65.00.

APPENDIX B- General and Specific Authority

TITLE 9. HEALTH SERVICES

CHAPTER 13. DEPARTMENT OF HEALTH SERVICES - HEALTH PROGRAMS SERVICES

ARTICLE 2. NEWBORN AND INFANT SCREENING

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

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

1. Protect the health of the people of the state.
2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.
3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.
4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.
5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.
6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.
7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.
8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.
9. Encourage and aid in the coordination of local programs concerning nutrition of the people of this state.

APPENDIX B- General and Specific Authority

10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.

11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.

12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.

14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug, and cosmetic act (52 Stat. 1040; 21 United States Code sections 1 through 905).

15. Recruit and train personnel for state, local and district health departments.

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.

17. License and regulate health care institutions according to chapter 4 of this title.

18. Issue or direct the issuance of licenses and permits required by law.

19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

(a) Screening in early pregnancy for detecting high-risk conditions.

(b) Comprehensive prenatal health care.

(c) Maternity, delivery and postpartum care.

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

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

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

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

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

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

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

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.

2. Perform all duties necessary to carry out the functions and responsibilities of the department.

3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.

4. Administer and enforce the laws relating to health and sanitation and the rules of the department.

5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.

6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of

APPENDIX B- General and Specific Authority

water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

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2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

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

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

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

I. The director, by rule, shall:

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

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

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

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that

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do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

- (a) Served at a noncommercial social event such as a potluck.
- (b) Prepared at a cooking school that is conducted in an owner-occupied home.
- (c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.
- (d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.
- (e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.
- (f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.
- (g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.
- (h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.
- (i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

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6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

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

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

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of

APPENDIX B- General and Specific Authority

environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

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

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

13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.

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

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

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

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

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

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

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

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

Q. For the purposes of this section:

1. "Cottage food product":

(a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.

(b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

36-694. Report of blood tests; newborn screening program; committee; fee; definitions

A. When a birth or stillbirth is reported, the attending physician or other person required to make a report of the birth shall state on the certificate whether a blood test for syphilis was made on a specimen of blood taken from the woman who bore the child or from the umbilical cord at delivery, as required by section 36-693, and the approximate date when the specimen was taken.

B. When a birth is reported the attending physician or person who is required to make a report on the birth shall order or cause to be ordered tests for certain congenital disorders, including hearing disorders. The results of tests for these disorders must be reported to the department of health services. The department of health services shall specify in rule the disorders, the process for collecting and submitting specimens and the reporting requirements for test results.

C. When a hearing test is performed on a newborn, the initial hearing test results and any subsequent hearing test results must be reported to the department of health services as prescribed by department rules.

D. The director of the department of health services shall establish a newborn screening program within the department to ensure that the testing for congenital disorders and the reporting of hearing test results required by this section are conducted in an effective and efficient manner. The newborn screening program shall include an education program for the general public, the medical community, parents and professional groups. The director shall designate the state laboratory as the only testing facility for the program, except that the director may designate other laboratory testing facilities for conditions or tests added to the newborn screening program on or after July 24, 2014. If the director designates another laboratory testing facility for any condition or test, the director shall require the facility to follow all of the privacy and sample destruction time frames that are required of the state laboratory.

APPENDIX B- General and Specific Authority

E. The newborn screening program shall establish and maintain a central database of newborns and infants who are tested for hearing loss and congenital disorders that includes information required in rule. Test results are confidential subject to the disclosure provisions of sections 12-2801 and 12-2802.

F. If tests conducted pursuant to this section indicate that a newborn or infant may have a hearing loss or a congenital disorder, the screening program shall provide follow-up services to encourage the child's family to access evaluation services, specialty care and early intervention services.

G. The director shall establish a committee to provide recommendations and advice to the department on at least an annual basis regarding tests that the committee believes should be included in the newborn screening program. Any recommendation by the committee that a test be added to the newborn screening program shall be accompanied by a cost-benefit analysis.

H. The committee shall include the following members who are appointed by the director and who serve without compensation or reimbursement of expenses at the pleasure of the director:

1. Seven physicians who are licensed pursuant to title 32, chapter 13 or 17 and who represent the medical specialties of endocrinology, pediatrics, neonatology, family practice, otology and obstetrics.
2. A neonatal nurse practitioner who is licensed and certified pursuant to title 32, chapter 15.
3. An audiologist who is licensed pursuant to chapter 17, article 4 of this title.
4. A representative of an agency that provides services under part C of the individuals with disabilities education act.
5. At least one parent of a child with a hearing loss or a congenital disorder.
6. A representative from the insurance industry who is familiar with health care reimbursement issues.
7. The director of the Arizona health care cost containment system administration or the director's designee.
8. A representative of the hospital or health care industry.

I. The director may establish by rule a fee that the department may collect for operation of the newborn screening program, including contracting for the testing pursuant to this section. The fee for the first specimen and hearing test shall not exceed thirty-six dollars.

J. For the purposes of this section:

1. "Infant" means a child who is twenty-nine days of age to two years of age.
2. "Newborn" means a child who is not more than twenty-eight days of age.

APPENDIX B- General and Specific Authority

DEPARTMENT OF HEALTH SERVICES (F19-0605)
Title 9, Chapter 10, Article 16, Behavioral Health Respite Homes



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 4, 2019

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

FROM: Council Staff

DATE: May 6, 2019

SUBJECT: DEPARTMENT OF HEALTH SERVICES (F19-0605)
Title 9, Chapter 10, Article 16, Behavioral Health Respite Homes

This Five Year Review Report (5YRR) from the Department of Health Services (Department) relates to rules in Title 9, Chapter 10, Article 16 regarding Behavioral Health Respite Homes. The rules define terms, specify supplemental application requirements, specify the requirements for administration of behavioral health respite homes, state recipient rights, and specify requirements relating to various aspects of the operation of behavioral health respite homes. This is the first 5YRR for these rules.

Proposed Action

As indicated below and in the report, the Department plans to amend a rule in Article 16 to allow providers and personnel to receive CPR training that includes the demonstration of the individual's ability to perform CPR. It also plans to amend other Articles in Chapter 10 that reference CPR training to include demonstration ability. It plans to make these amendments by December 2020.

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

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

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

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

4. **Has the agency received any written criticisms of the rules over the last five years?**

No. The Department has not received any written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. The Department indicates that the rules are mostly clear, concise, understandable, effective, and consistent with other rules and statutes. The Department identifies one rule, R9-10-1603 (Administration), which is not effective in achieving its objective. The Department states that this rule could be more effective if it were amended to require providers and personnel to have CPR training that included a demonstration or hands-on training of the individual's ability to perform CPR. Such an amendment would be consistent with other residential health care institution rules in Chapter 10.

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

Yes. The Department indicates that the rules are enforced as written.

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

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

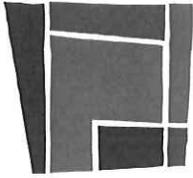
8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The rules require the issuance of specific agency authorization. Thus, a general permit is not applicable.

9. **Conclusion**

As indicated in the report, the rules are mostly clear, concise, understandable, and effective. The Department plans to amend R9-10-1603 by December 2020 to allow providers and personnel to receive CPR training that includes the demonstration of the individual's ability to perform CPR. It also plans to amend other articles in Chapter 10

that reference CPR training to include demonstration ability. This will result in rules that are more effective and that enhance public safety. Council staff recommends approval of this report.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

March 22, 2019

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

RE: Report for A.A.C. Title 9, Chapter 10, Article 16 Behavioral Health Respite Homes

Dear Ms. Sornsin:

According to the five-year-review report schedule of the Governor's Regulatory Review Council (Council), a report for A.A.C. Title 9, Chapter 10, Article 16, is due to the Council no later than March 29, 2019. The Arizona Department of Health Services (Department) has reviewed 9 A.A.C. 10, Article 16, and is enclosing a report to the Council for these rules.

The Department believes that this report complies with the requirements of A.R.S. § 41-1056. The report contains a summary of the Department's review for all the rules and is in the format of the Council's report template. As described in the report, the Department plans to amend the rules and send a Notice of Final Rulemaking to GRRC by December 2020.

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

If you need any further information, please contact me at (602) 542-1020.

Sincerely,

A handwritten signature in black ink, appearing to read 'RL', written over a white background.

Robert Lane
Director's Designee

RL:bg
Enclosures

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



ARIZONA DEPARTMENT OF HEALTH SERVICES
FIVE-YEAR-REVIEW REPORT
TITLE 9. HEALTH SERVICES
CHAPTER 10. HEALTH CARE INSTITUTIONS: LICENSING
ARTICLE 16. BEHAVIORAL HEALTH RESPITE HOMES
March 2019

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 36-104(3), 36-132(A)(1), 36-132(A)(17), and 36-136(G).
Specific Statutory Authority: A.R.S. §§ 36-558(B) and (C)(3)(d), 36-2939(B)(2)(g) and (C)(7).

2. The objective of each rule:

Table with 2 columns: Rule and Objective. Rows list rules R9-10-1601 through R9-10-1612 with their respective objectives.

3. Are the rules effective in achieving their objectives?

Yes ___ No _√_

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation
R9-10-1603	The rule would be more effective if the rule required for providers and personnel to have CPR training that included a demonstration or hands-on-training of the individual's ability to perform CPR. This would be consistent with other residential health care institution rules in 9 A.A.C. 10.

4. **Are the rules consistent with other rules and statutes?** Yes No

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation

5. **Are the rules enforced as written?** Yes No

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.

Rule	Explanation

6. **Are the rules clear, concise, and understandable?** Yes No

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

If yes, please fill out the table below:

Commenter	Comment	Agency's Response

8. **Economic, small business, and consumer impact comparison:**

The rules in 9 A.A.C. 10, Article 16, Behavioral Health Supportive Homes, were made new in 2013 as part of an exempt rulemaking to amend 9 A.A.C. 10 and 9 A.A.C. 20 to comply with Laws 2011, Ch. 96 that required the Department to adopt rules for health care institutions to reduce monetary or regulatory costs on persons or individuals and facilitate licensing of integrated health programs that provide both behavioral and physical health services. In 2014, the rules in Article 16 were further revised and titled, Behavioral Health Respite Homes, to comply with laws 2013, Ch. 10 that extended Laws 2011, Ch. 96 exempt rulemaking time period until April 30, 2014. The Department currently licenses and regulates Behavioral Health Respite Homes according to

the rules. For Article 16, the Department believes affected parties for these rulemakings include the Department, Behavioral Health Respite Homes, health care providers, recipients and their families, and the general public.

As of December 2018, the Department reported that 13 Behavioral Health Respite Homes were operating in the state. In calendar year 2018, 1 initial application and 11 renewal applications were received and approved. The Department completed 5 compliance surveys and 0 complaint investigation surveys. Out of the 5 compliance surveys, there was 1 initial survey and 4 compliance surveys completed by the Department.

In the 2014 exempt rulemaking, Article 16 consists of 12 Sections. The old Article 16, Behavioral Health Supportive Homes, contained 11 Sections and included a Section for adult behavioral health therapeutic homes. Adult behavioral health therapeutic homes was removed from this Article and placed in its own Article and a new Section for Supplemental Application Requirements was added. All of the Sections in Article 16, except the new Section, had language changes and additions. Wording was simplified to make the rules clearer. In addition, citations were updated and references were corrected. The old R9-101-1601, Definitions, contained one definition. Definitions in the new R9-10-1601 consist of four new definitions (acceptance, providers, recipient, and release). The Department believes adding the new definitions improve the effectiveness and understandability of the rules. The Department believes the new R9-10-1601 provides a benefit to the Department, Behavioral Health Respite Homes, and recipients and their families, by eliminating confusion and increasing consistency.

The new R9-10-1602, in accordance with the licensing requirements that are outlined in A.R.S. § 36-422, includes requirements for applicants to provide information for the Behavioral Health Respite Home's collaborating health care institution which includes their name, address, class or subclass, license number, and name and contact information for a recipient assigned by the collaborating health care institution. Because of the addition of the new Section, the Section numbers throughout the Article changed. Parts of the old R9-10-1602, Administration, were removed because the rules referenced providers in behavioral health supportive homes. The old language was replaced by new language referring to governing authorities and providers of Behavioral Health Respite Homes, and the Section number was changed to R9-10-1603. The new language outlines the requirements for the creation and implementation of policies and procedures for Behavioral Health Respite Homes. There were minor changes to the old R9-10-1603, Resident Rights. The Section number changed to R9-10-1604 and the title was changed from Resident Rights to Recipient Rights because a recipient is an individual referred by a collaborating health care institution and accepted by a Behavioral Health Respite Home. The old R9-10-1604, Providing Service, was changed to R9-10-1605 and minor language was removed and replaced to make the Section clear and concise.

The old R9-10-1605, Assistance in the Self-Administration of Medication, is now the new R9-10-1606 and requires a provider to immediately report a medication error to the recipient's collaborating health care institution. The word resident was changed to recipient throughout the Section. The old R9-10-1606 was changed to R9-10-1607, Medical Records. Minor language changes were made. Language was also added requiring a provider to ensure that a recipient's medical records contain further information such as their name and contact information, their representative's copy of a health or mental health care power of attorney, or court ordered records of guardianship. The old R9-10-1607 was changed to R9-10-1608, Food Services, and minor language changes were made.

R9-10-1609, Emergency and Safety Standards, which was the old R9-10-1608, removed the requirement that a record of evacuation must be maintained for at least two years and replaced two years with 12 months. R9-10-1610, Environmental Standards, was the old R9-10-1609 and requires a Behavioral Health Respite Home to have at least one bathroom for each six individuals and a bathroom with a working toilet that flushes and a sink with running water accessible for use by a recipient. Language was also added that required pets to be controlled in order to prevent endangering a recipient and for dogs and cats to be vaccinated against rabies.

The new Section R9-10-1611, Adult Behavioral Health Respite Services, was formerly Section R9-10-1610 and was titled Adult Behavioral Health Therapeutic Homes. Language was removed referring to therapeutic home services. New language consisting with Behavioral Health Respite Home services were included requiring bedrooms to have sufficient space for a recipient, have unobstructed access to the bedroom door, storage space for personal belongings, and a mirror available for grooming. The new R9-10-1612, Children's Behavioral Health Respite Services, establishes requirements for providers to be fingerprinted who provide behavioral health respite

services to children; and requirements for a child recipient's sleeping area provided by a Behavioral Health Respite Home. Language was added allowing a recipient less than 2 years of age to sleep in a crib placed in a provider's bedroom. Minor language changes were also made.

Overall, the Department believes that the changes made to the rules do not result in increased costs, but rather provide increased benefits to affected parties. Through the exempt rulemakings, the Department reduced monetary and regulatory costs on persons and simplified licensing of integrated health programs that provide physical and behavioral health services. The Department believes that the benefit for having more effective and understandable rules outweigh any costs that may be incurred.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ___ No √

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

This is the first five-year-review report for the new rules.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department has determined that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No √

Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The rules require the issuance of specific agency authorization, so a general permit is not applicable.

14. **Proposed course of action**

The Department plans to amend the rules in 9 A.A.C. 10, Article 16 to allow providers and personnel to receive CPR training that include the demonstration of the individual's ability to perform CPR as well as amend other articles in Chapter 10 that reference CPR training to include demonstration ability. The Department plans to send a Notice of Final Rulemaking to GRRC by December 2020.

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ARTICLE 16. BEHAVIORAL HEALTH RESPITE HOMES

R9-10-1601. Definitions

In addition to the definitions in A.R.S. § 36-401 and R9-10-101, the following apply in this Article unless otherwise specified:

1. “Acceptance” means, after a referral from a collaborating health care institution, an individual receives services from a provider in a behavioral health respite home.
2. “Provider” means an individual who lives in a behavioral health respite home and ensures that a recipient receives the behavioral health services and ancillary services in the recipient’s treatment plan.
3. “Recipient” means an individual referred by a collaborating health care institution to and accepted by a behavioral health respite home.
4. “Release” means a documented termination of services by a provider to a recipient that is authorized by a collaborating health care institution.
5. “Sibling” means one of two or more individuals having one or both parents in common.

Historical Note

Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13;
effective July 1, 2014 (Supp. 14-2).

R9-10-1602. Supplemental Application Requirements

In addition to the license application requirements in A.R.S. § 36-422 and 9 A.A.C. 10, Article 1, an applicant shall include, in a format provided by the Department, the following information for the behavioral health respite home’s collaborating health care institution:

1. Name,
2. Address,
3. Class or subclass,
4. License number, and
5. Name and contact information for an individual assigned by the collaborating health care institution to monitor the behavioral health respite home.

Historical Note

Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

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Section R9-10-1602 renumbered to R9-10-1603; new Section R9-10-1602 made by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-1603. Administration

A. A governing authority of a behavioral health respite home:

1. Consists of no more than two providers, who live in the behavioral health respite home;
2. Has the authority and responsibility to manage the behavioral health respite home;
3. Has a documented agreement with a collaborating health care institution that establishes the responsibilities of the behavioral health respite home and the collaborating health care institution, consistent with the requirements in this Chapter;
4. Shall establish, in writing, the behavioral health respite home's scope of services, which are approved by the collaborating health care institution; and
5. Shall ensure that:
 - a. Except as provided in R9-10-1612(A), no more than three recipients are accepted by the behavioral health respite home;
 - b. A provider is on the premises whenever a recipient is present in the behavioral health respite home;
 - c. Documentation required by this Article is provided to the Department within two hours after a Department request; and
 - d. When documentation or information is required by this Chapter to be submitted on behalf of the behavioral health respite home, the documentation or information is provided to the unit in the Department that is responsible for licensing the behavioral health respite home.

B. A provider:

1. Is at least 21 years of age;
2. Holds current certification in cardiopulmonary resuscitation and first aid training applicable to the ages of recipients;
3. Has the skills and knowledge established by the collaborating health care institution as specified in R9-10-118;
4. Has documentation of completion of training in assistance in the self-administration of medication as specified in R9-10-118; and
5. Has documentation of evidence of freedom from infectious tuberculosis:

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- a. On or before the date the provider begins providing services at or on behalf of the behavioral health respite home, and
 - b. As specified in R9-10-113.
- C.** A provider shall ensure that policies and procedures are:
1. Established, documented, and implemented to protect the health and safety of a recipient that cover:
 - a. Recordkeeping;
 - b. Recipient acceptance and release;
 - c. The release of a recipient under 18 years of age to an individual other than the recipient's parent or guardian;
 - d. Recipient rights;
 - e. The provision of respite care services, including coordinating the provision of behavioral health services;
 - f. Recipients' medical records, including electronic medical records;
 - g. Assistance in the self-administration of medication;
 - h. Infection control; and
 - i. How a provider will respond to a recipient's sudden, intense, or out-of-control behavior to prevent harm to the recipient or another individual;
 2. Approved, in writing, by the behavioral health respite home's collaborating health care institution before implementation and when the policies and procedures are reviewed or updated; and
 3. Reviewed by the provider and the behavioral health respite home's collaborating health care institution at least once every three years and updated as needed.
- D.** A provider shall provide written notification to the Department and the collaborating health care institution of a recipient's:
1. Death, if the recipient's death is required to be reported according to A.R.S. § 11-593, within one working day after the recipient's death; and
 2. Self-injury, within two working days after the recipient inflicts a self-injury that requires immediate intervention by an emergency medical services provider.
- E.** If abuse, neglect, or exploitation of a recipient is alleged or suspected to have occurred before the recipient was accepted or while the recipient is not at a behavioral health respite home and not receiving services from the behavioral health respite home, a provider shall report the alleged or suspected abuse, neglect, or exploitation of the recipient as follows:
1. For a recipient 18 years of age or older, according to A.R.S. § 46-454; or

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2. For a recipient under 18 years of age, according to A.R.S. § 13-3620.
- F.** If a provider has a reasonable basis, according to A.R.S. § 13-3620 or 46-454, to believe that abuse, neglect, or exploitation has occurred on the premises or while a recipient is receiving behavioral health respite home services, the provider shall:
1. If applicable, take immediate action to stop the suspected abuse, neglect, or exploitation;
 2. Report the suspected abuse, neglect, or exploitation of the recipient as follows:
 - a. To the behavioral health respite home's collaborating health care institution; and
 - b. For a:
 - i. Recipient 18 years of age or older, according to A.R.S. § 46-454; and
 - ii. Recipient under 18 years of age, according to A.R.S. § 13-3620;
 3. Document:
 - a. The suspected abuse, neglect, or exploitation;
 - b. Any action taken according to subsection (F)(1); and
 - c. The report in subsection (F)(2);
 4. Maintain the documentation in subsection (F)(3) for at least 12 months after the date of the report in subsection (F)(2);
 5. Initiate an investigation of the suspected abuse, neglect, or exploitation and document the following information within five working days after the report required in subsection (F)(2):
 - a. The dates, times, and description of the suspected abuse, neglect, or exploitation;
 - b. A description of any injury to the recipient related to the suspected abuse or neglect and any change to the recipient's physical, cognitive, functional, or emotional condition;
 - c. The names of witnesses to the suspected abuse, neglect, or exploitation; and
 - d. The action taken by the provider to prevent the suspected abuse, neglect, or exploitation from occurring in the future; and
 6. Maintain a copy of the documented information required in subsection (F)(5) and any other information obtained during the investigation for at least 12 months after the date the investigation was initiated.
- G.** A provider shall ensure that a recipient under 18 years of age is only released to an individual who, according to policies and procedures:
1. Is designated by the recipient's parent or guardian to release the recipient, and
 2. Presents documentation at the time of the recipient's release that verifies the individual's identity.
- H.** A provider shall maintain a record for each provider that includes:
1. The provider's:

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- a. Name,
 - b. Date of birth, and
 - c. Contact telephone number; and
2. Documentation of:
- a. Verification of skills and knowledge, completed by the behavioral health respite home's collaborating health care institution;
 - b. Certification in cardiopulmonary resuscitation and first aid training;
 - c. Completion of training in assistance in the self-administration of medication, provided by the behavioral health respite home's collaborating health care institution; and
 - d. Evidence of freedom from infectious tuberculosis.

Historical Note

Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

Section R9-10-1603 renumbered to R9-10-1604; new Section R9-10-1603 renumbered from R9-10-1602 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-1604. Recipient Rights

- A.** A provider shall ensure that:
1. A recipient is treated with dignity, respect, and consideration;
 2. A recipient is not subjected to:
 - a. Abuse;
 - b. Neglect;
 - c. Exploitation;
 - d. Coercion;
 - e. Manipulation;
 - f. Sexual abuse;
 - g. Sexual assault;
 - h. Seclusion;
 - i. Restraint;
 - j. Retaliation for submitting a complaint to the Department or another entity; or
 - k. Misappropriation of personal and private property by:
 - i. A behavioral health respite home's provider, or

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- ii. An individual other than a recipient residing in the behavioral health respite home; and
3. A recipient or the recipient's representative:
 - a. Is informed of the recipient complaint process;
 - b. Consents to photographs of the recipient before the recipient is photographed, except that a recipient may be photographed when accepted by a behavioral health respite home for identification and administrative purposes; and
 - c. Except as otherwise permitted by law, provides written consent to the release of information in the recipient's medical record.
- B.** A recipient has the following rights:
 1. Not to be discriminated against based on race, national origin, religion, gender, sexual orientation, age, disability, marital status, or diagnosis;
 2. To receive services that support and respect the recipient's individuality, choices, strengths, and abilities;
 3. To receive privacy in care for personal needs;
 4. To review, upon written request, the recipient's own medical record according to A.R.S. §§ 12-2293, 12-2294, and 12-2294.01;
 5. To receive a referral to another health care institution if the provider is not authorized or not able to provide physical health services or behavioral health services needed by the recipient; and
 6. To receive assistance from a family member, recipient's representative, or other individual in understanding, protecting, or exercising the recipient's rights.

Historical Note

Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

Section R9-10-1604 renumbered to R9-10-1605; new Section R9-10-1604 renumbered from R9-10-1603 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-1605. Providing Services

- A.** A provider shall ensure that behavioral health services and ancillary services are provided to a recipient according to the recipient's treatment plan obtained from the behavioral health respite home's collaborating health care institution.
- B.** A provider shall submit to the behavioral health respite home's collaborating health care institution and, if applicable, the recipient's case manager:

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1. Documentation of any significant change in a recipient's behavior or physical, cognitive, or functional condition and the action taken by a provider to address the recipient's changing needs; and
2. Notification of a recipient's unexpected self-release.

Historical Note

Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

Section R9-10-1605 renumbered to R9-10-1606; new Section R9-10-1605 renumbered from R9-10-1604 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-1606. Assistance in the Self-Administration of Medication

- A.** If a provider provides assistance in the self-administration of medication, the provider shall ensure that:
1. If a recipient is receiving assistance in the self-administration of medication, the recipient's medication is stored by the provider;
 2. The following assistance is provided to a recipient:
 - a. A reminder when it is time to take the medication;
 - b. Opening the medication container or medication organizer for the recipient;
 - c. Observing the recipient while the recipient removes the medication from the medication container or medication organizer;
 - d. Verifying that the medication is taken as ordered by the recipient's medical practitioner by confirming that:
 - i. The recipient taking the medication is the individual stated on the medication container label,
 - ii. The recipient is taking the dosage of the medication as stated on the medication container label, and
 - iii. The recipient is taking the medication at the time stated on the medication container label; or
 - e. Observing the recipient while the recipient takes the medication; and
 3. Assistance in the self-administration of medication provided to a recipient is documented in the recipient's medical record.
- B.** When medication is stored by a provider, the provider shall ensure that:
1. A locked cabinet, closet, or self-contained unit is used for medication storage;

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2. Medication is stored according to the instructions on the medication container; and
 3. Medication, including expired medication, that is no longer being used is discarded.
- C. A provider shall immediately report a medication error or a recipient's adverse reaction to a medication to the:
1. Medical practitioner who ordered the medication, or
 2. Contact individual at the behavioral health respite home's collaborating health care institution.

Historical Note

Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

Section R9-10-1606 renumbered to R9-10-1607; new Section R9-10-1606 renumbered from R9-10-1605 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-1607. Medical Records

- A. A provider shall ensure that:
1. A medical record is established and maintained for each recipient according to A.R.S. Title 12, Chapter 13, Article 7.1;
 2. An entry in a recipient's medical record is:
 - a. Only recorded by the provider or an individual designated by the provider to record an entry;
 - b. Dated, legible, and authenticated; and
 - c. Not changed to make the initial entry illegible;
 3. A recipient's medical record is available to an individual:
 - a. Authorized by policies and procedures to access the recipient's medical record;
 - b. If the individual is not authorized according to policies and procedures, with the written consent of the recipient or the recipient's representative; or
 - c. As permitted by law; and
 4. A recipient's medical record is protected from loss, damage, or unauthorized use.
- B. If a provider maintains recipients' medical records electronically, the provider shall ensure that safeguards exist to prevent unauthorized access .
- C. A provider shall ensure that a recipient's medical record contains:
1. Recipient information that includes:
 - a. The recipient's name,
 - b. The recipient's date of birth,

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- c. Any known allergies, and
 - d. Medication information for the recipient;
2. The names, addresses, and telephone numbers of:
 - a. The recipient's medical practitioner;
 - b. The recipient's case manager, if applicable;
 - c. The behavioral health professional assigned to the recipient by the behavioral health respite home's collaborating health care institution; and
 - d. An individual to be contacted in the event of an emergency;
3. The date and time of the recipient's acceptance by the behavioral health respite home and, if applicable, the date and time of the recipient's release from the behavioral health respite home;
4. If applicable, the name and contact information of the recipient's representative and:
 - a. If the recipient is 18 years of age or older or an emancipated minor, the document signed by the recipient consenting for the recipient's representative to act on the recipient's behalf; or
 - b. If the recipient's representative:
 - i. Has a health care power of attorney established under A.R.S. § 36-3221 or a mental health care power of attorney executed under A.R.S. § 36-3282, a copy of the health care power of attorney or mental health care power of attorney; or
 - ii. Is a legal guardian, a copy of the court order establishing guardianship;
5. A copy of the recipient's treatment plan and any updates to the recipient's treatment plan obtained from the behavioral health respite home's collaborating health care institution;
6. For a recipient receiving assistance in the self-administration of medication, documentation that includes for each medication:
 - a. The date and time of assistance;
 - b. The name, strength, dosage, and route of administration;
 - c. The provider's signature or first and last initials; and
 - d. Any adverse reaction the recipient has to the medication;
7. Documentation of the recipient's refusal of a medication, if applicable;
8. Documentation of any significant change in the recipient's behavior or physical, cognitive, or functional condition and the action taken by a provider to address the recipient's changing needs;
9. If applicable, documentation of any actions taken to control the recipient's sudden, intense, or out-of-control behavior to prevent harm to the recipient or another individual;
10. If applicable, documentation of a notification to the behavioral health respite home's collaborating health care institution of an unexpected self-release of the recipient; and

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11. A written notice of release from the behavioral health respite home, if applicable.

Historical Note

Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

Section R9-10-1607 renumbered to R9-10-1608; new Section R9-10-1607 renumbered from R9-10-1606 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-1608. Food Services

A provider shall ensure that:

1. Food is obtained, handled, and stored to prevent contamination, spoilage, or a threat to the health of a recipient;
2. Three nutritionally balanced meals are served each day;
3. Nutritious snacks are available between meals;
4. Food served meets any special dietary needs of a recipient as prescribed by the recipient's physician or registered dietitian; and
5. Chemicals and detergents are not stored with food.

Historical Note

Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

Section R9-10-1608 renumbered to R9-10-1609; new Section R9-10-1608 renumbered from R9-10-1607 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-1609. Emergency and Safety Standards

A provider shall ensure that:

1. A first aid kit is available at a behavioral health respite home sufficient to meet the needs of recipients;
2. If a firearm or ammunition for a firearm is stored at a behavioral health respite home:
 - a. The firearm is stored separate from the ammunition for the firearm; and
 - b. The firearm and the ammunition for the firearm are:
 - i. Stored in a locked closet, cabinet, or container; and
 - ii. Inaccessible to a recipient;
3. A smoke detector is installed in:
 - a. A bedroom used by a recipient,
 - b. A hallway in a behavioral health respite home, and

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- c. A behavioral health respite home's kitchen;
4. A smoke detector required in subsection (3):
 - a. Is maintained in operable condition; and
 - b. Is battery operated or, if hard-wired into the electrical system of a behavioral health respite home, has a back-up battery;
5. A behavioral health respite home has a portable fire extinguisher that is labeled 1A-10-BC by the Underwriters Laboratory and available in the behavioral health respite home's kitchen;
6. A portable fire extinguisher required in subsection (5) is:
 - a. If a disposable fire extinguisher, replaced when the fire extinguisher's indicator reaches the red zone; or
 - b. Serviced at least once every 12 months and has a tag attached to the fire extinguisher that includes the date of service;
7. A written evacuation plan is maintained and available for use by the provider and any recipient in a behavioral health respite home;
8. An evacuation drill is conducted at least once every six months; and
9. A record of an evacuation drill required in subsection (8) is maintained for at least 12 months after the date of the evacuation drill.

Historical Note

Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

Section R9-10-1609 renumbered to R9-10-1610; new Section R9-10-1609 renumbered from R9-10-1608 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-1610. Environmental Standards

- A. A provider shall ensure that a behavioral health respite home:
 1. Is in a building that:
 - a. Is arranged, designed, and used for the living, sleeping, and housekeeping activities for one family on a permanent basis; and
 - b. Is free of any plumbing, electrical, ventilation, mechanical, chemical, or structural hazard that may jeopardize the health or safety of a recipient;
 2. Has a living room accessible at all times to a recipient;

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3. Has a dining area furnished for group meals that is accessible to the provider, recipients, and any other individuals present in the behavioral health respite home;
 4. For each six individuals residing in the behavioral health respite home, including recipients, has at least one bathroom equipped with:
 - a. A working toilet that flushes and has a seat; and
 - b. A sink with running water accessible for use by a recipient;
 5. Has equipment and supplies to maintain a recipient's personal hygiene accessible to the recipient;
 6. Is clean and free from accumulations of dirt, garbage, and rubbish; and
 7. Implements a pest control program to minimize the presence of insects and vermin at the behavioral health respite home.
- B.** A provider shall ensure that any pets or other animals allowed on the premises are:
1. Controlled to prevent endangering a recipient and to maintain sanitation;
 2. Licensed consistent with local ordinances; and
 3. For a dog or cat, vaccinated against rabies.
- C.** If a swimming pool is located on the premises, a provider shall ensure that:
1. The swimming pool is equipped with the following:
 - a. An operational water circulation system that clarifies and disinfects the swimming pool water continuously and that includes at least:
 - i. A removable strainer,
 - ii. Two swimming pool inlets located on opposite sides of the swimming pool, and
 - iii. A drain located at the swimming pool's lowest point and covered by a grating that cannot be removed without using tools; and
 - b. An operational cleaning system;
 2. The swimming pool is enclosed by a wall or fence that:
 - a. Is at least five feet in height as measured on the exterior of the wall or fence;
 - b. Has no vertical openings greater than four inches across;
 - c. Has no horizontal openings, except as described in subsection (C)(2)(e);
 - d. Is not chain-link;
 - e. Does not have a space between the ground and the bottom fence rail that exceeds four inches in height; and
 - f. Has a self-closing, self-latching gate that:
 - i. Opens away from the swimming pool,
 - ii. Has a latch located at least 54 inches from the ground, and
 - iii. Is locked when the swimming pool is not in use; and

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3. A life preserver or shepherd's crook is available and accessible in the pool area.
- D. A provider shall ensure that a spa that is not enclosed by a wall or fence as described in subsection (C)(2) is covered and locked when not in use.

Historical Note

Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

Section R9-10-1610 renumbered to R9-10-1611; new Section R9-10-1610 renumbered from R9-10-1609 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-1611. Adult Behavioral Health Respite Services

A provider shall ensure that:

1. A bedroom for use by a recipient:
 - a. Is separated from a hall, corridors, or other habitable room by floor to ceiling walls containing no interior openings except doors and is not used as a passageway to another bedroom or habitable room;
 - b. Provides sufficient space for an individual in the bedroom to have unobstructed access to the bedroom door;
 - c. Contains for each recipient using the bedroom:
 - i. A separate, adult-sized, single bed or larger bed with a clean mattress in good repair;
 - ii. Clean bedding appropriate for the season; and
 - iii. Storage space for personal effects and clothing such as shelves, a dresser, or chest of drawers; and
 - d. If used for:
 - i. Single occupancy, contains at least 60 square feet of floor space; or
 - ii. Double occupancy, contains at least 100 square feet of floor space;
2. A mirror is available to a recipient for grooming;
3. A recipient does not share a bedroom with an individual who is not a recipient;
4. No more than two recipients share a bedroom;
5. If two recipients share a bedroom, each recipient agrees, in writing, to share the bedroom; and
6. A recipient's bedroom is not used to store anything that may be a hazard to the recipient or another individual.

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Historical Note

Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

Section R9-10-1611 renumbered to R9-10-1612; new Section R9-10-1611 renumbered from R9-10-1610 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-1612. Children's Behavioral Health Respite Services

- A.** A provider may provide children's behavioral health respite services for up to four recipients if at least two of the recipients are siblings.
- B.** For a behavioral health respite home that provides children's behavioral health respite services, a provider shall:
1. Have a valid fingerprint clearance card according to A.R.S. § 36-425.03; and
 2. Ensure that:
 - a. If an adult other than a provider is present in the behavioral health respite home, the provider supervises the adult when and where a recipient is present;
 - b. A recipient does not share a bedroom with:
 - i. An individual that, based on the other individual's developmental levels, social skills, verbal skills, and personal history, may present a threat to the recipient;
 - ii. Except as provided in subsection (C), an adult; or
 - iii. Except as provided in subsection (B)(2)(c), an individual that is not the same gender;
 - c. A recipient may share a bedroom with an individual that is not the same gender if the individual is the recipient's sibling;
 - d. A bedroom used by a recipient:
 - i. If the bedroom is a private bedroom, contains at least 60 square feet of floor space, not including the closet; or
 - ii. If the bedroom is a shared bedroom:
 - (1) Contains at least 100 square feet of floor space, not including a closet, for two individual occupying the bedroom or contains at least 140 square feet of floor space, not including a closet, for three individuals occupying the bedroom;
 - (2) If there are four siblings occupying the bedroom, contains at least 140 square feet of floor space, not including a closet;
 - (3) Provides space between beds or bunk beds; and

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- (4) Provides sufficient space for an individual in the bedroom to have unobstructed access to the bedroom door;
 - iii. For a recipient under three years of age, may contain a crib;
 - iv. Except for a recipient under three years of age who has a crib, contains a bed for the recipient that is at least 36 inches wide and at least 72 inches long, and consists of at least a frame and mattress and clean linens; and
 - v. Contains individual storage space for personal effects and clothing such as shelves, a dresser, or chest of drawers;
 - e. Clean linens for a bed include a mattress pad, sheets large enough to tuck under the mattress, pillows, pillow cases, waterproof mattress covers as needed, and blankets to ensure warmth and comfort of a recipient;
 - f. A recipient older than three years of age does not sleep in a crib;
 - g. Clean and non-hazardous toys, educational materials, and physical activity equipment are available and accessible to recipients in a quantity sufficient to meet each recipient's needs and are appropriate to each recipient's age and developmental level; and
 - h. The following are stored in a labeled container separate from food storage areas and inaccessible to a recipient:
 - i. Materials and chemicals labeled as a toxic substance, and
 - ii. Substances that have a child warning label and may be a hazard to a recipient.
- C.** If a recipient is younger than 2 years of age and sleeps in a crib, the recipient may sleep in a crib placed in a provider's bedroom.

Historical Note

New Section R9-10-1612 renumbered from R9-10-1611 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

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36-104. Powers and duties

This section is not to be construed as a statement of the department's organization. This section is intended to be a statement of powers and duties in addition to the powers and duties granted by section 36-103. The director shall:

1. Administer the following services:

(a) Administrative services, which shall include at a minimum the functions of accounting, personnel, standards certification, electronic data processing, vital statistics and the development, operation and maintenance of buildings and grounds used by the department.

(b) Public health support services, which shall include at a minimum:

(i) Consumer health protection programs, consistent with paragraph 25 of this section, that include at least the functions of community water supplies, general sanitation, vector control and food and drugs.

(ii) Epidemiology and disease control programs that include at least the functions of chronic disease, accident and injury control, communicable diseases, tuberculosis, venereal disease and others.

(iii) Laboratory services programs.

(iv) Health education and training programs.

(v) Disposition of human bodies programs.

(c) Community health services, which shall include at a minimum:

(i) Medical services programs that include at least the functions of maternal and child health, preschool health screening, family planning, public health nursing, premature and newborn program, immunizations, nutrition, dental care prevention and migrant health.

(ii) Dependency health care services programs that include at least the functions of need determination, availability of health resources to medically dependent individuals, quality control, utilization control and industry monitoring.

(iii) Children with physical disabilities services programs.

(iv) Programs for the prevention and early detection of an intellectual disability.

(d) Program planning, which shall include at least the following:

(i) An organizational unit for comprehensive health planning programs.

(ii) Program coordination, evaluation and development.

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(iii) Need determination programs.

(iv) Health information programs.

2. Include and administer, within the office of the director, staff services, which shall include at a minimum budget preparation, public information, appeals, hearings, legislative and federal government liaison, grant development and management and departmental and interagency coordination.

3. Make rules for the organization and proper and efficient operation of the department.

4. Determine when a health care emergency or medical emergency situation exists or occurs within this state that cannot be satisfactorily controlled, corrected or treated by the health care delivery systems and facilities available. When such a situation is determined to exist, the director shall immediately report that situation to the legislature and the governor. The report shall include information on the scope of the emergency, recommendations for solution of the emergency and estimates of costs involved.

5. Provide a system of unified and coordinated health services and programs between this state and county governmental health units at all levels of government.

6. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

7. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of monies.

8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.

9. Provide information and advice on request by local, state and federal agencies and by private citizens, business enterprises and community organizations on matters within the scope of the department's duties subject to the departmental rules and regulations on the confidentiality of information.

10. Establish and maintain separate financial accounts as required by federal law or regulations.

11. Advise with and make recommendations to the governor and the legislature on all matters concerning the department's objectives.

12. Take appropriate steps to reduce or contain costs in the field of health services.

13. Encourage and assist in the adoption of practical methods of improving systems of comprehensive planning, of program planning, of priority setting and of allocating resources.

14. Encourage an effective use of available federal resources in this state.

15. Research, recommend, advise and assist in the establishment of community or area health facilities, both public and private, and encourage the integration of planning, services and programs for the development of the state's health delivery capability.

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16. Promote the effective use of health manpower and health facilities that provide health care for the citizens of this state.

17. Take appropriate steps to provide health care services to the medically dependent citizens of this state.

18. Certify training on the nature of sudden infant death syndrome, which shall include information on the investigation and handling of cases involving sudden and unexplained infant death for use by law enforcement officers as part of their basic training requirement.

19. Adopt protocols on the manner in which an autopsy shall be conducted under section 11-597, subsection D in cases of sudden and unexplained infant death.

20. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

21. Administer the federal family violence prevention and services act grants, and the department is designated as this state's recipient of federal family violence prevention and services act grants.

22. Accept and spend private grants of monies, gifts and devises for the purposes of methamphetamine education. The department shall disburse these monies to local prosecutorial or law enforcement agencies with existing programs, faith-based organizations and nonprofit entities that are qualified under section 501(c)(3) of the United States internal revenue code, including nonprofit entities providing services to women with a history of dual diagnosis disorders, and that provide educational programs on the repercussions of methamphetamine use. State general fund monies shall not be spent for the purposes of this paragraph. If the director does not receive sufficient monies from private sources to carry out the purposes of this paragraph, the director shall not provide the educational programs prescribed in this paragraph. Grant monies received pursuant to this paragraph are not lapsing and do not revert to the state general fund at the close of the fiscal year.

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

24. Pursuant to chapter 13, article 8 of this title, coordinate all public health and risk assessment issues associated with a chemical or other toxic fire event if a request for the event is received from the incident commander, the emergency response commission or the department of public safety and if funding is available. Coordination of public health issues shall include general environmental health consultation and risk assessment services consistent with chapter 13, article 8 of this title and, in consultation with the Arizona poison control system, informing the public as to potential public health risks from the environmental exposure. Pursuant to chapter 13, article 8 of this title, the department of health services shall also prepare a report, in consultation with appropriate state, federal and local governmental agencies, that evaluates the public health risks from the environmental exposure. The department of health services' report shall include any department of environmental quality report and map of smoke dispersion from the fire, the results of any environmental samples taken by the department of environmental quality and the toxicological implications and public health risks of the environmental exposure. The department of

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health services shall consult with the Arizona poison control system regarding toxicology issues and shall prepare and produce its report for the public as soon as practicable after the event. The department of health services shall not use any monies pursuant to section 49-282, subsection E to implement this paragraph.

25. Consult, cooperate, collaborate and, if necessary, enter into interagency agreements and memoranda of understanding with the Arizona department of agriculture concerning its administration, pursuant to title 3, chapter 3, article 4.1, of this state's authority under the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) and any other federal produce safety regulation, order or guideline or other requirement adopted pursuant to the FDA food safety modernization act (P.L. 111-353; 21 United States Code sections 2201 through 2252).

26. Adopt rules pursuant to title 32, chapter 32, article 5 prescribing the designated database information to be collected by health profession regulatory boards for the health professionals workforce database.

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

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

1. Protect the health of the people of the state.
2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.
3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.
4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.
5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.

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

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20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

- (a) Screening in early pregnancy for detecting high-risk conditions.
- (b) Comprehensive prenatal health care.
- (c) Maternity, delivery and postpartum care.
- (d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.
- (e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

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

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

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

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

[36-136. Powers and duties of director; compensation of personnel; rules; definitions](#)

A. The director shall:

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1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
 2. Perform all duties necessary to carry out the functions and responsibilities of the department.
 3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
 4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
 5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.
 6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.
 7. Prepare sanitary and public health rules.
 8. Perform other duties prescribed by law.
- B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.
- C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease

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agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

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

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

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

I. The director, by rule, shall:

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

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies

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and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

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

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

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

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

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

(d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.

(e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.

(f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.

(g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact.

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The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

(h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

(i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds,

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

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

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

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

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

13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.

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

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and

APPENDIX B- General and Specific Authority

9 A.A.C. 10 Article 16. Behavioral Health Respite Homes

rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

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

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

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

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

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

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

Q. For the purposes of this section:

1. "Cottage food product":

(a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.

(b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

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2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

36-558. Establishment and maintenance of programs and services; definition

A. In addition to the Arizona training program facilities at Randolph and Tucson, the director shall establish and maintain a state owned and operated service center in Phoenix and other developmental disabilities programs and services at other locations throughout the state, subject to the availability of funds for such purpose and the approval of the legislature.

B. The director is responsible for the operation of each developmental disabilities program and service, shall coordinate these services and shall permit the transfer of residents between the various programs.

C. The department may provide, but not be limited to, the following programs and services in addition to other services prescribed by the director:

1. Child services, which may include:

- (a) Infant stimulation.
- (b) Developmental day training and related preschool programs.
- (c) Special education at department facilities.

2. Adult services, which may include:

- (a) Job training for specific jobs.
- (b) Training and personal adjustment tools such as the teaching of work skills.
- (c) Job development and placement.
- (d) The provision of sheltered employment opportunities.
- (e) Adult day activity services.

3. Residential services, which shall include:

- (a) Arizona training program facilities.
- (b) State owned and operated service centers.
- (c) Community residential settings under varying degrees of supervision or a semi-independent living arrangement.

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(d) Respite care.

4. Resource services, which may include:

(a) Diagnoses and evaluations.

(b) Therapy services, including physical therapy, speech therapy, occupational therapy and behavioral therapy.

(c) Health-related services, including dental services.

(d) Social development and adjustment services, including recreation programs.

(e) Transportation.

(f) Information and referral.

(g) In-home services.

5. Public information resources on developmental disabilities.

6. Training and practicum programs in conjunction with other state agencies and universities and colleges for teachers, psychologists, social workers, medical personnel and others interested in the field of developmental disabilities.

7. Research laboratories in the fields of behavioral services and abstract research.

8. Guardianship services.

D. Services of a facility may not supplant existing community services that are provided through other local, city or state resources.

E. The department shall stimulate, cooperate with and promote the development of community programs through existing resources and provide consultation wherever needed.

F. A service provider who is providing guardianship services must comply with the disclosure requirements of section 14-5106 and shall not provide services to a person with developmental disabilities that would cause a conflict of interest or that would jeopardize the service provider's ability to represent the person with developmental disabilities as a guardian.

G. For the purposes of this section, "guardianship services" means services offered to a person with developmental disabilities by a service provider who is under contract with the division to act as a guardian to a person with developmental disabilities if no other appropriate guardian is available.

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36-558.02. State operated service center

The state operated service center shall provide temporary residential care and space for child and adult services. Residential care includes respite services, crisis intervention and diagnostic evaluation.

36-2939. Long-term care system services

A. The following services shall be provided by the program contractors to members who are determined to need institutional services pursuant to this article:

1. Nursing facility services other than services in an institution for tuberculosis or mental disease.
2. Notwithstanding any other law, behavioral health services if these services are not duplicative of long-term care services provided as of January 30, 1993 under this subsection and are authorized by the program contractor through the long-term care case management system. If the administration is the program contractor, the administration may authorize these services.
3. Hospice services. For the purposes of this paragraph, "hospice" means a program of palliative and supportive care for terminally ill members and their families or caregivers.
4. Case management services as provided in section 36-2938.
5. Health and medical services as provided in section 36-2907.
6. Dental services in an annual amount of not more than one thousand dollars per member.

B. In addition to the services prescribed in subsection A of this section, the department, as a program contractor, shall provide the following services if appropriate to members who have a developmental disability as defined in section 36-551 and are determined to need institutional services pursuant to this article:

1. Intermediate care facility services for a member who has a developmental disability as defined in section 36-551. For purposes of this article, a facility shall meet all federally approved standards and may only include the Arizona training program facilities, a state owned and operated service center, state owned or operated community residential settings and private facilities that contract with the department.
2. Home and community based services that may be provided in a member's home, at an alternative residential setting as prescribed in section 36-591 or at other behavioral health alternative residential facilities licensed by the department of health services and approved by the director of the Arizona health care cost containment system administration and that may include:

(a) Home health, which means the provision of nursing services, home health aide services or medical supplies, equipment and appliances, that are provided on a part-time or intermittent basis by a licensed home health agency within a member's residence based on a physician's orders and in accordance with federal law. Physical therapy, occupational therapy, or speech and audiology services provided by a home

APPENDIX B- General and Specific Authority

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health agency may be provided in accordance with federal law. Home health agencies shall comply with federal bonding requirements in a manner prescribed by the administration.

(b) Home health aide, which means a service that provides intermittent health maintenance, continued treatment or monitoring of a health condition and supportive care for activities of daily living provided within a member's residence.

(c) Homemaker, which means a service that provides assistance in the performance of activities related to household maintenance within a member's residence.

(d) Personal care, which means a service that provides assistance to meet essential physical needs within a member's residence.

(e) Day care for persons with developmental disabilities, which means a service that provides planned care supervision and activities, personal care, activities of daily living skills training and habilitation services in a group setting during a portion of a continuous twenty-four-hour period.

(f) Habilitation, which means the provision of physical therapy, occupational therapy, speech or audiology services or training in independent living, special developmental skills, sensory-motor development, behavior intervention, and orientation and mobility in accordance with federal law.

(g) Respite care, which means a service that provides short-term care and supervision available on a twenty-four-hour basis.

(h) Transportation, which means a service that provides or assists in obtaining transportation for the member.

(i) Other services or licensed or certified settings approved by the director.

C. In addition to services prescribed in subsection A of this section, home and community based services may be provided in a member's home, in an adult foster care home as prescribed in section 36-401, in an assisted living home or assisted living center as defined in section 36-401 or in a level one or level two behavioral health alternative residential facility approved by the director by program contractors to all members who do not have a developmental disability as defined in section 36-551 and are determined to need institutional services pursuant to this article. Members residing in an assisted living center must be provided the choice of single occupancy. The director may also approve other licensed residential facilities as appropriate on a case-by-case basis for traumatic brain injured members. Home and community based services may include the following:

1. Home health, which means the provision of nursing services, home health aide services or medical supplies, equipment and appliances, that are provided on a part-time or intermittent basis by a licensed home health agency within a member's residence based on a physician's orders and in accordance with federal law. Physical therapy, occupational therapy, or speech and audiology services provided by a home health agency may be provided in accordance with federal law. Home health agencies shall comply with federal bonding requirements in a manner prescribed by the administration.

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2. Home health aide, which means a service that provides intermittent health maintenance, continued treatment or monitoring of a health condition and supportive care for activities of daily living provided within a member's residence.
 3. Homemaker, which means a service that provides assistance in the performance of activities related to household maintenance within a member's residence.
 4. Personal care, which means a service that provides assistance to meet essential physical needs within a member's residence.
 5. Adult day health, which means a service that provides planned care supervision and activities, personal care, personal living skills training, meals and health monitoring in a group setting during a portion of a continuous twenty-four-hour period. Adult day health may also include preventive, therapeutic and restorative health related services that do not include behavioral health services.
 6. Habilitation, which means the provision of physical therapy, occupational therapy, speech or audiology services or training in independent living, special developmental skills, sensory-motor development, behavior intervention, and orientation and mobility in accordance with federal law.
 7. Respite care, which means a service that provides short-term care and supervision available on a twenty-four-hour basis.
 8. Transportation, which means a service that provides or assists in obtaining transportation for the member.
 9. Home delivered meals, which means a service that provides for a nutritious meal that contains at least one-third of the recommended dietary allowance for an individual and that is delivered to the member's residence.
 10. Other services or licensed or certified settings approved by the director.
- D. The amount of money expended by program contractors on home and community based services pursuant to subsection C of this section shall be limited by the director in accordance with the federal monies made available to this state for home and community based services pursuant to subsection C of this section. The director shall establish methods for the allocation of monies for home and community based services to program contractors and shall monitor expenditures on home and community based services by program contractors.
- E. Notwithstanding subsections A, B, C and F of this section, no service may be provided that does not qualify for federal monies available under title XIX of the social security act or the section 1115 waiver.
- F. In addition to services provided pursuant to subsections A, B and C of this section, the director may implement a demonstration project to provide home and community based services to special populations, including persons with disabilities who are eighteen years of age or younger, are medically fragile, reside at home and would be eligible for supplemental security income for the aged, blind or disabled or the

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state supplemental payment program, except for the amount of their parent's income or resources. In implementing this project, the director may provide for parental contributions for the care of their child.

G. Subject to section 36-562, the administration by rule shall prescribe a deductible schedule for programs provided to members who are eligible pursuant to subsection B of this section, except that the administration shall implement a deductible based on family income. In determining deductible amounts and whether a family is required to have deductibles, the department shall use adjusted gross income. Families whose adjusted gross income is at least four hundred percent and less than or equal to five hundred percent of the federal poverty guidelines shall have a deductible of two percent of adjusted gross income. Families whose adjusted gross income is more than five hundred percent of adjusted gross income shall have a deductible of four percent of adjusted gross income. Only families whose children are under eighteen years of age and who are members who are eligible pursuant to subsection B of this section may be required to have a deductible for services. For the purposes of this subsection, "deductible" means an amount a family, whose children are under eighteen years of age and who are members who are eligible pursuant to subsection B of this section, pays for services, other than departmental case management and acute care services, before the department will pay for services other than departmental case management and acute care services.

DEPARTMENT OF HEALTH SERVICES (F19-0608)

Title 9, Chapter 10, Article 18, Adult Behavioral Health Therapeutic Homes



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 4, 2019

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

FROM: Council Staff

DATE: May 6, 2019

SUBJECT: **ARIZONA DEPARTMENT OF HEALTH SERVICES (DHS)**
Title 9, Chapter 10, Article 18, Adult Behavioral Health Therapeutic Homes

This five year review report (5YRR) from the Arizona Department of Health Services (DHS) relates to all Sections of Title 9, Chapter 10, Article 18, Adult Behavioral Health Therapeutic Homes.

This is the first 5YRR for these rules.

Proposed Action

DHS plans to amend these rules to address written criticisms outlined in more detail below, and to allow providers and personnel to receive CPR training that includes the demonstration of the individual's ability to perform CPR as well as amend other articles in Chapter 10 that reference CPR training to include demonstration ability. DHS plans to send a Notice of Final Rulemaking to the Council by December 2020.

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

Yes. DHS cites to both general and specific statutory authority for the rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

DHS concludes that the changes made to the rules provide increased benefits to stakeholders without increasing costs. As of December 2018, 48 Adult Behavioral Health Therapeutic Homes were operating in Arizona.

The stakeholders include DHS, Adult Behavioral Health Therapeutic Homes, health care providers, residents and their families, and the general public

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

DHS has determined that the rules impose the least burden and costs to persons regulated by the rules.

4. Has the agency received any written criticisms of the rules over the last five years?

DHS indicates it received one written criticism in the last five years. Specifically, AHCCCS commented requesting that Adult Behavioral Therapeutic Homes be allowed to request authorization to provide personal care services to adults. DHS responded that, because this comment relates to the ability to retain a resident as the resident ages and needs personal care services, DHS plans to amend the rules to add this change during the next rulemaking.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?

DHS indicates that the rules are clear, concise, and understandable. DHS indicates the rules are consistent with other rules and statutes. DHS indicates the rules are mostly effective except that R9-10-1803 would be more effective if the rule required for providers and personnel to have CPR training that included a demonstration or hands-on-training of the individual's ability to perform CPR. This would be consistent with other residential health care institution rules in 9 A.A.C. 10.

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

DHS indicates that the rules are enforced as written.

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

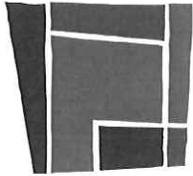
DHS indicates the rules are not more stringent than corresponding federal law.

8. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

The rules require the issuance of specific agency authorization. However, A.R.S. § 36-405 specifically authorizes the agency authorization at issue here. Therefore, DHS complies with A.R.S. § 41-1037(A) which states an agency may issue an alternative type of permit, license, or authorization “specifically authorized by state statute” or issuance of a general permit “would not meet the applicable statutory requirements.”

9. Conclusion

The rules are clear, concise, understandable, consistent and generally effective. As indicated above, DHS plans to amend these rules to address written criticisms that Adult Behavioral Therapeutic Homes be allowed to request authorization to provide personal care services to adults and to allow providers and personnel to receive CPR training that includes the demonstration of the individual’s ability to perform CPR as well as amend other articles in Chapter 10 that reference CPR training to include demonstration ability. DHS plans to send a Notice of Final Rulemaking to the Council by December 2020. Council staff recommends approval of this report.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

March 22, 2019

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

RE: Report for A.A.C. Title 9, Chapter 10, Article 18 Adult Behavioral Health Therapeutic Homes

Dear Ms. Sornsin:

According to the five-year-review report schedule of the Governor's Regulatory Review Council (Council), a report for A.A.C. Title 9, Chapter 10, Article 18, is due to the Council no later than March 29, 2019. The Arizona Department of Health Services (Department) has reviewed 9 A.A.C. 10, Article 18, and is enclosing a report to the Council for these rules.

The Department believes that this report complies with the requirements of A.R.S. § 41-1056. The report contains a summary of the Department's review for all the rules and is in the format of the Council's report template. As described in the report, the Department plans to amend the rules and send a Notice of Final Rulemaking to GRRC by December 2020.

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

If you need any further information, please contact me at (602) 542-1020.

Sincerely,

A handwritten signature in black ink, appearing to read 'RL', written over a circular scribble.

Robert Lane
Director's Designee

RL:bg
Enclosures

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



ARIZONA DEPARTMENT OF HEALTH SERVICES

FIVE-YEAR-REVIEW REPORT

TITLE 9. HEALTH SERVICES

CHAPTER 10. HEALTH CARE INSTITUTIONS: LICENSING

ARTICLE 18. ADULT BEHAVIORAL HEALTH THERAPEUTIC HOMES

March 2019

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 36-104(3), 36-132(A)(1), 36-132(A)(17), and 36-136(G).

Specific Statutory Authority: A.R.S. §§ 36-558(B) and (C)(2)(e), and 36-2939.

2. The objective of each rule:

Rule	Objective
R9-10-1801	The objective of this rule is to define terms and phrases used in 9 A.A.C. 10, Article 18, allowing for the consistent interpretation of the requirements.
R9-10-1802	The objective of this rule is to give information regarding supplemental application requirements for the adult behavioral health therapeutic home’s collaborating health care institution.
R9-10-1803	The objective of this rule is to establish requirements for an adult behavioral health therapeutic home’s governing authority and qualifications. The rule also establishes requirements for the creation and implementation of policies and procedures for the adult behavioral health therapeutic home.
R9-10-1804	The objective of this rule is to establish resident’s rights while living in an adult behavioral health therapeutic home.
R9-10-1805	The objective of this rule is to establish services a provider must provide to a resident according to the treatment plan obtained from a collaborating health care institution.
R9-10-1806	The objective of this rule is to establish the requirements of provider assistance in the self-administration of medication.
R9-10-1807	The objective of this rule is to establish requirements for the maintenance of a resident’s medical records.
R9-10-1808	The objective of this rule is to establish requirements for food safety and specifies required meals and snacks that meet a resident’s dietary needs.
R9-10-1809	The objective of this rule is to establish emergency and safety standards for adult behavioral health therapeutic homes.
R9-10-1810	The objective of this rule is to establish requirements to provide safe, living environments and adequate living accommodations for all residents living in adult behavioral health therapeutic homes.

3. Are the rules effective in achieving their objectives?

Yes ___ No

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation
R9-10-1803	The rule would be more effective if the rule required for providers and personnel to have CPR training that included a demonstration or hands-on-training of the individual's ability to perform CPR. This would be consistent with other residential health care institution rules in 9 A.A.C. 10.

4. **Are the rules consistent with other rules and statutes?** Yes No

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation

5. **Are the rules enforced as written?** Yes No

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.

Rule	Explanation

6. **Are the rules clear, concise, and understandable?** Yes No

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

If yes, please fill out the table below:

Commenter	Comment	Agency's Response
AHCCCS	AHCCCS requests that Adult Behavioral Therapeutic Homes be allowed to request authorization to provide personal care services to adults.	Because this comment relates to the ability to retain a resident as the resident ages and needs personal care services, the Department plans to amend the rules to add this change during the next rulemaking.

8. **Economic, small business, and consumer impact comparison:**

Prior to 2013, Adult Therapeutic Foster Homes were located in 9 A.A.C. 20, Article 15. During 2013, an exempt rulemaking occurred to amend 9 A.A.C. 10 and 9 A.A.C. 20 to comply with Laws 2011, Ch. 96 that required the Department to adopt rules for health care institutions to reduce monetary or regulatory costs on person or individuals and facilitate licensing of integrated health programs that provide both behavioral and physical health services. The Department included rules for Adult Therapeutic Foster Homes in 9 A.A.C. 10, Article 16, Behavioral Health Supportive Homes.

In 2014, the title of Article 16 changed to Behavioral Health Respite Homes, and requirements related to Adult Behavioral Health Therapeutic Supportive Services were moved into a new Article 18. Article 18, Adult Behavioral Health Therapeutic Homes consists of ten Sections. The Department currently licenses and regulates Adult Behavioral Health Therapeutic Homes according to the rules. For the Article 18 rulemaking, the Department believes affected parties include the Department, Adult Behavioral Health Therapeutic Homes, health care providers, residents and their families, and the general public.

As of December 2018, the Department reported that 48 Adult Behavioral Health Therapeutic Homes were operating in the State. In calendar year 2018, 10 initial applications and 35 renewal applications were received and approved. The Department completed 32 compliance surveys and 5 complaint investigation surveys. Out of the 32 compliance surveys, there were 12 initial surveys and 20 compliance surveys completed by the Department.

In the 2014 exempt rulemaking, Article 18 consists of 10 Sections. Definitions in the new R9-10-1801 consist of five new definitions (acceptance, back-up provider, provider, release, and resident). The Department believes that by adding the new definitions related to the Article the effectiveness and understandability of the rules were improved. The Department believes the new R9-10-1801 provides a benefit to the Department, Adult Behavioral Health Therapeutic Homes, and residents and their families, by eliminating confusion and increasing consistency. The new R9-10-1802 was added, in accordance with the licensing requirements that are outlined in A.R.S. § 36-422, to provide the Department with the name of the back-up provider and requirements for applicants to provide information for the Adult Behavioral Health Therapeutic Home's collaborating health care institution, which includes specifying their name, address, class or subclass, license number, and name and contact information for an individual assigned by the collaborating health care institution.

The new R9-10-1803, Administration, outlines requirements for the creation and implementation of policies and procedures for the Adult Behavioral Health Therapeutic Homes. The rules contain requirements that specify what a governing authority of an Adult Behavioral Health Therapeutic Home must be comprised of; and give requirements of what a provider and back-up provider must do to ensure that policies and procedures are met. The new R9-10-1804, Resident Rights, provides requirements for how a provider should take care of a resident and how a resident should be treated while living in an Adult Behavioral Health Therapeutic Home. R9-10-1805, Providing Services, require a provider to ensure that behavioral health services and ancillary services are provided to a resident according to the resident's treatment plan obtained from the Adult Behavioral Health Therapeutic Home's collaborating health care institution to monitor the Adult Behavioral Health Therapeutic Home.

R9-10-1806, Assistance in the Self-Administration of Medication, requires a provider to ensure that a resident is receiving assistance and care while taking their medication, and that the medication is safely stored by the provider. R9-10-1807, Medical Records, requires a provider to ensure that a resident's medical records are up to date, contain all relevant information, and are kept protected for the resident. R9-10-1808 and R9-10-1809, Food Services and Emergency and Safety Standards, establishes standards for a provider to make sure that food is obtained, handled, and stored properly for the health of the residents. A provider is also required to ensure that an Adult Behavioral Health Therapeutic Home is properly equipped with first aid kits, smoke detectors, fire extinguishers, and an evacuation plan. The final Section, R9-10-1810, Physical Plant, Environmental, and Equipment Standards, establishes requirements for a provider to provide a safe, living environment and adequate living accommodations for all residents living in an Adult Behavioral Health Therapeutic Home.

Overall, the Department believes that the changes made to the rules do not result in increased costs, but rather provide increased benefits to affected parties. Through the exempt rulemakings, the Department reduced monetary and regulatory costs on persons and simplified licensing of integrated health programs that provide physical and behavioral health services. The Department believes that the benefit for having more effective and understandable rules outweigh any costs that may be incurred.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ___ No ___

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**
Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

This is the first five-year-review report for the new rules.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department has determined that the rules impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No ✓

Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The rules require the issuance of specific agency authorization, authorized by A.R.S. § 36-405, so a general permit is not applicable.

14. **Proposed course of action**

The Department plans to amend the rules in 9 A.A.C. 10, Article 18 to address the written criticism and to allow providers and personnel to receive CPR training that includes the demonstration of the individual's ability to perform CPR as well as amend other articles in Chapter 10 that reference CPR training to include demonstration ability. The Department plans to send a Notice of Final Rulemaking to GRRC by December 2020.

APPENDIX A- Current Rules

9 A.A.C. 10 Article 18. Adult Behavioral Health Therapeutic Homes

ARTICLE 18. ADULT BEHAVIORAL HEALTH THERAPEUTIC HOMES

R9-10-1801. Definitions

In addition to the definitions in A.R.S. § 36-401 and R9-10-101, the following definitions apply in this Article unless otherwise specified:

1. “Acceptance” means, after a referral from a collaborating health care institution, an individual begins to live in and receive services from a provider in an adult behavioral health therapeutic home.
2. “Backup provider” means an individual designated by a provider to be present in an adult behavioral health therapeutic home, when a provider is not present, who ensures that a resident receives the behavioral health services and ancillary services in the resident’s treatment plan.
3. “Provider” means an individual who lives in an adult behavioral health therapeutic home and ensures that a resident receives the behavioral health services and ancillary services in the resident’s treatment plan.
4. “Release” means a documented termination of services to a resident by a provider that is authorized by a collaborating health care institution.
5. “Resident” means an individual referred by a collaborating health care institution to and accepted by an adult behavioral health therapeutic home.

Historical Note

New Section made by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13;
effective July 1, 2014 (Supp. 14-2).

R9-10-1802. Supplemental Application Requirements

In addition to the license application requirements in A.R.S. § 36-422 and 9 A.A.C. 10, Article 1, an applicant shall include, in a format provided by the Department:

1. The name of the backup provider; and
2. For the adult behavioral health therapeutic home’s collaborating health care institution:
 - a. Name,
 - b. Address,
 - c. Class or subclass,
 - d. License number, and
 - e. Name and contact information for an individual assigned by the collaborating health care institution to monitor the adult behavioral health therapeutic home.

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Historical Note

New Section made by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13;
effective July 1, 2014 (Supp. 14-2).

R9-10-1803. Administration

A. A governing authority of an adult behavioral health therapeutic home:

1. Consists of no more than two providers, who live in the adult behavioral health therapeutic home;
2. Has the authority and responsibility to manage the adult behavioral health therapeutic home;
3. Has a documented agreement with a collaborating health care institution that establishes the responsibilities of the adult behavioral health therapeutic home and the collaborating health care institution, consistent with the requirements in this Chapter;
4. Shall establish, in writing, the adult behavioral health therapeutic home's scope of services, which are approved by the collaborating health care institution;
5. Shall designate a back-up provider to be present in the adult behavioral health therapeutic home and accountable for services provided by the adult behavioral health therapeutic home when the provider is not present at the adult behavioral health therapeutic home; and
6. Shall ensure that:
 - a. No more than three residents are accepted by the adult behavioral health therapeutic home;
 - b. Documentation required by this Article is provided to the Department within two hours after a Department request; and
 - c. When documentation or information is required by this Chapter to be submitted on behalf of the adult behavioral health therapeutic home, the documentation or information is provided to the unit in the Department that is responsible for licensing the adult behavioral health therapeutic home.

B. A provider or back-up provider:

1. Is at least 21 years of age;
2. Holds current certification in cardiopulmonary resuscitation and first aid training applicable to the ages of residents;
3. Has the skills and knowledge established by the collaborating health care institution as specified in R9-10-118;
4. Has documentation of completion of training in assistance in the self-administration of medication as specified in R9-10-118; and
5. Has documentation of evidence of freedom from infectious tuberculosis:

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- a. On or before the date the provider or back-up provider begins providing services at or on behalf of the adult behavioral health therapeutic home, and
 - b. As specified in R9-10-113.
- C.** A provider shall ensure that policies and procedures are:
1. Established, documented, and implemented to protect the health and safety of a resident that cover:
 - a. Recordkeeping;
 - b. Resident acceptance and release;
 - c. Resident rights;
 - d. The provision of services, including coordinating the provision of behavioral health services;
 - e. Residents' medical records, including electronic medical records;
 - f. Assistance in the self-administration of medication;
 - g. Infection control; and
 - h. How a provider will respond to a resident's sudden, intense, or out-of-control behavior to prevent harm to the resident or another individual;
 2. Approved, in writing, by an adult behavioral health therapeutic home's collaborating health care institution before implementation and when the policies and procedures are reviewed or updated; and
 3. Reviewed by the provider and an adult behavioral health therapeutic home's collaborating health care institution at least once every three years and updated as needed.
- D.** A provider shall provide written notification to the Department and the adult behavioral health therapeutic home's collaborating health care institution of a resident's:
1. Death, if the resident's death is required to be reported according to A.R.S. § 11-593, within one working day after the resident's death; and
 2. Self-injury, within two working days after the resident inflicts a self-injury that requires immediate intervention by an emergency medical services provider.
- E.** If abuse, neglect, or exploitation of a resident is alleged or suspected to have occurred before the resident was accepted or while the resident is not at an adult behavioral health therapeutic home and not receiving services from the adult behavioral health therapeutic home, a provider shall report the alleged or suspected abuse, neglect, or exploitation of the resident according to A.R.S. § 46-454.
- F.** If a provider has a reasonable basis, according to A.R.S. § 46-454, to believe abuse, neglect, or exploitation has occurred on the premises or while a resident is receiving adult behavioral health therapeutic services, the provider shall:

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1. If applicable, take immediate action to stop the suspected abuse, neglect, or exploitation;
 2. Immediately report the suspected abuse, neglect, or exploitation of the resident as follows:
 - a. To the adult behavioral health therapeutic home's collaborating health care institution; and
 - b. According to A.R.S. § 46-454;
 3. Document:
 - a. The suspected abuse, neglect, or exploitation;
 - b. Any action taken according to subsection (F)(1); and
 - c. The report in subsection (F)(2);
 4. Maintain the documentation in subsection (F)(3) for at least 12 months after the date of the report in subsection (F)(2);
 5. Initiate an investigation of the suspected abuse, neglect, or exploitation and document the following information within five working days after the report required in subsection (F)(2):
 - a. The dates, times, and description of the suspected abuse, neglect, or exploitation;
 - b. A description of any injury to the resident related to the suspected abuse or neglect and any change to the resident's physical, cognitive, functional, or emotional condition;
 - c. The names of witnesses to the suspected abuse, neglect, or exploitation; and
 - d. The actions taken by the provider to prevent the suspected abuse, neglect, or exploitation from occurring in the future; and
 6. Maintain a copy of the documented information required in subsection (F)(5) and any other information obtained during the investigation for at least 12 months after the date the investigation was initiated.
- G.** A provider shall maintain a record for each provider and backup provider that includes:
1. For the provider and the backup provider:
 - a. Name;
 - b. Date of birth;
 - c. Contact telephone number; and
 - d. Documentation of:
 - i. Verification of skills and knowledge, completed by the adult behavioral health therapeutic home's collaborating health care institution;
 - ii. Certification in cardiopulmonary resuscitation and first aid training;
 - iii. Completion of training in assistance in the self-administration of medication, provided by the adult behavioral health therapeutic home's collaborating health care institution;

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- iv. If the provider or backup provider provides behavioral health services, clinical oversight as required in R9-10-1805(C); and
 - v. Evidence of freedom from infectious tuberculosis; and
2. For the backup provider, home address.

Historical Note

New Section made by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-1804. Resident Rights

A. A provider shall ensure that:

1. A resident is treated with dignity, respect, and consideration;
2. A resident is not subjected to:
 - a. Abuse;
 - b. Neglect;
 - c. Exploitation;
 - d. Coercion;
 - e. Manipulation;
 - f. Sexual abuse;
 - g. Sexual assault;
 - h. Seclusion;
 - i. Restraint;
 - j. Retaliation for submitting a complaint to the Department or another entity; or
 - k. Misappropriation of personal and private property by:
 - i. An adult behavioral health therapeutic home's provider or backup provider, or
 - ii. An individual other than a resident residing in the adult behavioral health therapeutic home; and
3. A resident or the resident's representative:
 - a. Is informed of the resident complaint process;
 - b. Consents to photographs of the resident before the resident is photographed, except that the resident may be photographed when accepted by an adult behavioral health therapeutic home for identification and administrative purposes; and
 - c. Except as otherwise permitted by law, provides written consent to the release of information in the resident's medical record.

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B. A resident has the following rights:

1. Not to be discriminated against based on race, national origin, religion, gender, sexual orientation, age, disability, marital status, or diagnosis;
2. To receive services that support and respect the resident's individuality, choices, strengths, and abilities;
3. To receive privacy in care for personal needs;
4. To review, upon written request, the resident's own medical record according to A.R.S. §§ 12-2293, 12-2294, and 12-2294.01;
5. To receive a referral to another health care institution if the provider is not authorized or not able to provide physical health services or behavioral health services needed by the resident; and
6. To receive assistance from a family member, resident's representative, or other individual in understanding, protecting, or exercising the resident's rights.

Historical Note

New Section made by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-1805. Providing Services

- A.** A provider shall ensure that behavioral health services and ancillary services are provided to a resident according to the resident's treatment plan obtained from the adult behavioral health therapeutic home's collaborating health care institution.
- B.** A provider shall submit documentation of any significant change in a resident's behavior or physical, cognitive, or functional condition and the action taken by the provider to address the resident's changing needs to the adult behavioral health therapeutic home's collaborating health care institution or, if applicable, the resident's case manager.
- C.** A provider who provides behavioral health services to a resident:
1. For the purpose of an exception to licensing in A.R.S. § 32-3271, is considered a behavioral health technician; and
 2. Shall comply with the requirements for clinical oversight for a behavioral health technician in R9-10-115.

Historical Note

New Section made by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-1806. Assistance in the Self-Administration of Medication

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- A.** If a provider provides assistance in the self-administration of medication, the provider shall ensure that:
1. If a resident is receiving assistance in the self-administration of medication, the resident's medication is stored by the provider;
 2. The following assistance is provided to a resident:
 - a. A reminder when it is time to take the medication;
 - b. Opening the medication container or medication organizer for the resident;
 - c. Observing the resident while the resident removes the medication from the medication container or medication organizer;
 - d. Verifying that the medication is taken as ordered by the resident's medical practitioner by confirming that:
 - i. The resident taking the medication is the individual stated on the medication container label,
 - ii. The resident is taking the dosage of the medication as stated on the medication container label, and
 - iii. The resident is taking the medication at the time stated on the medication container label;or
 - e. Observing the resident while the resident takes the medication; and
 3. Assistance in the self-administration of medication provided to a resident is documented in the resident's medical record.
- B.** When medication is stored by a provider, the provider shall ensure that:
1. A locked cabinet, closet, or self-contained unit is used for medication storage;
 2. Medication is stored according to the instructions on the medication container; and
 3. Medication, including expired medication, that is no longer being used is discarded.
- C.** A provider shall immediately report a medication error or a resident's adverse reaction to a medication to the:
1. Medical practitioner who ordered the medication, or
 2. Contact individual at an adult behavioral health therapeutic home's collaborating health care institution.

Historical Note

New Section made by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

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R9-10-1807. Medical Records

A. A provider shall ensure that:

1. A medical record is established and maintained for each resident according to A.R.S. Title 12, Chapter 13, Article 7.1;
2. An entry in a resident's medical record is:
 - a. Only recorded by the provider or individual designated by the provider to record an entry;
 - b. Dated, legible, and authenticated; and
 - c. Not changed to make the initial entry illegible;
3. A resident's medical record is available to an individual:
 - a. Authorized by policies and procedures to access the resident's medical record;
 - b. If the individual is not authorized according to policies and procedures, with the written consent of the resident or the resident's representative; or
 - c. As permitted by law; and
4. A resident's medical record is protected from loss, damage, or unauthorized use.

B. If a provider maintains residents' medical records electronically, the provider shall ensure that safeguards exist to prevent unauthorized access.

C. A provider shall ensure that a resident's medical record contains:

1. Resident information that includes:
 - a. The resident's name,
 - b. The resident's date of birth,
 - c. Any known allergies, and
 - d. Medication information for the resident;
2. The names, addresses, and telephone numbers of:
 - a. The resident's medical practitioner;
 - b. The resident's case manager, if applicable;
 - c. The behavioral health professional assigned to the resident by the adult behavioral health therapeutic home's collaborating health care institution; and
 - d. An individual to be contacted in the event of an emergency;
3. The date of the resident's acceptance by the adult behavioral health therapeutic home and, if applicable, the date of the resident's release from the adult behavioral health therapeutic home;
4. If applicable, the name and contact information of the resident's representative and:

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- a. The document signed by the resident consenting for the resident's representative to act on the resident's behalf; or
- b. If the resident's representative:
 - i. Has a health care power of attorney established under A.R.S. § 36-3221 or a mental health care power of attorney executed under A.R.S. § 36-3282, a copy of the health care power of attorney or mental health care power of attorney; or
 - ii. Is a legal guardian, a copy of the court order establishing guardianship;
5. A copy of the resident's treatment plan and any updates to the resident's treatment plan, obtained from the adult behavioral health therapeutic home's collaborating health care institution;
6. For a resident receiving assistance in the self-administration of medication, documentation that includes for each medication:
 - a. The date and time of assistance;
 - b. The name, strength, dosage, and route of administration;
 - c. The provider's signature or first and last initials; and
 - d. Any adverse reaction the resident has to the medication;
7. Documentation of the resident's refusal of a medication, if applicable;
8. Documentation of any significant change in a resident's behavior or physical, cognitive, or functional condition and the action taken by a provider to address the resident's changing needs;
9. If applicable, documentation of any actions taken to control the resident's sudden, intense, or out-of-control behavior to prevent harm to the resident or another individual; and
10. If applicable, a written notice of termination of residency.

Historical Note

New Section made by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-1808. Food Services

A provider shall ensure that:

1. Food is obtained, handled, and stored to prevent contamination, spoilage, or a threat to the health of a resident;
2. Three nutritionally balanced meals are served each day;
3. Nutritious snacks are available between meals;
4. Food served meets any special dietary needs of a resident as prescribed by the resident's physician or registered dietitian; and

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5. Chemicals or detergents are not stored with food.

Historical Note

New Section made by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-1809. Emergency and Safety Standards

A provider shall ensure that:

1. A first aid kit is available at an adult behavioral health therapeutic home sufficient to meet the needs of residents;
2. If a firearm or ammunition for a firearm is stored at an adult behavioral health therapeutic home:
 - a. The firearm is stored separate from the ammunition for the firearm; and
 - b. The firearm and the ammunition for the firearm are:
 - i. Stored in a locked closet, cabinet, or container; and
 - ii. Inaccessible to a resident;
3. A smoke detector is installed in:
 - a. A bedroom used by a resident,
 - b. A hallway in an adult behavioral health therapeutic home, and
 - c. An adult behavioral health therapeutic home's kitchen;
4. A smoke detector required in subsection (3):
 - a. Is maintained in operable condition; and
 - b. Is battery operated or, if hard-wired into the electrical system of an adult behavioral health therapeutic home, has a back-up battery;
5. An adult behavioral health therapeutic home has a portable fire extinguisher that is labeled 1A-10-BC by the Underwriters Laboratory and available in the adult behavioral health therapeutic home's kitchen;
6. A portable fire extinguisher required in subsection (5) is:
 - a. If a disposable fire extinguisher, replaced when the fire extinguisher's indicator reaches the red zone; or
 - b. Serviced at least once every 12 months and has a tag attached to the fire extinguisher that includes the date of service;
7. A written evacuation plan is maintained and available for use by the provider and any resident in an adult behavioral health therapeutic home;
8. An evacuation drill is conducted at least once every six months; and

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9. A record of an evacuation drill required in subsection (8) is maintained for at least one year after the date of the evacuation drill.

Historical Note

New Section made by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-1810. Physical Plant, Environmental Services, and Equipment Standards

A. A provider shall ensure that an adult behavioral health therapeutic home:

1. Is in a building that:
 - a. Is arranged, designed, and used for the living, sleeping, and housekeeping activities for one family on a permanent basis; and
 - b. Is free of any plumbing, electrical, ventilation, mechanical, chemical, or structural hazard that may jeopardize the health or safety of a resident;
2. Has a living room accessible at all times to a resident;
3. Has a dining area furnished for group meals that is accessible to the provider, residents, and any other individuals present in the adult behavioral health therapeutic home;
4. For each six individuals residing in the adult behavioral health therapeutic home, including residents, has at least one bathroom equipped with:
 - a. A working toilet that flushes and has a seat; and
 - b. A sink with running water accessible for use by a resident;
5. Has equipment and supplies to maintain a resident's personal hygiene that are accessible to the resident;
6. Is clean and free from accumulations of dirt, garbage, and rubbish; and
7. Implements a pest control program to minimize the presence of insects and vermin at the adult behavioral health therapeutic home.

B. A provider shall ensure that pets and animals are:

1. Controlled to prevent endangering the residents and to maintain sanitation;
2. Licensed consistent with local ordinances; and
3. For a dog or cat, vaccinated against rabies.

C. If a swimming pool is located on the premises, a provider shall ensure that:

1. The swimming pool is equipped with the following:
 - a. An operational water circulation system that clarifies and disinfects the swimming pool water continuously and that includes at least:

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- i. A removable strainer,
 - ii. Two swimming pool inlets located on opposite sides of the swimming pool, and
 - iii. A drain located at the swimming pool's lowest point and covered by a grating that cannot be removed without using tools; and
 - b. An operational cleaning system;
 2. The swimming pool is enclosed by a wall or fence that:
 - a. Is at least five feet in height as measured on the exterior of the wall or fence;
 - b. Has no vertical openings greater than four inches across;
 - c. Has no horizontal openings, except as described in subsection (C)(2)(e);
 - d. Is not chain-link;
 - e. Does not have a space between the ground and the bottom fence rail that exceeds four inches in height; and
 - f. Has a self-closing, self-latching gate that:
 - i. Opens away from the swimming pool,
 - ii. Has a latch located at least 54 inches from the ground, and
 - iii. Is locked when the swimming pool is not in use; and
 3. A life preserver or shepherd's crook is available and accessible in the pool area.
- D.** A provider shall ensure that a spa that is not enclosed by a wall or fence as described in subsection (C)(2) is covered and locked when not in use.
- E.** A provider shall ensure that:
1. A bedroom for use by a resident:
 - a. Is separated from a hall, corridors, or other habitable room by floor-to-ceiling walls containing no interior openings except doors and is not used as a passageway to another bedroom or habitable room;
 - b. Provides sufficient space for an individual in the bedroom to have unobstructed access to the bedroom door;
 - c. Contains for each resident using the bedroom:
 - i. A separate, adult-sized, single bed or larger bed with a clean mattress in good repair;
 - ii. Clean bedding appropriate for the season; and
 - iii. An individual dresser and closet for storage of personal possessions and clothing; and
 - d. If used for:
 - i. Single occupancy, contains at least 60 square feet of floor space; or
 - ii. Double occupancy, contains at least 100 square feet of floor space; and

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2. A mirror is available to a resident for grooming;
3. A resident does not share a bedroom with an individual who is not a resident;
4. No more than two residents share a bedroom;
5. If two residents share a bedroom, each resident agrees, in writing, to share the bedroom; and
6. A resident's bedroom is not used to store anything other than the furniture and articles used by the resident and the resident's belongings.

Historical Note

New Section made by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13;
effective July 1, 2014 (Supp. 14-2).

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36-104. Powers and duties

This section is not to be construed as a statement of the department's organization. This section is intended to be a statement of powers and duties in addition to the powers and duties granted by section 36-103. The director shall:

1. Administer the following services:

(a) Administrative services, which shall include at a minimum the functions of accounting, personnel, standards certification, electronic data processing, vital statistics and the development, operation and maintenance of buildings and grounds used by the department.

(b) Public health support services, which shall include at a minimum:

(i) Consumer health protection programs, consistent with paragraph 25 of this section, that include at least the functions of community water supplies, general sanitation, vector control and food and drugs.

(ii) Epidemiology and disease control programs that include at least the functions of chronic disease, accident and injury control, communicable diseases, tuberculosis, venereal disease and others.

(iii) Laboratory services programs.

(iv) Health education and training programs.

(v) Disposition of human bodies programs.

(c) Community health services, which shall include at a minimum:

(i) Medical services programs that include at least the functions of maternal and child health, preschool health screening, family planning, public health nursing, premature and newborn program, immunizations, nutrition, dental care prevention and migrant health.

(ii) Dependency health care services programs that include at least the functions of need determination, availability of health resources to medically dependent individuals, quality control, utilization control and industry monitoring.

(iii) Children with physical disabilities services programs.

(iv) Programs for the prevention and early detection of an intellectual disability.

(d) Program planning, which shall include at least the following:

(i) An organizational unit for comprehensive health planning programs.

(ii) Program coordination, evaluation and development.

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(iii) Need determination programs.

(iv) Health information programs.

2. Include and administer, within the office of the director, staff services, which shall include at a minimum budget preparation, public information, appeals, hearings, legislative and federal government liaison, grant development and management and departmental and interagency coordination.

3. Make rules for the organization and proper and efficient operation of the department.

4. Determine when a health care emergency or medical emergency situation exists or occurs within this state that cannot be satisfactorily controlled, corrected or treated by the health care delivery systems and facilities available. When such a situation is determined to exist, the director shall immediately report that situation to the legislature and the governor. The report shall include information on the scope of the emergency, recommendations for solution of the emergency and estimates of costs involved.

5. Provide a system of unified and coordinated health services and programs between this state and county governmental health units at all levels of government.

6. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

7. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of monies.

8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.

9. Provide information and advice on request by local, state and federal agencies and by private citizens, business enterprises and community organizations on matters within the scope of the department's duties subject to the departmental rules and regulations on the confidentiality of information.

10. Establish and maintain separate financial accounts as required by federal law or regulations.

11. Advise with and make recommendations to the governor and the legislature on all matters concerning the department's objectives.

12. Take appropriate steps to reduce or contain costs in the field of health services.

13. Encourage and assist in the adoption of practical methods of improving systems of comprehensive planning, of program planning, of priority setting and of allocating resources.

14. Encourage an effective use of available federal resources in this state.

15. Research, recommend, advise and assist in the establishment of community or area health facilities, both public and private, and encourage the integration of planning, services and programs for the development of the state's health delivery capability.

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16. Promote the effective use of health manpower and health facilities that provide health care for the citizens of this state.
17. Take appropriate steps to provide health care services to the medically dependent citizens of this state.
18. Certify training on the nature of sudden infant death syndrome, which shall include information on the investigation and handling of cases involving sudden and unexplained infant death for use by law enforcement officers as part of their basic training requirement.
19. Adopt protocols on the manner in which an autopsy shall be conducted under section 11-597, subsection D in cases of sudden and unexplained infant death.
20. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.
21. Administer the federal family violence prevention and services act grants, and the department is designated as this state's recipient of federal family violence prevention and services act grants.
22. Accept and spend private grants of monies, gifts and devises for the purposes of methamphetamine education. The department shall disburse these monies to local prosecutorial or law enforcement agencies with existing programs, faith-based organizations and nonprofit entities that are qualified under section 501(c)(3) of the United States internal revenue code, including nonprofit entities providing services to women with a history of dual diagnosis disorders, and that provide educational programs on the repercussions of methamphetamine use. State general fund monies shall not be spent for the purposes of this paragraph. If the director does not receive sufficient monies from private sources to carry out the purposes of this paragraph, the director shall not provide the educational programs prescribed in this paragraph. Grant monies received pursuant to this paragraph are not lapsing and do not revert to the state general fund at the close of the fiscal year.
23. Identify successful methamphetamine prevention programs in other states that may be implemented in this state.
24. Pursuant to chapter 13, article 8 of this title, coordinate all public health and risk assessment issues associated with a chemical or other toxic fire event if a request for the event is received from the incident commander, the emergency response commission or the department of public safety and if funding is available. Coordination of public health issues shall include general environmental health consultation and risk assessment services consistent with chapter 13, article 8 of this title and, in consultation with the Arizona poison control system, informing the public as to potential public health risks from the environmental exposure. Pursuant to chapter 13, article 8 of this title, the department of health services shall also prepare a report, in consultation with appropriate state, federal and local governmental agencies, that evaluates the public health risks from the environmental exposure. The department of health services' report shall include any department of environmental quality report and map of smoke dispersion from the fire, the results of any environmental samples taken by the department of environmental quality and the toxicological implications and public health risks of the environmental exposure. The department of health services shall consult with the Arizona poison control system regarding toxicology issues and shall prepare and produce its report for the public as soon as practicable after the event. The department of

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health services shall not use any monies pursuant to section 49-282, subsection E to implement this paragraph.

25. Consult, cooperate, collaborate and, if necessary, enter into interagency agreements and memoranda of understanding with the Arizona department of agriculture concerning its administration, pursuant to title 3, chapter 3, article 4.1, of this state's authority under the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) and any other federal produce safety regulation, order or guideline or other requirement adopted pursuant to the FDA food safety modernization act (P.L. 111-353; 21 United States Code sections 2201 through 2252).

26. Adopt rules pursuant to title 32, chapter 32, article 5 prescribing the designated database information to be collected by health profession regulatory boards for the health professionals workforce database.

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

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

1. Protect the health of the people of the state.
2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.
3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.
4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.
5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.
6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.

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

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- (a) Screening in early pregnancy for detecting high-risk conditions.
- (b) Comprehensive prenatal health care.
- (c) Maternity, delivery and postpartum care.
- (d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.
- (e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

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

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

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

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

36-136. [Powers and duties of director; compensation of personnel; rules; definitions](#)

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.

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2. Perform all duties necessary to carry out the functions and responsibilities of the department.
 3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
 4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
 5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.
 6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.
 7. Prepare sanitary and public health rules.
 8. Perform other duties prescribed by law.
- B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.
- C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

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D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

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

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

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

I. The director, by rule, shall:

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

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

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

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

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

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

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

(d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.

(e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.

(f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.

(g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food

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products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

(h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

(i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty

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days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

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

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

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

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

13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.

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

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

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

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

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

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

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

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

Q. For the purposes of this section:

1. "Cottage food product":

(a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.

(b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

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36-558. Establishment and maintenance of programs and services; definition

A. In addition to the Arizona training program facilities at Randolph and Tucson, the director shall establish and maintain a state owned and operated service center in Phoenix and other developmental disabilities programs and services at other locations throughout the state, subject to the availability of funds for such purpose and the approval of the legislature.

B. The director is responsible for the operation of each developmental disabilities program and service, shall coordinate these services and shall permit the transfer of residents between the various programs.

C. The department may provide, but not be limited to, the following programs and services in addition to other services prescribed by the director:

1. Child services, which may include:

- (a) Infant stimulation.
- (b) Developmental day training and related preschool programs.
- (c) Special education at department facilities.

2. Adult services, which may include:

- (a) Job training for specific jobs.
- (b) Training and personal adjustment tools such as the teaching of work skills.
- (c) Job development and placement.
- (d) The provision of sheltered employment opportunities.
- (e) Adult day activity services.

3. Residential services, which shall include:

- (a) Arizona training program facilities.
- (b) State owned and operated service centers.
- (c) Community residential settings under varying degrees of supervision or a semi-independent living arrangement.
- (d) Respite care.

4. Resource services, which may include:

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- (a) Diagnoses and evaluations.
 - (b) Therapy services, including physical therapy, speech therapy, occupational therapy and behavioral therapy.
 - (c) Health-related services, including dental services.
 - (d) Social development and adjustment services, including recreation programs.
 - (e) Transportation.
 - (f) Information and referral.
 - (g) In-home services.
5. Public information resources on developmental disabilities.
6. Training and practicum programs in conjunction with other state agencies and universities and colleges for teachers, psychologists, social workers, medical personnel and others interested in the field of developmental disabilities.
7. Research laboratories in the fields of behavioral services and abstract research.
8. Guardianship services.
- D. Services of a facility may not supplant existing community services that are provided through other local, city or state resources.
- E. The department shall stimulate, cooperate with and promote the development of community programs through existing resources and provide consultation wherever needed.
- F. A service provider who is providing guardianship services must comply with the disclosure requirements of section 14-5106 and shall not provide services to a person with developmental disabilities that would cause a conflict of interest or that would jeopardize the service provider's ability to represent the person with developmental disabilities as a guardian.
- G. For the purposes of this section, "guardianship services" means services offered to a person with developmental disabilities by a service provider who is under contract with the division to act as a guardian to a person with developmental disabilities if no other appropriate guardian is available.

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A. The following services shall be provided by the program contractors to members who are determined to need institutional services pursuant to this article:

1. Nursing facility services other than services in an institution for tuberculosis or mental disease.
2. Notwithstanding any other law, behavioral health services if these services are not duplicative of long-term care services provided as of January 30, 1993 under this subsection and are authorized by the program contractor through the long-term care case management system. If the administration is the program contractor, the administration may authorize these services.
3. Hospice services. For the purposes of this paragraph, "hospice" means a program of palliative and supportive care for terminally ill members and their families or caregivers.
4. Case management services as provided in section 36-2938.
5. Health and medical services as provided in section 36-2907.
6. Dental services in an annual amount of not more than one thousand dollars per member.

B. In addition to the services prescribed in subsection A of this section, the department, as a program contractor, shall provide the following services if appropriate to members who have a developmental disability as defined in section 36-551 and are determined to need institutional services pursuant to this article:

1. Intermediate care facility services for a member who has a developmental disability as defined in section 36-551. For purposes of this article, a facility shall meet all federally approved standards and may only include the Arizona training program facilities, a state owned and operated service center, state owned or operated community residential settings and private facilities that contract with the department.
2. Home and community based services that may be provided in a member's home, at an alternative residential setting as prescribed in section 36-591 or at other behavioral health alternative residential facilities licensed by the department of health services and approved by the director of the Arizona health care cost containment system administration and that may include:

(a) Home health, which means the provision of nursing services, home health aide services or medical supplies, equipment and appliances, that are provided on a part-time or intermittent basis by a licensed home health agency within a member's residence based on a physician's orders and in accordance with federal law. Physical therapy, occupational therapy, or speech and audiology services provided by a home health agency may be provided in accordance with federal law. Home health agencies shall comply with federal bonding requirements in a manner prescribed by the administration.

(b) Home health aide, which means a service that provides intermittent health maintenance, continued treatment or monitoring of a health condition and supportive care for activities of daily living provided within a member's residence.

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(c) Homemaker, which means a service that provides assistance in the performance of activities related to household maintenance within a member's residence.

(d) Personal care, which means a service that provides assistance to meet essential physical needs within a member's residence.

(e) Day care for persons with developmental disabilities, which means a service that provides planned care supervision and activities, personal care, activities of daily living skills training and habilitation services in a group setting during a portion of a continuous twenty-four-hour period.

(f) Habilitation, which means the provision of physical therapy, occupational therapy, speech or audiology services or training in independent living, special developmental skills, sensory-motor development, behavior intervention, and orientation and mobility in accordance with federal law.

(g) Respite care, which means a service that provides short-term care and supervision available on a twenty-four-hour basis.

(h) Transportation, which means a service that provides or assists in obtaining transportation for the member.

(i) Other services or licensed or certified settings approved by the director.

C. In addition to services prescribed in subsection A of this section, home and community based services may be provided in a member's home, in an adult foster care home as prescribed in section 36-401, in an assisted living home or assisted living center as defined in section 36-401 or in a level one or level two behavioral health alternative residential facility approved by the director by program contractors to all members who do not have a developmental disability as defined in section 36-551 and are determined to need institutional services pursuant to this article. Members residing in an assisted living center must be provided the choice of single occupancy. The director may also approve other licensed residential facilities as appropriate on a case-by-case basis for traumatic brain injured members. Home and community based services may include the following:

1. Home health, which means the provision of nursing services, home health aide services or medical supplies, equipment and appliances, that are provided on a part-time or intermittent basis by a licensed home health agency within a member's residence based on a physician's orders and in accordance with federal law. Physical therapy, occupational therapy, or speech and audiology services provided by a home health agency may be provided in accordance with federal law. Home health agencies shall comply with federal bonding requirements in a manner prescribed by the administration.

2. Home health aide, which means a service that provides intermittent health maintenance, continued treatment or monitoring of a health condition and supportive care for activities of daily living provided within a member's residence.

3. Homemaker, which means a service that provides assistance in the performance of activities related to household maintenance within a member's residence.

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4. Personal care, which means a service that provides assistance to meet essential physical needs within a member's residence.

5. Adult day health, which means a service that provides planned care supervision and activities, personal care, personal living skills training, meals and health monitoring in a group setting during a portion of a continuous twenty-four-hour period. Adult day health may also include preventive, therapeutic and restorative health related services that do not include behavioral health services.

6. Habilitation, which means the provision of physical therapy, occupational therapy, speech or audiology services or training in independent living, special developmental skills, sensory-motor development, behavior intervention, and orientation and mobility in accordance with federal law.

7. Respite care, which means a service that provides short-term care and supervision available on a twenty-four-hour basis.

8. Transportation, which means a service that provides or assists in obtaining transportation for the member.

9. Home delivered meals, which means a service that provides for a nutritious meal that contains at least one-third of the recommended dietary allowance for an individual and that is delivered to the member's residence.

10. Other services or licensed or certified settings approved by the director.

D. The amount of money expended by program contractors on home and community based services pursuant to subsection C of this section shall be limited by the director in accordance with the federal monies made available to this state for home and community based services pursuant to subsection C of this section. The director shall establish methods for the allocation of monies for home and community based services to program contractors and shall monitor expenditures on home and community based services by program contractors.

E. Notwithstanding subsections A, B, C and F of this section, no service may be provided that does not qualify for federal monies available under title XIX of the social security act or the section 1115 waiver.

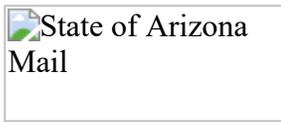
F. In addition to services provided pursuant to subsections A, B and C of this section, the director may implement a demonstration project to provide home and community based services to special populations, including persons with disabilities who are eighteen years of age or younger, are medically fragile, reside at home and would be eligible for supplemental security income for the aged, blind or disabled or the state supplemental payment program, except for the amount of their parent's income or resources. In implementing this project, the director may provide for parental contributions for the care of their child.

G. Subject to section 36-562, the administration by rule shall prescribe a deductible schedule for programs provided to members who are eligible pursuant to subsection B of this section, except that the administration shall implement a deductible based on family income. In determining deductible amounts and whether a family is required to have deductibles, the department shall use adjusted gross income. Families whose adjusted gross income is at least four hundred percent and less than or equal to

APPENDIX B- General and Specific Authority

9 A.A.C. 10 Article 18. Adult Behavioral Health Therapeutic Homes

five hundred percent of the federal poverty guidelines shall have a deductible of two percent of adjusted gross income. Families whose adjusted gross income is more than five hundred percent of adjusted gross income shall have a deductible of four percent of adjusted gross income. Only families whose children are under eighteen years of age and who are members who are eligible pursuant to subsection B of this section may be required to have a deductible for services. For the purposes of this subsection, "deductible" means an amount a family, whose children are under eighteen years of age and who are members who are eligible pursuant to subsection B of this section, pays for services, other than departmental case management and acute care services, before the department will pay for services other than departmental case management and acute care services.



Ruthann Smejkal <ruthann.smejkal@azdhs.gov>

R9-10-1802 requested changes

1 message

Fries, Nicole <Nicole.Fries@azahcccs.gov>

Mon, Feb 11, 2019 at 10:38 AM

To: Robert Lane <robert.lane@azdhs.gov>

Cc: Ruthann Smejkal <ruthann.smejkal@azdhs.gov>, "Loiselle, CJ" <CJ.Loiselle@azahcccs.gov>, "McCanna, Kathryn" <kathryn.mccanna@azdhs.gov>

Hi Rob and Ruthann,

I understand that this rule was not included in the changes you have previously sent out in the Perpetual Licensing Draft Rules, however one of my subject matter experts just brought to my attention that a level of care that is currently not being met, could be solved by a small addition to this rule.

Under R9-10-702, subsection 3 states:

“Whether the applicant is requesting authorization to provide:

- a. Residential services to individuals 18 years of age or older whose behavioral health issue limits the individuals’ ability to function independently, or
- b. b. Personal care services;”

We have this ability to reimburse for this service but under your current licensing rules it cannot be requested. We ask that you add it to R9-10-1802 so it can be requested in the Supplemental Application for Behavioral Health Therapeutic Homes as well.

Please let me know if you have any questions.

Thank you,

Nicole Fries

Associate General Counsel

Office of Administrative Legal Services

Arizona Health Care Cost Containment System

[701 E. Jefferson Street](#)

[Phoenix, AZ 85034](#)

Tel: (602) 417-4795

Fax: (602) 253-9115

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GAME AND FISH COMMISSION (F19-0606)
Title 12, Chapter 4, Article 4, Live Wildlife



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 4, 2019

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

FROM: Council Staff

DATE: May 7, 2019

SUBJECT: GAME AND FISH COMMISSION (F19-0606)
Title 12, Chapter 4, Article 4, Live Wildlife

This Five Year Review Report (5YRR) from the Game and Fish Commission (Agency) relates to 26 rules in Title 12, Chapter 4, Article 4 regarding live wildlife. The rules cover a range of issues including, but not limited to: definitions, possession of wildlife, license requirements, and captivity standards.

The Council approved the previous 5YRR for these rules in December 2013. Based on the previous 5YRR, the Agency completed a rulemaking that substantially amended the rules in Article 4 in November 2015. The Notice of Final Rulemaking is located at 21 A.A.R. 2813, November 20, 2015.

Proposed Action

For the reasons specified in the report, the Agency proposes to amend the following rules:

- **R12-4-401 (Live Wildlife Definitions);**
- **R12-4-403 (Escaped or Released Live Wildlife);**
- **R12-4-405 (Importing, Purchasing, and Transporting Live Wildlife without an Arizona License or Permit);**
- **R12-4-406 (Restricted Live Wildlife);**

- R12-4-407 (Exemptions from Special License Requirements for Restricted Live Wildlife);
- R12-4-409 (General Provisions and Penalties for Special Licenses);
- R12-4-410 (Aquatic Wildlife Stocking License);
- R12-4-411 (Live Bait Dealers' License);
- R12-4-412 (Special License Fees);
- R12-4-413 (Private Game Farm License);
- R12-4-414 (Game Bird License);
- R12-4-417 (Wildlife Holding License);
- R12-4-418 (Scientific Collecting License);
- R12-4-420 (Zoo License);
- R12-4-421 (Wildlife Service License);
- R12-4-422 (Sport Falconry License);
- R12-4-423 (Wildlife Rehabilitation License);
- R12-4-424 (White Amur Stocking and Holding License);
- R12-4-428 (Captivity Standards); and
- R12-4-430 (Importation, Handling, and Possession of Cervids).

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

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

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Agency states that the economic impact of most of the rules in Article 4 do not differ significantly from what was indicated in the economic impact statements from 2015 and 2017.

The Agency notes that the economic impact of R12-4-412 (Special License Fees) was originally anticipated to be minimal. However, the Game and Fish Department (Department) determined that the administrative burden of processing these special licenses is significantly higher than the revenue that the fees generate. A 2011 audit determined that the special licenses generated approximately \$110,000 in revenue and cost the Department approximately \$230,000 in resources in one year.

The stakeholders include the Agency, the Department, businesses that work with wildlife, and the public.

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

The Agency indicates that the rules require numerous amendments. Once the amendments are completed, the rules will impose the least burden and costs to regulated populations.

4. **Has the agency received any written criticisms of the rules over the last five years?**

Yes. The Agency indicates that it has received numerous written comments/criticisms of the rules over the last five years. The Agency has adequately responded to those comments/criticisms.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. The Agency indicates that the rules are clear, concise, understandable, effective, and consistent with other rules and statutes. The Agency notes those rules whose clarity, understandability, or effectiveness could be improved.

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

The Agency indicates that the rules are enforced as written.

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

No. Where the Agency indicates there is a corresponding federal law for certain rules, the Agency states that those rules are not more stringent than the corresponding federal law.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

For those rules in Article 4 that require a permit, the Agency certifies that it is in compliance with A.R.S. § 41-1037. The following rules require a permit:

- R12-4-410 (Aquatic Wildlife Stocking License);
- R12-4-411 (Live Bait Dealer's License);
- R12-4-413 (Private Game Farm License);
- R12-4-414 (Game Bird License);
- R12-4-417 (Wildlife Holding License);
- R12-4-418 (Scientific Collecting License);
- R12-4-420 (Zoo License);
- R12-4-421 (Wildlife Service License);
- R12-4-422 (Sport Falconry License);
- R12-4-423 (Wildlife Rehabilitation License); and
- R12-4-424 (White Amur Stocking and Holding License).

9. Conclusion

Council staff finds that the rules are clear, concise, understandable, and effective. Council staff finds that once the Agency amends the rules identified above and in the report, the clarity and effectiveness of the rules will be improved. Council staff recommends approval of this report.



March 15, 2019

Nicole Sornsin, Madam Chair
The Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, AZ 85007

SUBJECT: Five-year-Review Report: 12 A.A.C. 4, Article 4. Live Wildlife

Dear Ms Sornsin:

On March 15, 2019, the Arizona Game and Fish Commission adopted the enclosed five-year-review report for submission to the Council; 12 A.A.C. 4, Article 4, Live Wildlife. The report is prepared in accordance with A.R.S. § 41-1056 and the rules and guidelines of the Council. The established due date for the report is April 2019.

The Commission believes the report complies with the Council's requirements as stated under R1-6-301.

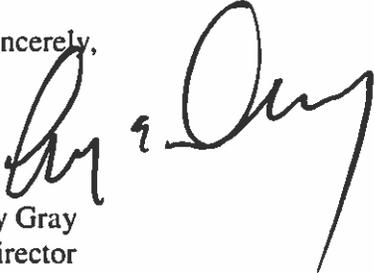
The Arizona Game and Fish Commission also certifies compliance with the requirements of A.R.S. § 41-1091. The Commission certifies the following:

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,


Ty Gray
Director

**ARIZONA GAME AND FISH
COMMISSION
2019 FIVE-YEAR REVIEW REPORT**

**TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION
ARTICLE 4. LIVE WILDLIFE**



Prepared for the
Governor's Regulatory Review Council

ARIZONA GAME AND FISH COMMISSION

12 A.A.C. 4, ARTICLE 4. LIVE WILDLIFE

2018 FIVE-YEAR REVIEW REPORT

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REPORT - ARTICLE 4. LIVE WILDLIFE

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 4, Live Wildlife, are scheduled to be reviewed by April 2019.

The Arizona Game and Fish Department tasked a team of employees to review the rules contained within Article 4. 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 May 2019 and submitting the Notice of Final Rulemaking for actions proposed in this report to the Council by May 2021, provided the Commission is granted permission to pursue rulemaking or the current moratorium is not extended.

With this report, the Department also certifies its compliance with the requirements of A.R.S. § 41-1091:

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;
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, AZ 85086.

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R12-4-401. Live Wildlife Definitions

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-238, and 17-306

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish definitions that assist the regulated community and members of the public in understanding the unique terms that are used throughout Article 4. The rule was adopted to facilitate consistent interpretation of, and 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. The Department believes this data indicates the rule is effective.

- 4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

The rule incorporates by reference the October 10, 2013 edition of 50 17.11 (endangered and threatened wildlife) and the October 10, 2014 edition of 50 C.F.R. 10.13 (list of migratory birds). The Department proposes to amend the rule to reference the most recent edition of the federal regulation incorporated by reference.

- 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

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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 4 assist the public, Department personnel, and members of law enforcement in understanding the contents and meaning of Article 4 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.

The Department is aware confusion exists in regards to the definition of "game farm." The current definition references terrestrial wildlife and parts of terrestrial wildlife. The game farm license stipulates the species and parts of wildlife that may be commercially farmed and sold by a game farm license holder. The Department intends to amend the rule to remove references to "terrestrial wildlife or the parts of terrestrial wildlife" from the definition of "game farm" to reflect changes made to R12-4-413 (game farm license) to make the rule more concise.

The Department is aware confusion exists as to who has the authority to complete a health certificate. The current definition of "health certificate" means a certificate of inspection by a licensed veterinarian. The Department intends to amend the rule to clarify that a health certificate may also be completed by a federal or state certified inspector to make the rule more concise.

Hybrid wildlife is defined under R12-4-401 and R12-4-422. The Department also proposes to amend the rule to exclude from the definition of "hybrid" all hybrid birds as defined under the Migratory Bird Treaty Act (MBTA) under 50 C.F.R. 21.3 (definitions), revised October 1, 2017 to make the rule more concise.

The Department proposes to amend the rule to remove the Department website Uniform Resource Location (url) and simply reference "Department's website" to ensure the rule remains concise in the event the Department's url should change.

7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.

The Department received the following written criticisms of the rule:

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Written Comment: July 23, 2013. The state of Arizona's current regulations regarding restricted live wildlife are significant, but in light of substantial evidence of the clear and considerable risks associated with the private possession of these animals, the state should further strengthen its regulations by adding additional species to the definition of restricted live wildlife and limiting the use of these animals. Wild animals that have the capacity to cause death, inflict serious injury and spread deadly diseases (such as big cats, bears, wolves, hyenas, non-human primates, and all species of procyonidae) should be designated as Dangerous Wild Animals and subjected to additional restrictions in Arizona's regulations regarding restricted live wildlife as set forth below.

Agency Response: The Department disagrees. The intent of the recommended defined term is to restrict public contact with and the breeding of "dangerous wild animals." Such restrictions are already in place within Article 4 and are implemented without the need for this definition.

Written Comment: July 23, 2013. Only institutions accredited by or affiliated with the Association of Zoos and Aquariums (AZA) should be able to breed dangerous wild animals. The AZA is the only domestic organization that manages endangered species through Species Survival Plan (SPP) programs, which are based on the best available science to maintain genetic integrity of captive colonies as a hedge against extinction. Unlike the AZA's SPP, commercial breeding of dangerous wild animals to produce babies to attract visitors, to use for public contact activities, or to sell in the exotic animal trade is done without regard to lineage and genetic diversity or planning for the lifetime care of long-lived animals. Irresponsible breeding practices often result in inbreeding that produces animals that suffer from serious congenital defects, as well as cross-breeding of animals to produce curiosities such as "ligers." Insert a new definition for "zoo:" "Zoo" means an institution accredited by the Association of Zoos and Aquariums (AZA), certified related facilities that coordinate with AZA Species Survival Plan (SSP) Programs for breeding of species listed as threatened or endangered pursuant to 16 U.S.C. § 1533, or facilities that are actively seeking accreditation or certification by the AZA.

Agency Response: The suggested definition fails to include licensing or recognition by the Arizona Game and Fish Department. Establishing a new definition of "zoo" under A.R.S. § 17-101 requires an act by the Arizona Legislature. The possession, propagation, and sale of wildlife defined as "restricted live wildlife" under R12-4-406 (restricted live wildlife) is strictly regulated under both state and federal law. "Dangerous" wildlife are restricted under R12-4-406. R12-4-406 further regulates the possession, propagation, and sale of hybrid wildlife resulting from the interbreeding of at least one parent species listed as restricted; this would include "ligers."

Written Comment: May 15, 2018. Under R12-4-420(B), there are four criteria to satisfy in order to meet the overall requirements for a zoo license. However, under subsection (J), there is a requirement that the facility state the days of the week and the hours when the facility is open for viewing for the general public. Many facilities that specialize in breeding for science, wildlife management, or conservation may not be open to the public as their

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focus may not be on public education or entertainment. This would still meet the criteria as defined under R12-4-401 (live wildlife definitions). However, there is a discrepancy in definitions as stated in the opening statement in R12-4-401. Under R12-4-401, "zoo" means any facility licensed by the Arizona Game and Fish Department under R12-4-420 or, for facilities located outside of Arizona, licensed or recognized by the applicable governing agency. Under A.R.S. § 17-101, "zoo" means a commercial facility open to the public where the principal business is holding wildlife in captivity for exhibition purposes. A.R.S. § 17-101 conflicts with R12-4-420(A) and subsection (B)(1), (2), and (4). A.R.S. § 17-101 uses an archaic definition of zoo from a time of traveling menageries. By using this archaic definition, it puts facilities that focus on research, wildlife management, and wildlife conservation at a disadvantage and burdens these facilities with a requirement to be open to the public. We request clarification of subsection (B)(1), "Advancement of science or commercial purpose (as defined under R12-4-401) for the maintenance of captive live wildlife (as defined under R12-4-401) management." We request removal of subsection (J)(8) or replace with "Animals will be held on a zoo license for science or commercial purpose (as defined under R12-4-401) for the maintenance of captive wildlife (as defined under R12-4-401), management, promotion of public health or welfare, public education, or wildlife conservation." We request a modernization of the A.R.S. § 17-101 definition that will bring R12-4-420 and A.R.S. § 17-101 in line with each other.

Agency Response: Any modernization of the definition of "zoo: under A.R.S. § 17-101 requires an act by the Arizona Legislature. The current definition requires zoo licenses to be issued only to commercial facilities open to the public where the principal business is wildlife exhibition.

- 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 October 6, 2015. The rule was amended to clarify, adopt, and repeal definitions for terms within Article 4 rules. Because the Commission determined definitions alone have no impact on the Department or regulated community, the Commission anticipated the amendments would have little or no impact on the Department or persons regulated by the rule.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

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

The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

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 definitions that assist the regulated community and members of the public in understanding the unique terms that are used throughout Article 4. The public benefits from a rule that defines terms referenced throughout Commission rules as they help to clarify the Commission's intent and foster consistent interpretation of Commission rules. The public and Department benefit from a rule that is understandable. 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.

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The Department proposes to amend R12-4-401 as follows:

- Transfer the definition of "cervid" to R12-4-101 as the term "cervid" is also used in Articles 1 and 3.
- Exclude from the definition of "hybrid" all hybrid birds as defined under the Migratory Bird Treaty Act (MBTA) under 50 C.F.R. 21.3 (definitions), revised October 1, 2017 to make the rule more concise.
- Incorporate by reference the most recent editions of 50 C.F.R. 17.11 (endangered and threatened wildlife) and 50 C.F.R. 10.13 (list of migratory birds).
- Remove references to "terrestrial wildlife or the parts of terrestrial wildlife" from the definition of "game farm" to reflect changes made to R12-4-413 (game farm license) to make the rule more concise.
- Clarify the health certificate may also be completed by a federal or state certified inspector to make the rule more concise.
- Repeal the definition of "person" as the term is already defined under R12-4-101.
- Replace references to the Department website url with "Department's website" to ensure the rule remains concise in the event the Department's url should change.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by May 2021.

R12-4-402. Live Wildlife; Unlawful Acts

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(3), 17-231(B)(8), 17-238(A), 17-240, 17-250(A), 17-250(B), and 17-306

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish unlawful activities for persons taking and possessing live wildlife and the Department's authority to take possession of wildlife for a violation of the rule. The rule was adopted to protect native wildlife in many ways: preventing the spread of disease, reducing the risk of released animals competing with native wildlife, and preventing interactions between humans and wildlife that may threaten public health or safety.

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

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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, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and 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 written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.

The Department received the following written criticism of the rule:

Written Comment: February 27, 2017. The data show a clear and remarkable linkage between the presence of wolves and the health of an entire streamside ecosystem, including two species of cottonwoods and the myriad of roles they play in erosion control, stream health, and nurturing diverse plant and animal life. The findings of these studies were recently published in *Ecological Applications*, a journal of the Ecological Society of America, and the journal *Forest Ecology and Management*.

Agency Response: This comment was received after the public comment period had ended and was submitted in response to the Notice of Proposed Rulemaking amending R12-4-402. Live Wildlife; Unlawful Acts, see 22

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A.A.C. 2558, September 16, 2016. This rule was amended on March 3, 2017 to clarify that a federal permit alone is insufficient when a federal agency or its employees perform activities with live wildlife that require a state permit. Many commenters believed the rule was amended to prevent the reintroduction of Mexican gray wolves into Arizona. The Department has issued USFWS multiple permits to release Mexican wolves into Arizona, and as recently as this year, the Department's permit authorized the Service to release or reintroduce Mexican wolves consistent with the jointly prepared and approved annual release plan.

- 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 February 7, 2017. The rule was amended to clarify that federal agencies or employees are not exempt from obtaining a state permit or license when conducting any activity listed under R12-4-402(A). Through this rulemaking, the Commission codified what had been a common practice with government agencies. The Commission anticipated the rulemaking would have no measurable impact on Department operations or government partners, as the Department's administrative process for special licenses and permits has been in place for over thirty years.

- 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 completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

In addition, R12-4-402 was recently amended as follows:

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

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- Notice of Proposed Rulemaking: 22 A.A.R. 2558, September 16, 2016.
- Public Comment Period: September 16, 2016 through October 16, 2016.
- G.R.R.C. approved the Notice of Final Rulemaking at the February 7, 2017 Council Meeting.
- Notice of Final Rulemaking: 23 A.A.R. 492, March 3, 2017.

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 unlawful activities for persons taking and possessing live wildlife and the Department's authority to take possession of wildlife for a violation of the rule. The rule was adopted to protect native wildlife in many ways: preventing the spread of disease, reducing the risk of released animals competing with native wildlife, and preventing interactions between humans and wildlife that may threaten public health or safety. The public benefits from a rule that is clear and concise, along with continued protection from improper handling and use of wildlife. The Department benefits from a rule that allows continued regulatory oversight of activities pertaining to wildlife. The public and Department benefit from a rule that is understandable. The Department has determined 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

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R12-4-403. Escaped or Released Live Wildlife

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(B)(8), 17-238(A), 17-240(A), 17-250(A), 17-250(B), 17-306, and 17-314

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish the Department's authority to take possession of any escaped or released wildlife that poses an actual or potential threat to native wildlife, wildlife habitat, or to the safety, health, and welfare of the public. The rule was adopted to enable the Department to more closely monitor the use of wildlife in Arizona and to ensure proper management and conservation of the State's resources, particularly in relation to potentially competitive or threatening species or wildlife disease.

- 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, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

- 4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and 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.

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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.

In 2015, the rule was amended to establish the person who releases or allows wildlife to escape is responsible for all costs incurred by the Department associated with seizing or quarantining wildlife. The current rule uses the term "possessing," which has resulted in some confusion. The Department proposes to amend the rule to clarify the person who releases or allows the wildlife to escape is responsible for all costs incurred by the Department associated with seizing or quarantining wildlife to make the rule more understandable.

7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.

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 October 6, 2015. The rule was amended to clarify and establish owner responsibilities and to allow the Department to seize, quarantine, or euthanize any wildlife that has escaped or is likely to escape and poses a threat to public health, safety, or welfare, wildlife populations or wildlife habitat until it is properly contained or rehomed; remove the reference to A.R.S. § 17-306; and provide additional options necessary for the evaluation of any situation where native wildlife protection and the safety, health and welfare of the public are concerned. The Commission anticipated the proposed rule would impact special license holders and owners by requiring the license holder or owner to bear the expense for the animal's care, however, the Commission believes it is a reasonable economic burden.

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.

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

The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The rule establishes the Department's authority to take possession of any escaped or released wildlife that poses an actual or potential threat to native wildlife, wildlife habitat, or to the safety, health, and welfare of the public. The public benefits from a rule that protects the public safety, health, and welfare. The Department benefits from a rule that helps ensure the proper management and conservation of the State's resources, particularly in relation to potentially competitive or threatening species or wildlife disease. The public and Department benefit from a rule that is understandable. The Department has determined 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.

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The Department proposes to amend R12-4-403 to clarify the person who releases or allows the wildlife to escape is responsible for all costs incurred by the Department associated with seizing or quarantining wildlife to make the rule more understandable.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by May 2021.

R12-4-404. Possession of Live Wildlife Taken Under an Arizona Hunting or Fishing License

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-238(A), 17-332, 17-234, 17-306, and 17-331

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish lawful activities for persons taking and possessing live wildlife under a valid hunting or fishing license and to regulate the take and disposition of live wildlife when live bag and possession limits are specified in a Commission Order. The rule was adopted to provide a mechanism that allows a person to lawfully possess and dispose of live wildlife taken from the wild.

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, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

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- 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 written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

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 October 6, 2015. The rule was amended to provide additional clarity and ensure consistency between rules within Article 4 by replacing the term "personal use" with "noncommercial purpose;" allowing the use of reptiles or amphibians for aversion or avoidance training; and specifying a special license is not required to sell photographs of wildlife taken under a valid hunting or fishing license. In addition, the rule was amended to prohibit the release of propagated wildlife into the wild to help prevent the transmission of wildlife diseases. The Commission anticipated the proposed amendments would impact persons who possess wildlife taken under an Arizona hunting or fishing license by prohibiting propagation of restricted wildlife; persons may also incur the cost of a veterinary office visit and costs to spay or neuter an animal.

- 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.

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

The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

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 lawful activities a person taking and possessing live wildlife under a valid hunting or fishing license may conduct with that wildlife. The public benefits from a rule that provides a lawful mechanism that allows a person to possess and dispose of live wildlife taken from the wild. The Commission recognizes the role that wildlife play in fostering interest and future participation in outdoor activities; the Department benefits from a rule that enables a person to lawfully possess live wildlife taken under a valid hunting or fishing license. The public and Department benefit from a rule that is understandable. The Department has determined 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.

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No action

R12-4-405. Importing, Purchasing, and Transporting Live Wildlife Without an Arizona License or Permit

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-238(A), and 17-306

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish lawful activities and limitations for a person importing, purchasing, or transporting wildlife or the offspring of wildlife taken without a Department-issued license or permit to prevent harm to native wildlife of this state or to endanger public safety. The rule was adopted to allow individuals to import wildlife not listed as restricted live wildlife and at the same time provide protection for public, wildlife, and livestock health.

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, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

Subsection (E) of the rule references wildlife taken under an Arizona hunting or fishing license. This information was added in an effort to make the rule more concise, but has resulted in some confusion because the rule establishes lawful activities and limitations for wildlife possessed without a Department-issued license or permit.

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The Department proposes to repeal subsection (E) to make the rule more concise.

- 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 written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

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 October 6, 2015. The rule was amended to comply with Department of Agriculture rules governing importation of animals and to remove language pertaining to cervids. The Commission anticipated that the rule would have an effect on business importing wildlife for use as pets. The rule has had the anticipated impact.

- 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.**

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The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

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 lawful activities and limitations for a person importing, purchasing, or transporting wildlife or the offspring of wildlife taken without a Department-issued license or permit to prevent harm to native wildlife of this state or to endanger public safety. The public and Department benefit from a rule that is understandable. The Department has determined 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 R12-4-405 to repeal subsection (E) to make the rule more concise.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by May 2021.

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R12-4-406. Restricted Live Wildlife

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-231(A)(2), 17-231(B)(8), 17-238(A), 17-255, 17-255.02, and 17-306

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish a list of live wildlife for which a special license is required in order to possess the wildlife and/or to engage in activities that may be prohibited under A.R.S. § 17-306 and R12-4-402 (live wildlife; unlawful acts). The rule was adopted to identify those live wildlife species that would pose a threat to Arizona's natural resources, public health as well as the health and safety if left unregulated.

When adding or removing a species from the restricted wildlife list, the Department bases its decision on the following factors:

- Protection of public health and safety;
- Biological impact on species and ecosystems;
- Consistency with federal, state, and county regulatory agencies; and
- Potential economic impact.

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, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

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The rule incorporates by reference the October 1, 2014 edition of 50 C.F.R. 10.13 (list of migratory birds). The Department proposes to amend the rule to incorporate the most recent edition of the federal regulation incorporated by reference.

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

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

6. Clarity, conciseness, and understandability of the rule.

Overall, the rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

The Department is aware of some confusion as to whether the offspring of one restricted wildlife species and one nonrestricted species is listed as restricted under R12-4-406. The Department proposes to amend the rule to specify hybrid wildlife is considered restricted when one parent wildlife species is listed as restricted.

Effective February 6, 2018, Article 11 (aquatic invasive species) was renumbered to Article 9. Subsection (A) references R12-4-1102 (aquatic invasive species; prohibitions; inspections; decontamination protocols); the Department proposes to amend the rule to replace the citation to R12-4-1102 with R12-4-902 to make the rule more concise.

The Department is aware of some confusion in regards to the hedgehogs. In December 2013, the rule was amended to remove the African pygmy hedgehogs, and hybrids of same, from the list of restricted live wildlife. The African hedgehog, *Atelerix* genus, is native to Africa. Adults range between 7 and 9 inches in length and weigh between 12 to 35 ounces. Hedgehog species that are not restricted include *Atelerix albiventris*, *A. algirus*, *Hemiechinus auritus*, *H. collaris*, and any hybrids of these species. The European hedgehog, *Erinaceus europaeus* genus, is native to the British Isles and other European countries. It is the largest of all hedgehogs with adults ranging between 9 to 14 inches in length and weigh between 28 and 42 ounces. It is characteristically brown in color with a furry underside and head. The European hedgehog, *Erinaceus europaeus*, and other wild hedgehogs are still considered restricted. The Department proposes to amend the rule to clarify which hedgehogs are not restricted; and indicate those species that pose a risk to native wildlife and habitat are restricted.

The Department is aware of some confusion as to transgenic species that are created using scientific methods such as genetic engineering. The confusion results from the statement, "a transgenic animal is considered wildlife if the

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animal is the offspring of at least one wildlife species." This statement does not account for genetically engineered animals. The Department proposes to amend the rule to specify a transgenic animal is considered wildlife if the animal's genetic material predominantly originated from wildlife species to proactively address the possession of genetically engineered wildlife.

The Department is aware there are discrepancies between when the italicization of scientific names. The Department proposes to amend the rule to italicize all mentions of Genus and below, with no italics above Genus to be consistent with scientific naming standards.

The Department is no longer conducting Northern Bobwhite quail reintroduction efforts in game management unit 34A and, as a result, there is no need to restrict Northern Bobwhite quail reintroduction efforts in game management unit 34A. The Department proposes to amend the rule to remove Northern Bobwhite quail from the list of restricted species.

The Department is aware confusion exists because turkeys are on the list of restricted species, when many species are available for purchase at local pet and feed stores. The Department proposes to amend the rule to specify the species of turkey that are restricted.

The Department also proposes to amend the rule to place the listed wildlife in alphabetical order and provide additional common names for certain species to make the rule more concise. The Department recognizes it is not always possible to provide an all-inclusive list of every of the order, family, or genus. The Department proposes to amend the rule to clarify the common names are provided as examples only and are not all-inclusive of the order, family, or genus.

7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.

The Department received the following written criticism of the rule:

Written Comment: April 11, 2014. It is my understanding that hedgehogs are prohibited and permits to own them are virtually impossible to obtain. I would like to request a legal process circumventing the current stipulations for licensure: restricted wildlife possession for the purpose(s) of the advancement of science, wildlife management, promotion of public health or welfare, or education. As a responsible pet owner, I would be willing to submit to inspections, etc., to ensure that I can adequately provide for the needs of a hedgehog. On that note, I would like to inquire about how many signatures are needed to legalize hedgehogs for responsible pet owners in

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Arizona. I want to bring to your attention that there is an ongoing petition to do so with 2,477 signatures as of April 11th at 2:00 pm at the url below. <http://www.petitiononline.com/3311786M/petition.html>

Agency Response: For many years it was illegal to possess a hedgehog in Arizona without first obtaining a special license; the Department does not issue a special license that allows a person to possess restricted wildlife as a pet. However, in December 2015, the Commission amended its rules to remove African pygmy hedgehogs, and hybrids of same, from the list of restricted live wildlife. In Arizona, it is lawful to possess a hedgehog. This recommendation was made in the Five-year Review Report approved by the Governor's Regulatory Review Council (G.R.R.C.) on December 3, 2013; and implemented through final rulemaking approved by G.R.R.C. on October 6, 2015. It is important to note, European hedgehogs, and hybrids of the same, are still considered restricted live wildlife in Arizona.

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 October 6, 2015. The rule was amended to incorporate the online taxonomic authority Integrated Taxonomic Information System (ITIS); remove hedgehogs from the restricted live wildlife list to allow their use as pets; expand "restricted primates" to include all non-human primates in an effort to protect public health and safety; improve consistency between federal and state rules by listing all Migratory Bird Treaty Act (MBTA) birds as restricted live wildlife; include the Red shiner, certain species of tilapia, paddlefish, sturgeon, Chinese mystery snail, and false dark mussel as restricted live wildlife; and include all wildlife listed under the Aquatic Invasive Species Director's Order #1 as restricted live wildlife. The Commission anticipated the proposed amendments would impact persons and businesses that sell the live wildlife that the Commission proposes to add to the list of restricted live wildlife as they will no longer be able to sell Red Shiner, five tilapia species (*Oreochromis aureus*, *O. mossambica*; *O. niloticus*, *O. urolepis hornoru*, and *T. zilli*), sturgeon, paddlefish, Chinese mystery snail, apple snail, false dark mussels, non-human primates to persons in Arizona without a lawful exemption or a special license. The Commission anticipated persons possessing wildlife under this rule might incur minor costs associated with the requirement that a person permanently mark the animal with a tattoo, microchip, or other means. Costs are minimal, the required services may be obtained from a licensed veterinarian. The Commission anticipated the proposed amendment that removed hedgehogs from the list of restricted live wildlife would benefit businesses that sell them and members of the public who would like to possess them for pets.

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- 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 completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

- 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 list of live wildlife for which a special license is required in order to possess the wildlife and/or to engage in activities that may be prohibited under A.R.S. § 17-306 and R12-4-402 (live wildlife; unlawful acts). The public and the Department benefit from a rule that protects human health and safety and Arizona's wildlife species and habitats. The Department benefits from a rule that maintains oversight of those species that pose a threat to Arizona's natural resources as well as the health and safety of the public. 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.

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- 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 R12-4-406 as follows:

- Clarify hybrid wildlife that is the progeny of a restricted wildlife species and a nonrestricted wildlife species is considered restricted wildlife.
- Italicize all mentions of Genus and below with no italics above Genus to be consistent with scientific naming standards.
- Specify a transgenic animal is considered wildlife if the animal's genetic material predominantly originated from wildlife species to proactively address the possession of genetically engineered wildlife.
- Clarify the breeds of hedgehogs that are not restricted to make the rule more concise.
- Remove Northern Bobwhite quail from the list of restricted species.
- Clarify which species of turkey are restricted.
- Incorporate by reference the most recent edition of 50 C.F.R 10.13.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by May 2021.

R12-4-407. Exemptions from Special License Requirements for Restricted Live Wildlife

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-234, 17-238(A), 17-306, and 17-371(D)

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish the types of scenarios when a person may lawfully possess restricted live wildlife without a special license. The rule was adopted to provide specific exemptions from special license requirements, typically situations which are temporary in nature.

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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, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

Under A.R.S. 17-306(A) and R12-4-402 (live wildlife; unlawful acts), a person is prohibited from releasing wildlife into the wild without written authorization from the Department. During the past several decades, a deadly bacterial infection is appearing more and more frequently among wild tortoises, likely due to the release of infected tortoises in the wild. This bacterial infection, Upper Respiratory Tract Disease, attacks the tortoise's respiratory system and can be transmitted through sharing of burrows, or through the human handling of tortoises. Because this can occur when a person handles a sick tortoise and then unwittingly transmits the disease to a healthy animal, the Department proposes to amend the rule to specify a desert tortoise cannot be released into the wild to increase consistency between Commission laws and rules.

The rule incorporates by reference the January 1, 2012 edition of 9 C.F.R. 2.30 (registration), which involves the registration of facilities with the U.S. Department of Agriculture. The Department proposes to amend the rule to incorporate the most recent edition of the federal regulation incorporated by reference.

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.

The Department may allow a person to export a desert tortoise to an education or research facility or a zoo when authorized in writing by the Department. To shape a more efficient process, the Department proposes to amend the rule to specify who a person may contact in order to obtain that written authorization.

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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.

In 1990, the desert tortoise was listed as threatened by the U.S. Fish and Wildlife Service (USFWS) and Arizona law has prohibited the removal of desert tortoises from the wild since 1988. Lawfully obtained desert tortoises may be privately adopted, but desert tortoise adoption in Arizona is subject to specific rules. The Department is aware that confusion exists in regards to under what circumstances a person may lawfully possess or export a desert tortoise out-of-state. The Department proposes to amend the rule to clarify when a person may lawfully possess and export a desert tortoise out-of-state. The proposed rule will prohibit a person from taking a live desert tortoise out-of-state unless authorized by the Department. In the alternative, the person may gift the tortoise to an Arizona resident or donate the tortoise to the Department's Tortoise Adoption Program. Exporting the tortoise to an out-of-state an education or research institution or zoo will also require Department authorization. The Department's Desert Tortoise Application clearly states that custodians of adopted tortoises may not remove them from Arizona and must return the tortoise to an approved Arizona adoption facility if they plan to relocate to another state. These amendments are proposed due to the amount of time and resources required of the Department and USFWS when a desert tortoise is found outside of its natural range. USFWS considers all desert tortoises found outside of the combined range of Sonoran and Mojave desert tortoises to be the federally-protected Mojave desert tortoise by similarity of appearance. USFWS and the state wildlife agency collaborate to try to determine the origin of the tortoise (Arizona, California, Nevada, or Utah). If it is determined the person possesses a Mojave desert tortoise, the person is cited for possessing a federally-listed species; USFWS and the state wildlife agency then return the tortoise back to the state from which it was exported. Because there is such a high probability the tortoise will be returned to Arizona, tortoises should not be removed from Arizona in the first place. For these reasons, the Department proposes to amend the rule to clarify a person may only export a desert tortoise to an education or research institution or zoo located in another state; and require a person who possesses a desert tortoise and is moving out-of-state to gift the desert tortoise to another person who resides in Arizona or donate it to the Department's Tortoise Adoption Program.

Under Commission Order 43 (reptiles), a person may lawfully possess one desert tortoise per person and the progeny of any lawfully held desert tortoise may be held in captivity for twenty-four months from date of hatching. Before or upon reaching twenty-four months of age, such progeny must be disposed of by gift to another person or as directed by the Department. The Department is aware of confusion regarding the number of desert tortoises a person may possess; some persons believe that they can lawfully possess as many as they like. The Department proposes to amend the rule to reference the Commission Order in which the possession limit for desert tortoise is established to make the rule more concise.

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Under subsection (B)(10), a person may export, give away, import, kill, possess, propagate, purchase, trade, and transport restricted live wildlife without a special license for a medical or scientific research facility registered with the U.S. Department of Agriculture under 9 C.F.R. 2.30 (registration). Because transgenic animals are considered restricted live wildlife, under subsection (B)(10), the second subsection is redundant. The Department proposes repeal subsection (B)(13) to make the rule more concise.

7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.

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 October 6, 2015. The rule was amended to require persons who import wildlife into the state to possess a valid health certificate, as already required by the Arizona Department of Agriculture; prohibit persons from propagating lawfully possessed desert tortoises; clarify the live game fish exemption applies only to restricted live game fish; establish guidelines for the disposal of animals that die while in transport through Arizona; and clarify that medical and scientific research facilities, regardless of whether they are licensed by the U.S. Department of Agriculture, are exempt from special licensing requirements when working with transgenic animals. The Commission anticipated that the proposed amendments would impact persons and businesses that provide veterinary care or certified waste disposal facilities. The Commission anticipated a person possessing wildlife under this rule may incur minor costs associated with the requirement that a person permanently mark the animal with a tattoo, microchip, or other means. Costs to mark the animal with a tattoo or microchip and costs to spay or neuter the animal were expected to be insignificant.

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.

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

The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

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 scenarios when a person may lawfully possess restricted live wildlife without a special license. The rule was adopted to provide exemptions from special license requirements; typically these situations are temporary in nature. The public benefits from a rule that allows native wildlife to be held under certain circumstances without the burden of having to apply for and obtain a special license. The Department benefits from a rule that allows a person to possess native wildlife without the issuance of a special license. The public and Department benefit from a rule that is understandable. 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.

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The Department proposes to amend R12-4-407 as follows:

- Reference the Commission Order in which the possession limit for desert tortoise is established to make the rule more concise.
- Clarify a person may only export a desert tortoise to a zoo or an education or research institution located in another state to make the rule more concise.
- Require a person who possesses a desert tortoise and is moving out of state to gift the desert tortoise to another person who resides in Arizona or donate it to the Department's Tortoise Adoption Program to make the rule more concise.
- Clarify who a person may contact to obtain the authorization to export a desert tortoise to effect a more efficient process.
- Specify a desert tortoise cannot be released into the wild to increase consistency between Commission laws and rules.
- Incorporate by reference the most recent edition of 9 C.F.R. 2.30 (registration).
- Repeal subsection (B)(13) to make the rule more concise.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by May 2021.

R12-4-408. Holding Wildlife for the Department

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(B)(8), 17-238(A), 17-240(A), and 17-306

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish requirements that allow a person to possess and transport live wildlife needed as evidence in pending legal proceedings without a special license. The rule also allows a person authorized by the Department to possess and transport live wildlife for up to 72 hours; possess wildlife held as evidence during the pendency of the judicial proceeding; or possess a live cervid on the Department's behalf.

The rule was adopted to allow a person to continue to possess and transport the wildlife while the resulting judicial process runs its course. The Department needed to establish a method that ensures wildlife is humanely held as

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evidence for a court proceeding without having to take on the burden of caring for wildlife that was seized because it was unlawfully possessed.

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, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and 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 written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.

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.

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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 October 6, 2015. The rule was amended to allow a person to possess and transport live wildlife needed as evidence in pending legal proceedings without a special license; provide the Department with greater latitude in the amount of time it may allow a person to hold or transport wildlife for the Department; and replace "designated Department employee" with "Department." The Commission anticipated the proposed amendments would impact persons who hold wildlife for the Department as they will bear the expense for the animal's care until it is placed in a permanent home. However, the Commission believes it is a reasonable economic burden because the person has already taken on that responsibility when they took possession of the wildlife

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 completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

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 necessary to allow a person to possess and transport live wildlife needed as evidence in pending legal proceedings without a special license. The rule allows a person authorized by the Department to possess and transport live wildlife for up to 72 hours; possess wildlife held as evidence during the pendency of the judicial proceeding; or possess a live cervid on the Department's behalf. The public benefits from a rule that allow a person to continue to possess and care for wildlife while waiting for the judicial process to run its course. The Department benefits from a rule that establishes a method that ensures wildlife is humanely held as

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evidence in a court proceeding without having to take on the burden of caring for wildlife that was seized because it was unlawfully possessed. The Commission believes this is a reasonable burden because the person has already taken on that responsibility of the wildlife when they took possession of it. The public and Department benefit from a rule that is understandable. The Department has determined 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

R12-4-409. General Provisions and Penalties for Special Licenses

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-238, 17-240(A), 17-250(A), 17-250(B), 17-306, 17-332, and 41-1005

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish general provisions and administrative compliance applicable to all special licenses, as well as punitive actions that may be taken when a special license holder is convicted offense involving

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cruelty to animals, fails to remedy a noticed condition, or fails to comply with requirements of the rule governing the applicable special license or this rule. The rule was adopted to ensure Arizona's wildlife resources are placed into the care of persons who are capable of carrying out the permitted activities and knowledgeable in the care and handling of permitted wildlife.

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

Overall, 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, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

The current rule only allows the Department to place additional stipulations on a special license at the time of issuance or renewal. The Department purposes to amend the rule to allow the Department to place additional stipulations on a special license believes it is necessary to have the ability to add or remove stipulations during the licensing period to address changing conditions that may arise.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

The Department proposes to amend the rule to replace the reference to "Scientific Collecting License" with "Scientific Activity License" to reflect changes proposed to R12-4-418 (scientific collecting license).

The Department proposes to amend R12-4-412 (special license fees) to clarify the fees for an initial special license and the renewal of a special license. In most cases, the costs incurred by the Department when processing a renewal of a license are anticipated to be less than an initial license because a license renewal should take less time to review. The Department proposes to amend the rule to establish the circumstances under which an application for a special license may be considered the renewal of the special license.

Upon determining a disease or other emergency condition exists that poses an immediate threat to the public or the welfare of any wildlife, the Department may immediately order a cessation of operations under the special license

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and require the special license holder to ensure any contaminated or affected wildlife is tested for the presence of diseases or pathogens. Under R12-4-426 (possession of nonhuman primates) and R12-4-430 (Importation, handling, and possession of cervids) the special license holder is required to submit the results of any required testing to the Department. This information will guide the Department in determining future actions necessary to prevent the introduction and proliferation of wildlife diseases and protect public health or safety. The Department proposes to amend the rule to require all special license holders to submit the results of any required testing to the Department.

Each license holder is required to maintain records associated with the license and make them available to the Department for inspection upon request. The Department proposes to establish a time period of five-years for all records maintained by the special license holder that are subject to Department inspection.

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.

When a special license holder fails to renew their special license, they are required to dispose of the wildlife held under the license in the manner directed by the Department, which may include export from this state, transfer to another eligible special license holder, or transfer to a medical or scientific research facility. Because the Department is responsible for all wildlife held in this State, the Department must inspect the license holder's facility to ensure wildlife was disposed of as directed by the Department.

Where a special license holder elects to terminate activities authorized by their special license, the wildlife must be exported from this state, transferred to another eligible special license holder, or transferred to a medical or scientific research facility. To ensure wildlife held under the license is properly disposed of and any required administrative processes are completed, the Department must be notified when a special license holder no longer wishes to conduct activities authorized under the special license. The Department proposes to amend the rule to establish a requirement that a special license holder notify the Department at least 30 days prior to ceasing wildlife activities authorized under the special license.

To obtain a permit to possess live wildlife in all but six states and for federal permits, an applicant must be at least 18 years of age. The Department proposes to amend the rule to require an applicant to be at least 18 years of age; except this restriction will not apply to the Game Bird Dog Training and Sport Falconry licenses.

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The Department has documented cases where special license holders either illegally conducted surgical operations on wildlife without a veterinary license or did not seek appropriate veterinary care as required by the humane treatment standards established under R12-4-428 (captivity standards). Because the Department is responsible for all wildlife held in this State, the Department proposes to amend the rule to allow the Department to add or remove stipulations to a special license during the license period to ensure humane care and treatment of wildlife. The proposed amendment will enable the Department to treat a violation of Article 4 that involves a public health threat or a threat to wildlife welfare to issue a written notice to the special license holder with a request to remedy the condition, instead of having to issue three notices for the same condition within a two-year period before the Department can intervene in the event of a license holder's inaction.

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 Department proposes to amend the rule to remove the Department website Uniform Resource Location (url) and simply reference "Department's website" to ensure the rule remains concise in the event the Department's url should change.

Two separate subsections address Department inspections of a special license holder's facility. The Department proposes to remove subsection (L) to make the rule more concise.

7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.

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 October 6, 2015. The rule was amended to combine all game bird license rules into one overarching game bird rule; require an applicant to affirm the information provided on the application is true and correct; expand the time-frame for which the Department may deny a special license to an

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applicant convicted of illegally holding or possessing wildlife from three years to five years; clarify the license holder is responsible for all costs associated with the testing and treatment of contaminated or affected wildlife; provide the Department with greater flexibility by including an additional option for actions the Department may take should a special license holder fail to adhere to the requirements of applicable laws and rules. The Commission anticipated the proposed amendments would benefit the regulated community, members of the public, and the Department by clarifying rule language to ease enforcement, creating consistency among existing Commission rules, reducing the burden on the regulated community where practical, and allowing the Department additional oversight where necessary.

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 completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The rule establishes the general provisions and administrative compliance applicable to all special licenses, as well as regulatory actions that may be taken when a special license holder is convicted offense involving cruelty to animals, fails to remedy a noticed condition, or fails to comply with requirements of the rule governing the applicable special license or this rule. The public benefits from a rule that provides general provisions in one overarching rule because it ensures consistency between all special license rules. The Department benefits from a rule that allows Arizona's wildlife resources to be placed into the care of persons who are capable of carrying out the permitted activities and knowledgeable in the care and handling of permitted wildlife. The public and Department benefit from a rule that is understandable. The Department believes that once the proposed

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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 R12-4-409 as follows:

- Replace the reference to "Scientific Collecting License" with "Scientific Activity License" to reflect changes proposed to R12-4-418.
- Replace references to the Department website url with "Department's website" to ensure the rule remains concise in the event the Department's url should change.
- Establish the circumstances under which an application for a special license may be considered the renewal of the special license.
- Allow the Department to place add or remove stipulations to a special license during the license period to address changing conditions that may arise.
- Require all special license holders to submit the results of any required testing to the Department.
- Establish a time period of five-years for all records maintained by the special license holder that are subject to Department inspection.
- Enable the Department to treat the first violation of subsection (N) as a failure to remedy to allow the Department to take action more quickly when a special license holder commits an egregious violation.
- Repeal subsection (J) to make the rule more concise because inspections are included under subsection (L).

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by May 2021.

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R12-4-410. Aquatic Wildlife Stocking License

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(B)(8), 17-238(A), 17-240(A), 17-250(A), 17-250(B), 17-306, 17-332, and 41-1005

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish requirements that allow a person to import, possess, purchase, stock, and transport any restricted aquatic species designated on the license at the location specified on the license, including authorized activities, administrative compliance, and the restrictions and prohibitions necessary to protect existing aquatic wildlife and wildlife habitat. The rule was adopted to protect natural aquatic ecosystems from the introduction, establishment, and/or spread of undesired aquatic wildlife, while still allowing persons to stock aquatic wildlife for personal or commercial use.

The Department issues approximately 150 aquatic stocking and holding licenses on an annual basis.

The aquatic stocking and holding license is valid for a period of 20 consecutive days.

There is no fee for the aquatic stocking and holding license.

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, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

Overall, the rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in

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determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

As a result of changes made to R12-4-414 during the most recent rulemaking, the Department proposes to amend the rule to allow the applicant to provide a physical address or general location and remove the requirement that an applicant provide the Universal Transverse Mercator coordinates. This change is proposed as a result of customer comments received by the Department.

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.

The Department is currently working with various counties to allow them to stock, hold, and use endangered Gila Topminnow for vector control instead of nonnative mosquitofish. The Department accomplishes this transfer through the counties USFWS ESA Federal Habitat Conservation Plan, the Department's USFWS 10(a)(1)(a) permit, and an Aquatic Wildlife Stocking License issued to the county. Pima is the only county currently stocking Gila Topminnow for vector control. Because a county will need to hold and stock Gila Topminnow year-round and the license is only valid for a period of 20 consecutive days, Pima County has had to apply for and obtain 18 licenses per year. The Department proposes to amend the rule to allow the issuance of an annual Aquatic Wildlife Stocking to government agencies that stock Gila Topminnow or other approved species for vector control.

The Department has determined the anticipated benefits of requiring an applicant to provide their Federal Tax Identification Number (FTIN) and, when applicable, their wildlife supplier's FTIN has not been realized. The Department proposes to amend the rule to remove the FTIN requirement.

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 Department proposes to replace the reference to the "On-Line Environmental Review Tool" with "Online Environmental Review Tool" to reflect current terminology.

7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.

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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 October 6, 2015. The rule was amended to require an applicant to further examine the potential for adverse impacts of stocking on existing wildlife species in the proposed area; require additional information about the proposed stocking location; and possess the license when conducting stocking activities and present it to a Department employee or agent upon request. The Commission anticipated any costs that may be incurred would be administrative in nature and believed to be insignificant.

- 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 completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

- 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 allow a person to import, possess, purchase, stock, and transport any restricted aquatic species designated on the license at the location specified on the license, including authorized activities, administrative compliance, and the restrictions and prohibitions necessary to protect existing aquatic wildlife and wildlife habitat. The public benefits from a rule that allows a person to stock aquatic wildlife for

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personal or commercial use, while protecting Arizona's natural aquatic ecosystems from the introduction, establishment, and/or spread of undesired aquatic wildlife. The public and the Department benefit from a rule that protects aquatic wildlife from illegal stocking of restricted aquatic wildlife that may have a negative impact on native wildlife; or that may cause harm to recreational sport fisheries through biological interactions or parasite and pathogen transmissions. The public and Department benefit from a rule that is understandable. The Department proposes to amend the rule to establish a restocking license. In most cases, the costs incurred by the Department when processing a restocking license are anticipated to be less than an initial license because the Department believes the issuance of an aquatic stocking license should take less time to review as there would be no need for the required inspection(s) and background or reference check(s). 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.

The Department has determined that the rule is not more stringent than corresponding federal law. Federal law, 9 C.F.R. Subchapter A, Animal Welfare Act (AWA), governs the care and treatment of mammals. The Department regulates all wildlife, mammals, birds, and reptiles, to ensure all species receive humane and appropriate care and to protect public health and safety. While the rule is not based on corresponding federal law, the Department applies AWA requirements to all wildlife to further protect native wildlife populations, their habitat, and the public.

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 Aquatic Wildlife Stocking License 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 R12-4-410 as follows:

- Amend the title to reference the restocking license.
- Allow the Department to issue an annual aquatic wildlife stocking license to government agencies that stock Gila Topminnow or other approved species for vector control.

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- Replace references to the Department website url with "Department's website" to ensure the rule remains concise in the event the Department's url should change.
- Remove the FTIN requirement.
- Allow the applicant to provide a physical address or location and remove the requirement an applicant provide the Universal Transverse Mercator coordinates. This change is proposed as a result of customer comments received by the Department.
- Replace reference to "On-Line Environmental Review Tool" with "Online Environmental Review Tool" to reflect current terminology.
- Establish an aquatic wildlife restocking license to aid in facilitating a more efficient application review process.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by May 2021.

R12-4-411. Live Bait Dealer's License

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-231(B)(8), 17-332, 17-240(A), 17-250(A), 17-250(B), 17-306, 17-333, and 41-1005

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish the requirements necessary to allow a person to conduct a commercial live bait retail sales operation, to include authorized activities, permitted species, administrative compliance, and the restrictions and prohibitions necessary to protect existing aquatic wildlife and aquatic wildlife habitat. The rule was adopted to protect native aquatic wildlife from parasite/pathogen transmissions that may be carried by live baitfish while allowing a person to sell live baitfish commercially.

The Department issues approximately 15 live bait dealer licenses on an annual basis.

The live bait dealer license is valid until December 31st of each year.

The fee for the live bait dealer license is \$35.

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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, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

The Department proposes to remove mosquito fish and threadfin shad from the list of authorized aquatic live wildlife a bait dealer may lawfully sell. As a result of the Arizona Game and Fish Department's Statewide Sport Fish Stocking Consultation with the U.S. Fish and Wildlife Service, the Conservation and Mitigation Program conducted a statewide live bait use assessment to analyze the statewide use of live bait (including baitfish, crayfish, and waterdogs) and complete a risk analysis to identify recommendations for live bait management in Arizona. The Department evaluated the potential to minimize the risk and threats to native aquatic species, while continuing to maintain live bait use opportunities that have social and economic importance to the angling community. The Western Mosquitofish is native throughout the Mississippi River and its tributary waters, from the southern portions of Illinois and Indiana to the Gulf Coast and northeastern portion of Mexico. Mosquitofish were first documented in Arizona in 1925 and were first stocked by the Department in 1968. In Arizona, Mosquitofish have been directly linked to the local extirpation of at least three historical Gila Topminnow (*Poeciliopsis occidentalis occidentalis*) populations within a few years of introduction. The Mosquitofish is a voracious predator, feeding primarily on zooplankton and invertebrate larvae, it has been documented feeding on its own offspring, attacking adult fish of similar size as well as offspring of larger fish including Largemouth Bass and Goldfish. Threadfin Shad are native to watersheds of the Gulf Coast, including the Ohio, Illinois, Indiana, and Mississippi River drainages. They were recognized as a legal baitfish in Arizona in 1959 and permitted for state-wide use except for trout waters. In 1970, regulations prohibited the use of live bait in counties rather than stating "trout waters." Threadfin Shad are very sensitive to changes in temperature and dissolved oxygen, and die-offs are frequent in late summer and fall. Therefore, bait dealers usually do not hold and sell this species and anglers are able to collect these species from wild populations to use as bait. At present in Arizona, no live baitfish may be possessed while at any waterbody in Coconino, Navajo, Apache, Pima, and Cochise counties and all other counties have specific live baitfish regulations by waterbody or area. Mosquitofish and Threadfin Shad are permitted on all waters of La Paz, Maricopa, Mohave, Pinal, and Yuma counties.

The Department also proposes to amend the rule to add the following native species to the list of authorized aquatic live wildlife a bait dealer may lawfully sell: Longfin Dace, Speckled Dace (*Rhinichthys osculus*), Sonora Sucker, and Desert Sucker (*Catostomas clarkii*).

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- 4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and 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.

The Department has determined the anticipated benefits of requiring an applicant to provide their Federal Tax Identification Number (FTIN) and, when applicable, their wildlife supplier's FTIN has not been realized. The Department proposes to amend the rule to remove the FTIN requirement.

- 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 Department proposes to amend the rule to remove the Department website Uniform Resource Location (url) and simply reference "Department's website" to ensure the rule remains concise in the event the Department's url should change.

- 7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

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

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rulemaking package approved by G.R.R.C. on October 6, 2015. The rule was amended to require an applicant for a Live Bait Dealer's license to remove Red Shiners from the list of authorized bait fish; include additional information regarding the common names of the live bait they propose to sell; and the physical location of the facility. The Commission anticipated the rule would have no impact on consumers because there are no registered live bait dealers that offer Red Shiners for sale as a baitfish. The Commission anticipated a person possessing wildlife under the rule would not incur additional costs as a result of the rulemaking.

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 completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

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 necessary to allow a person to conduct a commercial live bait retail sales operation, to include authorized activities, permitted species, administrative compliance, and the restrictions and prohibitions necessary to protect existing aquatic wildlife and aquatic wildlife habitat. The public and Department benefit from a rule that protects natural ecosystems, native aquatic species, and desirable non-native aquatic species from potential disease and parasitic introduction through the use of live bait fish; and harmful ecological impacts from undesirable non-native aquatic species. The public and Department benefit from a rule that is understandable. The current live bait dealer's license is valid for a period of up to one year depending on the date of issue; the Department proposes to amend the rule to extend the time in which the license is valid from a period of up to one year to a period up to three years. Because the Department intends to implement an online special license application and reporting system, the Department proposes to remove the requirement that an applicant

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submit a separate application for each location where the applicant proposes to use wildlife. These changes are proposed to reduce the burdens and costs to persons regulated by the rule and the Department. The Department will continue to maintain oversight throughout the licensing period through the required inspections and reports. 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 Live Bait Dealer's License 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 R12-4-411 as follows:

- Remove mosquito fish and threadfin shad from the list of authorized aquatic live wildlife a bait dealer may lawfully sell.
- Add Longfin Dace, Speckled Dace (*Rhinichthys osculus*), Sonora Sucker, and Desert Sucker (*Catostomas clarkii*) to the list of authorized aquatic live wildlife a bait dealer may lawfully sell.
- Increase the amount of time in which a special license is valid from one to three years to reduce costs and burdens to the Department and persons regulated by the rule.
- Replace references to the Department website url with "Department's website" to ensure the rule remains concise in the event the Department's url should change.
- Remove the requirement that an applicant submit a separate application for each location where the applicant proposes to use wildlife to reduce burdens and costs to persons regulated by the rule.
- Remove the FTIN requirement.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the

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Department anticipates submitting a Notice of Final Rulemaking to the Council by May 2021.

R12-4-412. Special License Fees

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-333 and 41-1005

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish fees for the special licenses issued under Article 4. Live Wildlife; special license fees were previously included under R12-4-102 (license; permit; stamp; tag fees) which establishes fees for hunting and fishing licenses, permits, stamps, and tags. The rule was adopted to provide special license fees in the same Article that governs the Department's special licenses.

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, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

The Department proposes to amend this rule to change the name of the White Amur Stocking and Holding License to White Amur Stocking License to reflect amendments made to R12-4-424 (white amur stocking and holding license); to offer a White Amur Restocking License instead of a renewal of the license to make the rule more concise; and eliminate the commercial and noncommercial licenses to increase consistency between rules within Article 4.

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The Department proposes to amend the name of the Scientific Collecting License to Scientific Activity License and replace the two types of scientific collecting licenses (commercial and noncommercial) with the three types of scientific collecting licenses to reflect amendments made to R12-4-418 (scientific collecting license): academia, consulting, and personal/government/non-governmental organization. The Department proposes to require a \$50 fee for all three types of licenses.

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

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

6. Clarity, conciseness, and understandability of the rule.

Overall, the rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

When the rule was adopted it established a fee structure that would allow the Department to establish a lower fee for licenses that are renewed before they expire. Because the Aquatic Stocking and White Amur Stocking and Holding licenses are typically a “one and done” license and are only valid for 10 to 20 days, there is no renewal process for them. The Department proposes to amend the rule to clearly indicate these two licenses are not eligible for renewal.

7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.

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 was adopted to simply transfer the fee information for all special licenses listed under R12-4-102 (license; permit; stamp; tag fees) to R12-4-412 (special license fees). Because the rulemaking did not make any changes to

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the special license fees, the Commission anticipated the rulemaking would have no impact on persons regulated by the rule.

The purpose of the special license program is to enable wildlife management and provide information valuable to the maintenance of wild populations, education, the advancement of science, or the promotion of public health. A special license is required when a person, typically a business or educational entity, wants to possess, process, or handle a species listed on the Commission's Restricted Live Wildlife list. On average, the Department issues approximately 2,275 special licenses on an annual basis.

The findings of an internal audit and cost analysis of the Department's special license program determined the Department incurs significant administrative costs and burdens during the review and inspection stage of the special license issuance process. In 2011, the audit estimated the annual administrative burden of the special license program was approximately \$227,991. As a result, a formal team was tasked with assessing each special license. The team evaluated the special license process from start to finish and benchmarked fees for similar licenses issued by other states. Out of eleven special licenses, one generates approximately \$100,000 in revenue annually: White Amur Stocking and Holding license. Out of the remaining ten special licenses, five generate approximately \$9,393 in revenue annually: Game Bird, Live Bait Dealer, Private Game Farm, Sport Falconry, and Zoo licenses. All of the remaining five special licenses are issued at no cost to the applicant: Aquatic Wildlife Stocking, Scientific Collecting, Wildlife Holding, Wildlife Rehabilitation, and Wildlife Service.

The Department receives no appropriations from the general fund and operates primarily with the revenue it generates from the sale of licenses, permits, stamps, tags, special licenses and matching funds from federal excise taxes hunters and anglers pay on guns, ammunition, fishing tackle, motorboat fuels, and related equipment.

The Commission directed the Department to develop fees with the intention of recovering the cost of providing a service now and into the future. Because the Department issues most all of its special licenses for no fee or at a very low fee, the Department proposes to establish or increase special license fees in attempt to recover the Department's administrative costs.

During the team's assessment of the eleven special licenses, two common discussion points were the fact that the Department does not charge an application fee for any of the special licenses despite the fact that the Department incurs significant administrative costs (i.e. application review, analysis of data provided, facility inspection(s), background or reference check(s)).

The Department proposes to amend the rule to establish an application fee of \$20 for all special licenses. The Department proposes to amend the rule to establish renewal special license fees at a reduced fee where

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appropriate. In addition, the Department proposes to amend the rule to increase the fees for special licenses where the administrative burden is greater than the fee for the license and the Department receives little or no benefit from the activities carried out under the authority of the special license.

The formal special license team's report provided recommendations intended to help offset the administrative burden associated with pre- and post-issuance administrative costs. The Department chose to implement the minimal fee increase suggested by the formal special license team.

It is important to note, while the Department is recommending either a fee increase or the establishment of a new special license fee, the Department is also extending the period for which a special license is valid from one year to three, unless the nature of the license does not support a longer time-frame: aquatic wildlife stocking (valid for 20 days nongovernment, one-year government), game bird field trial (valid for 10 days), and white amur stocking (valid for 20 days).

- 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 on January 1, 2014.

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes fees for the special licenses issued under Article 4. Live Wildlife. The Department receives no appropriations from the general fund and operates primarily with the revenue it generates. Applying for a special license is voluntary and only a person who chooses to apply for a special license will incur those costs associated with that license and the purpose of the license. The public benefits from a rule that provides a comprehensive listing of special license fees. The public and Department benefit from a rule that is understandable. 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 allow the Department to recover some of the administrative costs from the special license program.

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- 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 R12-4-412 as follows:

- Identify when a renewal license fee is required.
- Establish an application fee of \$20 for all special license applications.
- Establish a fee of \$120 for an Aquatic Wildlife Stocking License.
- Clarify the Aquatic Wildlife Stocking License cannot be renewed.
- Establish an Aquatic Restocking license for an application fee only.
- Increase the initial Game Bird Field Trial and Game Bird Hobby license fees to \$15 from \$6 and 5, respectively.
- Increase the initial Game Bird Shooting Preserve license fee to \$135 from \$115 and reduce the renewal fee for this license from \$115 to \$40.
- Increase the initial Private Game Farm license fee to \$125 from \$57.50 and reduce the renewal fee for this license from \$57.50 to \$40.
- Rename of the Scientific Collecting License to Scientific Activity License to reflect amendments made to R12-4-418.
- Replace current Scientific Collecting commercial and noncommercial license types with academia, consulting, and personal/government/non-governmental organization license types to reflect amendments made to R12-4-418.
- Establish a \$50 fee for all three types of Scientific Activity licenses.
- Increase the Sport Falconry initial and renewal licenses to a fee of \$125 from \$87.50.
- Establish a White Amur Restocking License for a fee of \$100.

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- Establish a Wildlife Service License fee of \$75 and a renewal fee of \$75.
- Rename the White Amur Stocking and Holding License to White Amur Stocking License to reflect amendments made to R12-4-424 (white amur stocking and holding license).

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by May 2021.

R12-4-413. Private Game Farm License

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 3-1205, 17-231(B)(8), 17-238, 17-240(A), 17-306, 17-307(C), 17-332, 17-333, and 41-1005

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish the requirements necessary to allow a person to conduct the commercial farming, use, and sale of game species, to include authorized activities, permitted wildlife, administrative compliance, and the restrictions and prohibitions necessary to protect native wildlife and wildlife habitat. The rule was adopted to protect native wildlife from parasite and pathogen transmissions that may be carried by game species while allowing a person to farm, use, and sell game species and game species parts as a trade or business and for the conservation of the State's wildlife.

The Department issues approximately 10 private game farm licenses on an annual basis.

The private game farm license is valid until December 31st of each year.

The fee for the private game farm license is \$115.

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

Overall, 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

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concern, etc. Responses indicate the rule is not effective. While the rule is intended to authorize the issuance of a game farm license for the purpose of raising and propagating game species (principally game birds and, formerly, deer) it also authorizes the possession, sale, and use of mammals listed as restricted live wildlife under R12-4-406 (restricted live wildlife), including anteaters, armadillos, moose, primates (apes, baboons, chimpanzees, gibbons, gorillas, lorises, macaques, orangutans, spider monkeys, and tamarins), shrews, sloths, weasels, wild cats (including jaguars, leopards, lions, lynx, ocelots, servals, and tigers), and woodchucks. Allowing a person to possess these mammals for game farm purposes was not the intent of this rule.

The Department has received private game farm license applications for armadillos, lemurs, and servals. These are not native game species and pose a public health and safety risk and a risk to native wildlife and wildlife habitat if illegally released or allowed to escape. In addition, many of these species require complex dietary, territorial, social, physical, and psychological needs that the general public is incapable or providing; often these animals are kept in deprived and inappropriate environments. It is not uncommon for the public to surrender unwanted restricted species to the Department, which then must provide veterinary treatment and find a willing wildlife sanctuary to accept the animal.

The Department proposes to amend the rule to align it with its original intent to allow a license holder farm, use, and sell captive pen-reared game birds. The proposed change will not impact the three currently licensed private game farms authorized to possess other species of wildlife as they will be able to renew their license for the wildlife currently held under the license under subsection (E) of this rule.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

Overall, the rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

The Department is no longer conducting Northern Bobwhite quail reintroduction efforts in game management unit 34A and, as a result, there is no need to restrict Northern Bobwhite quail reintroduction efforts in game management unit 34A. The Department proposes to amend the rule to allow Northern Bobwhite quail to be held under a private game farm license in game management unit 34A.

As a result of changes made to R12-4-414 (game bird license) during the most recent rulemaking, the Department proposes to amend the rule to allow the applicant to provide a physical address or general location and remove the requirement that an applicant provide the Universal Transverse Mercator coordinates. This change is proposed as a result of customer comments received by the Department.

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Under A.R.S. §17-250, a person who is in possession of wildlife or who maintains wildlife under a license issued by the Department is required to submit the wildlife or parts of the wildlife for disease testing. The Department proposes to amend the rule to require a person to immediately report to the Department any mortality event that results in the loss of ten percent or more of the wildlife held on the facility and allow the Department to collect samples from the affected wildlife for disease testing purposes; these standards were chosen because they are the common standard for the livestock and pet trade industries; and signify an event outside of normal parameters and is indicative of a potential disease outbreak.

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

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

6. Clarity, conciseness, and understandability of the rule.

Overall, the rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

In 2002, as a result of concerns over the spread of Chronic Wasting Disease (CWD), the Commission amended the rule to prohibit the possession of cervids under a private game farm license. Subsection (E) was adopted to provide a mechanism to allow a person who was previously authorized to possess cervids under the rule to renew the license, provided certain criteria are met. The Department proposes to amend the rule to allow a person who currently possesses mammals under this rule to continue to renew the private game farm license, provided the license holder is in compliance with all applicable requirements under R12-4-409 (general provisions and penalties for special licenses), R12-4-428 (captivity standards), R12-4-430 (importation, handling, and possession of cervids), and this rule.

The Department proposes to amend the rule to clearly state that the location information required under subsection (I)(4) is the location physical address or general location where the applicant proposes to conduct activities. This change is proposed as a result of customer comments received by the Department.

7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.

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The Department received the following written criticisms of the rule:

Written Comment: February 20, 2018. Recently it was brought to my attention that I cannot breed and sell Mallard ducks. I can hold and train with them, but it is not legal to raise and sell them? The USFWS allows the raising and selling of mallard ducks. I think this rule should be changed to allow the breeding, raising, and selling of domestically raised Mallard ducks, provided the license holder is in compliance with the requirements of 50 C.F.R. 21.13 (permit exceptions for captive-reared mallard ducks), as amended October 1, 2017.

Agency Response: The Department proposes to amend the rule to authorize the possession of Mallard ducks to expand opportunities for private game farm license holders.

Written Comment: May 8, 2017. Add *Oreortyx pictus* (Mountain Quail) to the list of birds that may be held. Create a permanent license number or identification number for all special licenses to provide for better tracking and better consistency in reporting. Require an applicant to provide the U.S. Department of Agriculture (USDA) Premise Identification Number (PIN) instead of the Federal Employee Identification Number (FEIN). Some game farms are a limited liability company with no employees and would not have an FEIN. The USDA PIN provides the state with better record keeping, better controls on the health of the birds being imported, and ensures pathogens of concern are not introduced into Arizona through released game birds. The state can access this information through the USDA's National Poultry Improvement Program (NPIP). Remove the requirement that the applicant provide the information for each location where the wildlife will be held; the game farm owner cannot be responsible for this information. Consider requiring the applicant to provide zoning approval for conducting game farm activities to ensure the Department does not authorize something that is illegal based on another state or county law or ordinance. Add "if applicable" to subsection (I)(7). Add a requirement for the NPIP number from the vendor and the USDA form VS9-3 for game birds. There is a higher level of authority already regulating this via the USDA and the NPIP. Adding these requirements will ensure continuity with federal regulations and provide better tracking information for the state on birds entering and being released. The Department can use this information to eliminate the need for the health certificate currently required under the rule. These forms indicate USDA veterinarian has inspected the animal and provide better quality control than the currently required health certificate through blood testing which ensures disease is not introduced into existing wildlife. Ensure each facility is inspected annually (and as needed) by the attending veterinarian or USDA veterinarian. Also include the minimum criteria for the inspection. As a note, the current USDA and NPIP compliant inspections include the following: records checks (importing, breeding, disease blood testing, biosecurity), NPIP certification, blood testing for pullorum thyroid and/or avian flu. For the reporting requirement, add USDA PIN and flock number to improve tracking and data for the Department. Under subsection (M)(4)(e), add the address, city, state, and telephone number of the person who received the wildlife. Under subsection (N)(5), add "or by other federal governing body" to reference the USDA office in Phoenix.

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Agency Response: The Department proposes to amend the rule to allow the possession of Mountain Quail to expand opportunities for private game farm license holders. Currently, a license holder is required to provide their Department ID; this number is sufficient for tracking and reporting purposes and will not result in added costs and burdens to persons regulated by the rule or the Department. The USDA implemented the PIN program to control and eradicate animal diseases through the identification of livestock (cattle, goats, sheep, and swine) being moved interstate. Game farms are not required to obtain a USDA PIN because wildlife are not considered livestock. NPIP is a voluntary state-federal cooperative testing and certification program for poultry breeding flocks, baby chicks, poults, hatching eggs, hatcheries, and dealers. NPIP was initiated to eliminate Pullorum Disease caused by *Salmonella pullorum* which was rampant in poultry and could cause upwards of 80% mortality in baby poultry. Game farms are not currently required to enroll in NPIP. Implementing this suggestion would apply another level of regulation, which would result in increased costs and burdens to persons regulated by the rule. In addition, implementing this suggestion would not result in better tracking and reporting for the Department. Under subsection (I), a private game farm license applicant is required to provide information applicable to the location where the private game farm license holder proposes to possess wildlife. This subsection applies to the applicant, not the game farm customer; and the applicant should know the minimum information required for the location where they propose to conduct activities authorized under the license. However, the Department proposes to amend the rule to clarify the requirement for the location where the applicant proposes to conduct activities. The Department believes it is the applicant's responsibility to ensure they are in compliance with all regulations applicable to the type of business they propose to conduct. Requiring an applicant to provide zoning approval implies the Department will track and monitor compliance with the applicable zoning laws, which is not the Department's responsibility. Under R12-4-409 (general provisions and penalties for special licenses) subsections (C)(2) and subsection (G)(1), of this rule an applicant is already required to comply with applicable municipal, county, state or federal code, ordinance, statute, regulation, or rule applicable to the license. The Department does not believe it is necessary to append "Any other information required by the Department" with "if applicable." The Veterinary Services form 93 Report of Sales of Hatching Eggs, Chicks, and Poults is a certificate of inspection and is signed by any one of three state officials who are authorized to complete the health inspection and form. The form is comparable to the health certificate; the Department proposes to amend the rule to allow a person to submit a health certificate or other similar form that indicates the wildlife identified on the form appears to be healthy and free of infectious, contagious, and communicable diseases. Under subsection (K)(5), a private game farm license holder is required to ensure each licensed facility is inspected by the attending veterinarian at least once every year. The criteria for an inspection are provided under R12-4-428 (captivity standards). The Department may, at its discretion, inspect the license holder's records at any time during the licensing period. Because address and contact information is subject to change on a frequent basis for some persons, the Department believes requiring the name of the person who received wildlife is sufficient for Department purposes. Under A.R.S. § 17-102, wildlife, both resident and migratory, native or introduced, found in this state, except fish and bullfrogs impounded in private

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ponds or tanks or wildlife and birds reared or held in captivity under permit or license from the commission, are property of the state and may be taken at such times, in such places, in such manner and with such devices as provided by law or rule of the Commission. The Department cannot relinquish its authority to manage wildlife held under a license issued by the Department.

- 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 was amended to clarify language regarding propagation; replace the term "Blue Grouse" with "Dusky Grouse;" clarify the locations where the Department will not issue a private game farm license to raise Northern Bobwhite quails; require an applicant to provide additional information on the application to enable the Department to more adequately evaluate the application for the requested activities; better regulate the use of "hybrid wildlife;" address sport harvest of wildlife held under this license; clearly state that, if breeding takes place, a private game farm license is issued to authorize only the breeding of wildlife species to the same species; clarify the Department will not issue a private game farm license if the escape of the proposed species could create a threat to native species and or habitat; and require the game farm license holder to ensure their facility is inspected by a licensed, practicing veterinarian. The Commission anticipated the benefits of the proposed amendments, specifically taking a stronger stance in the regulation of live wildlife for the principal purpose of protecting native wildlife species, outweighed any costs. The Commission anticipated a person possessing wildlife under this rule may incur minor burdens associated with the requirement to submit an annual report even when authorized activities did not occur during the license year.

- 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 completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.

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- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

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 necessary to allow a person to conduct the commercial farming, use, and sale of game species, to include authorized activities, permitted wildlife, administrative compliance, and the restrictions and prohibitions necessary to protect native wildlife and wildlife habitat. The intent of the rule is to protect native wildlife from diseases and parasites that may be carried by game species while allowing a person to farm, use, and sell game species and game species parts as a trade or business and for the conservation of the State's wildlife. The public benefits from a rule that allows a person to legally farm, use, and sell or purchase game species. The public and the Department benefit from a rule that is understandable, protects native wildlife and wildlife habitat, and promotes the conservation of the State's wildlife. The current game farm license is valid for a period of up to one year depending on the date of issue; the Department proposes to amend the rule to extend the time in which the license is valid to three years. The Department will continue to maintain oversight throughout the licensing period through the required inspections and reports. Because the Department intends to implement an online special license application and reporting system, the Department proposes to remove the requirement that an applicant submit a separate application for each location where the applicant proposes to use wildlife. These changes are proposed to reduce the burdens and costs to persons regulated by the rule and the Department. 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.

The Department has determined that the rule is not more stringent than corresponding federal law.

Federal law, 9 C.F.R. Subchapter A, Animal Welfare Act (AWA), governs the care and treatment of mammals, only. The Department regulates all wildlife, mammals, birds, and reptiles, to ensure all species receive humane and appropriate care and to protect public health and safety. While the rule is not based on corresponding federal law, the Department applies AWA requirements to all wildlife to further protect native wildlife populations, their habitat, and the public.

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Federal law, 50 C.F.R. 21.13 (Permit exceptions for captive reared mallard duck), establishes the conditions, restrictions, and requirements that allow captive-reared and properly marked mallard ducks to be possessed without a federal permit.

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 Private Game Farm License 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 R12-4-413 as follows:

- Limit the issuance of a private game farm license to the sole purpose of farming, using, and selling captive pen-reared game birds.
- Increase the amount of time in which a special license is valid from one to three years to reduce costs and burdens to the Department and persons regulated by the rule, excepting the field trial license which remains valid for not more than ten days.
- Authorize the possession of Mallard ducks to expand opportunities for private game farm license holders.
- Authorize the possession of Mountain Quail to expand opportunities for private game farm license holders.
- Incorporate by reference 50 C.F.R. 21.13 which establishes the conditions, restrictions, and requirements that allow captive-reared and properly marked mallard ducks to be possessed without a federal permit.
- Remove all mammals from the list of authorized wildlife to align the rule with its original intent.
- Allow a license holder who currently possesses mammals to renew the private game farm license, provided the license holder is in compliance with R12-4-409, R12-4-428, R12-4-430, and this rule.
- Clarify the location information required under subsection (I)(4) requirement is for the location where the applicant proposes to conduct activities. This change is proposed as a result of customer comments received by the Department.
- Allow a person to submit a health certificate or other similar form that indicates the wildlife identified on the form appears to be healthy and free of infectious, contagious, and communicable diseases to reduce burdens and costs to persons regulated by the rule. This change is proposed as a result of customer comments received by the Department.
- Require a person to immediately report to the Department any mortality event that results in the loss of ten

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percent or more within a seven-day period of the wildlife held on the facility and allow the Department to collect samples from the affected wildlife for disease testing purposes.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by May 2021.

R12-4-414. Game Bird License

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-231(A)(3), 17-231(B)(8), 17-238(A), 17-240(A), 17-306, 17-307(C), 17-332, 17-333, and 41-1005

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish the requirements that allow a person to possess, release, and take pen-reared game birds, to include authorized activities, permitted game bird species that may be held under the license, administrative compliance, and the restrictions and prohibitions necessary to protect existing habitat and wildlife resources. Under A.R.S. § 17-102, wildlife, both resident and migratory, native or introduced, found in this state, except fish and bullfrogs impounded in private ponds or tanks or wildlife and birds reared or held in captivity under permit or license from the Commission, are property of the state and may be taken at such times, in such places, in such manner and with such devices as provided by law or rule of the Commission. The rule was adopted to allow a person to lawfully conduct activities using captive pen-reared game birds listed as restricted live wildlife, while provide protection for public health, and wildlife health and habitat.

The Department issues approximately:

- Forty game bird field trial licenses on an annual basis.
- Eighty game bird field trial training licenses on an annual basis.
- Fifty game bird hobby licenses on an annual basis.
- Six game bird shooting preserve licenses on an annual basis.

The fee for the:

- Game bird field trial license is \$6.
- Game bird hobby license is \$5.

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- Game bird shooting preserve license is \$115.

There is no fee for the game bird field trial training license.

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, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has received written comments in support of the rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

The Department is no longer conducting Northern Bobwhite quail reintroduction efforts in game management unit 34A and, as a result, there is no need to restrict Northern Bobwhite quail reintroduction efforts in game management unit 34A. The Department proposes to amend the rule to allow Northern Bobwhite quail to be held under a game bird license in game management unit 34A.

Under A.R.S. §17-250, a person who is in possession of wildlife or who maintains wildlife under a license issued by the Department is required to submit the wildlife or parts of the wildlife for disease testing. The Department proposes to amend the rule to require a person who possesses a game bird shooting preserve or hobby license to immediately report to the Department any mortality event that results in the loss of ten percent or more of the wildlife held on the facility and allow the Department to collect samples from the affected wildlife for disease testing purposes. The "ten percent" standard is chosen because it is the common standard for the livestock and pet trade industries; an event resulting in a loss of ten percent or more of the total number of animals is outside of normal parameters and is indicative of a potential outbreak of disease. This requirement will not apply to persons who hold game bird field trial events or conduct game bird field training because these license holders possess game birds on a temporary basis.

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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 written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

The Department received the following written criticisms of the rule:

Written Comment: March 9, 2017. The new application form is not well thought out in some instances and ridiculous in some instances. A permit life of no more than 10 days, for each region where a person trains their game bird dog, means I will submit a new application every ten days; I would have to constantly reapply in order to train year round, in each region I might want to train in. Department staff takes several days to process the application, which is reasonable, but would I need to reapply every week in order to train every weekend or every other weekend? In addition, a proposed of \$6 fee for each training permit means a prohibitive cost when added up as an annual fee, especially when multiple permits for differing regions are required; this would mean a cost of \$156 if training every other weekend throughout the year in one region. This rule was amended from a reasonable situation where I obtained a free annual permit each year for each region to an expensive, cumbersome process. Not to mention the burden it places on Department staff. I view this current process as a bloated, bureaucratic process that just costs money and time and people will ignore it instead of participating. The three page long application forms is very frustrating to those of us who use the program. I ask the Department to take a step back and look at how simple the forms and process was before these new changes. The information you gather from me is still the same, it's just far more difficult for me to accomplish and much more of a workload on Department staff.

Agency Response: This comment was submitted in response to rule amendments made effective December 5, 2015. On April 7, 2017, as a result of a rulemaking petition, the Commission directed the Department to work with identified stakeholders to develop rule amendments that would result in an improved process and more customer-

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friendly approach for administering game bird licenses. The rule was amended as indicated under item #8. The amended rule became effective September 6, 2017.

Written Comment: May 16, 2017. I would like the rule amended to automatically disqualify anyone from getting a game bird license (hobby license) for the purpose of keeping game birds for pets. I do not think the public should keep native game birds as pets and the hobby license allows that. It is okay for a person to raise them for meat or to train a dog or falcon, but I do not believe the Department should be aiding in the pet trade of native game bird species. A person who is in the field taking game birds should be required to have a hunting license, even if the birds are captive pen-reared game birds. I realize it is a small group of people, but if a wildlife manager contacts a hunter in the field with dead mallards and they display a \$6 training license, the hunter is probably going to have to answer some questions, which will be a waste of time for the wildlife manager and the hunter.

Agency Response: The game bird hobby license allows a person to purchase, import, propagate, give away, kill, transport, or export captive pen-reared game birds for personal, non-commercial purposes. The Department does not issue a special license for the purpose of possessing wildlife as a pet or for amusement or companionship purposes. Often, captive pen-reared game birds held under the license are used for the eggs they lay or the meat they provide. Because all manners of hunting involve the take wildlife, the Arizona Legislature defined "take" as it relates to live wildlife; under A.R.S. § 17-101(19), "take" means pursuing, shooting, hunting, fishing, trapping, killing, capturing, snaring or netting wildlife or the placing or using of any net or other device or trap in a manner that may result in the capturing or killing of wildlife. Because releasing captive pen-reared game birds for the purpose of dog training does not involve the actual take of wildlife, the Department has determined a hunting license is not required. Wildlife managers are familiar with game bird license activities and the applicable licensing requirements.

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 September 7, 2017. The rule was amended to speak more clearly to the different species of game bird and different activities allowed under each type of license; clarify the Game Bird License only authorizes the license holder to use captive pen-reared game birds for any of the activities authorized under the license; establish a person conducting activities under a Game Bird Field Training license is not required to possess a hunting license; offer a Game Bird Field Training license that is valid until December 31 of the year in which it was issued; remove the requirement that an applicant submit a separate application when applying for a

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license when the applicant proposes to use more than one location to conduct activities authorized under the license; remove the requirement that an applicant provide the game bird supplier's Federal Tax Identification Number and the applicant's Federal Tax Identification Number on the application when the applicant will use the captive pen-reared game birds for a commercial purpose; clarify that only a person applying for a Game Bird Hobby or Game Bird Shooting Preserve License is required to provide a detailed description or diagram of the facilities where the applicant will hold game birds and a description of how the facilities comply with the requirements established under R12-4-428; remove the requirement that a Game Bird License holder have their facility inspected by a veterinarian at least once every year; remove the requirement that a Game Bird License holder retain records of copies of all federal, state, and local licenses, permits, and authorizations required for the lawful operation of the game bird activity; clarify that any activities authorized under the license may occur only at the locations and dates specified on the license; and require a license holder who wishes to conduct activities authorized under the license at a new location or a different date to submit an application to the Department. The Commission anticipated the rulemaking would benefit the Department by increasing efficiency in administering game bird licenses and provide an overall benefit to persons regulated by the rule by reducing the burdens and costs associated with the rule and providing better customer-service to persons seeking to conduct activities with captive pen-reared game birds in Arizona.

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 completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

In addition, R12-4-414 was recently amended as follows:

- Notice of Rulemaking Docket Opening: 23 A.A.R. 1489, June 2, 2017.
- Notice of Proposed Rulemaking: 23 A.A.R. 2293, 1472, June 2, 2017.
- Public Comment Period: August 23, 2014 through September 29, 2014.

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- G.R.R.C. approved the Notice of Final Rulemaking at the September 6, 2017 Council Meeting.
- Notice of Final Rulemaking: 23 A.A.R. 2557, September 22, 2017.

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 allow a person to possess, release, and take captive pen-reared game birds, to include authorized activities, permitted game bird species that may be held under the license, administrative compliance, and the restrictions and prohibitions necessary to protect existing habitat and wildlife resources. The public benefits from a rule that allows them to conduct a variety of lawful activities using captive pen-reared game birds. The Department benefits from a rule that protects the public health, and wildlife health and habitat. The public and Department benefit from a rule that is understandable. The current live game bird license is valid for a period of up to one year depending on the date of issue; the Department proposes to amend the rule to extend the time in which the license is valid from a period of up to one year to a period up to three years, except for the field trial license. This change is proposed to reduce the burdens and costs to persons regulated by the rule and the Department. The Department will continue to maintain oversight throughout the licensing period through the required inspections and reports. Field trials are connected to the sport of hunting; they support the maintaining of hunting breeds of dogs which add not only to the sport of hunting, but also the conservation of our wildlife resources by facilitating more efficient game harvest. Field trials specifically involve dogs, horses, and game birds in an organized and judged event. They are outdoor competitions designed to mimic an actual hunt in the wild, with a focus on honing hunting instincts in domestic dogs. These events judge dogs on their field performance during particular events, thus an annual license is not warranted. The Game Bird Field Trial license applicant will also continue to submit a separate application for each date and location where a competition will occur. 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.

The Department has determined that the rule is not more stringent than corresponding federal law. Federal law, 9 C.F.R. Subchapter A, Animal Welfare Act (AWA), governs the care and treatment of mammals, only. The Department regulates all wildlife, mammals, birds, and reptiles, to ensure all species receive humane and appropriate care and to protect public health and safety. While the rule is not based on corresponding federal law, the Department applies AWA requirements to all wildlife to further protect native wildlife populations, their habitat, and the public.

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- 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 Game Bird License 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 R12-4-414 as follows:

- Increase the amount of time in which the game bird license is valid from one to three years to reduce costs and burdens to the Department and persons regulated by the rule, excepting the field trial license which remains valid for ten consecutive days.
- Authorize the possession of Mallard ducks, for all game bird licenses except the game bird hobby license, to increase consistency between federal regulations and Commission rules.
- Incorporate by reference 50 C.F.R. 21.13 which establishes the conditions, restrictions, and requirements that allow captive-reared and properly marked mallard ducks to be possessed without a federal permit.
- Require a person who possesses a game bird shooting preserve or game bird hobby license to immediately report to the Department any mortality event that results in the loss of ten percent or more of the wildlife held on the facility and allow the Department to collect samples from the affected wildlife for disease testing purposes.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by May 2021.

R12-4-417. Wildlife Holding License

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(3), 17-231(B)(8), 17-238(A), 17-240(A), 17-306, 17-332, and 41-1005

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2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish the requirements that allow a person to possess and care for restricted live wildlife lawfully taken under a valid hunting or fishing license, scientific collecting license, or wildlife rehabilitation license to include authorized activities, permitted wildlife species that may be held under the license, administrative compliance, and the restrictions necessary to protect wildlife and wildlife habitat. The rule was adopted to allow for holding wildlife for approved activities for the benefit of wildlife, educating the public, and other activities that are consistent with the mission of the Department.

The Department issues approximately:

- One hundred twenty wildlife holding licenses for educational purposes on an annual basis.
- Five wildlife holding licenses for exhibition purposes on an annual basis.
- Fifteen wildlife holding licenses for humane purposes on an annual basis.
- Five wildlife holding licenses for scientific purposes on an annual basis.
- Five wildlife holding licenses for wildlife management purposes on an annual basis.

There is no fee for the wildlife holding license.

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, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

The Department proposes to amend the rule to replace the reference to “Scientific Collecting License” with “Scientific Activity License” to reflect changes proposed to R12-4-418 (scientific collecting license).

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The Department proposes to amend the rule to allow the applicant to provide a physical address or general location and remove the requirement that an applicant provide the Universal Transverse Mercator coordinates. This change is proposed as a result of customer comments received by the Department.

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.

The Department has determined the anticipated benefits of requiring an applicant to provide their Federal Tax Identification Number (FTIN) and, when applicable, their wildlife supplier's FTIN has not been realized. The Department proposes to amend the rule to remove the FTIN requirement.

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.

Throughout the rule, the terms "restricted," "nonrestricted," and "restricted and nonrestricted" are used somewhat indiscriminately. The Department proposes to amend the rule to increase consistency between when and where these terms should apply.

Under subsection (C)(2)(a), a wildlife holding license holder may permanently hold wildlife that is unable to meet its own needs in the wild; however, the rule does not establish who is qualified to make this determination. The Department proposes to amend the rule to specify that only a licensed veterinarian may determine whether or not an animal is suitable for release.

The Department allows an agent to assist, or act on behalf of, the license holder. The Department proposes to amend the rule to clarify the agent's role and responsibilities to make the rule more concise.

The Department proposes to amend the rule to make minor grammatical changes to make the rule more concise.

7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.

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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 October 6, 2015. The rule was amended to allow the license holder to use an agent to assist the license holder in carrying out activities authorized under the license; allow an applicant to submit photographs instead of a diagram and detailed description of the facility where an applicant proposes to hold wildlife; and allow an applicant to submit a certification issued by an institutional animal care and use committee or similar committee instead of a description of how the facility complies with requirements established under R12-4-428. The Commission anticipated the rulemaking would benefit persons regulated by the rule due to the reduction in burdens and costs associated with the rule.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

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

The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

- 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 allow a person to possess and care for restricted live wildlife lawfully

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taken under a valid hunting or fishing license, scientific collecting license, or wildlife rehabilitation license to include authorized activities, permitted wildlife species that may be held under the license, administrative compliance, and the restrictions necessary to protect wildlife and wildlife habitat. The public benefits from a rule that allows a person to continue to lawfully possess wildlife held under another license once the primary purpose for which the license was issued no longer exists. The Department benefits from a rule that allows a person to continue to possess and care for wildlife held under another license rather than bear the unplanned burden of either euthanizing the wildlife or providing veterinary treatment and finding a sanctuary willing to accept the animal. The public and Department benefit from a rule that is understandable. The current wildlife holding license is valid for a period of up to one year depending on the date of issue; the Department proposes to amend the rule to extend the time in which the license is valid from a period of up to one year to a period up to three years. This change is proposed to reduce the burdens and costs to persons regulated by the rule and the Department. 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.

The Department has determined that the rule is not more stringent than corresponding federal law. Federal law, 9 C.F.R. Subchapter A, Animal Welfare Act (AWA), governs the care and treatment of mammals, only. The Department regulates all wildlife, mammals, birds, and reptiles, to ensure all species receive humane and appropriate care and to protect public health and safety. While the rule is not based on corresponding federal law, the Department applies AWA requirements to all wildlife to further protect native wildlife populations, their habitat, and the public.

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 Wildlife Holding License 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 R12-4-417 as follows:

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- Clarify when the terms "restricted," "nonrestricted," and "restricted and nonrestricted" to increase consistency between when and where these terms should apply.
- Replace the reference to "Scientific Collecting License" with "Scientific Activity License" to reflect changes proposed to R12-4-418.
- Specify that only a licensed veterinarian may determine whether or not an animal is suitable for release.
- Increase the amount of time in which a special license is valid from one to three years to reduce costs and burdens to the Department and persons regulated by the rule.
- Replace references to "educational organization" with "educational institution" to increase consistency between rules within Article 4.
- Replace references to the Department website url with "Department's website" to ensure the rule remains concise in the event the Department's url should change.
- Remove the FTIN requirement.
- Clarify the agent's role and responsibilities to make the rule more concise.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by May 2021.

R12-4-418. Scientific Collecting License

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-231(A)(3), 17-231(B)(8), 17-234, 17-238, 17-240(A), 17-306, 17-332, and 41-1005

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish the requirements that allow a person to use live wildlife for purposes related to the advancement of conservation, education, science, and wildlife management, to include authorized activities, permitted wildlife species that may be held under the license, administrative compliance, and the restrictions and prohibitions necessary to protect public health and safety and existing wildlife habitat and resources. The rule was adopted to permit a person to collect, capture, mark, or salvage wildlife for scientific purposes.

The Department issues approximately 305 scientific collecting licenses on an annual basis.

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There is no fee for the scientific collecting license.

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, etc. Responses indicate the rule is understandable and applicable. The Department believes this data indicates the rule is effective.

The Department offers three types of scientific collecting licenses: personal, consultant, and government. The Department proposes to amend the rule to further refine the license types replace current Scientific Collecting commercial and noncommercial license types with personal/government/non-governmental organization, consulting, and academia license types for statistical purposes.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

As a result of changes made to R12-4-414 during the most recent rulemaking, the Department proposes to amend the rule to allow the applicant to provide a physical address or general location and remove the requirement that an applicant provide the Universal Transverse Mercator coordinates. This change is proposed as a result of customer comments received by the Department.

Under R12-4-309 (authorization for use of drugs on wildlife), a person who proposes to use drugs on wildlife must obtain permission from the Department before using drugs on wildlife; there have been instances where an applicant assumed they could obtain this authorization through the scientific collecting license. The Department proposes to amend the rule to specify that a person shall not administer any drug to wildlife without advance approval from the Department to increase consistency between Commission rules.

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

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The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

6. Clarity, conciseness, and understandability of the rule.

Overall, the rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

The Department proposes to amend the name of the Scientific Collecting License to Scientific Activity License to reflect amendments made to R12-4-418 (scientific collecting license). This change is proposed as a result of customer comments received by the Department.

The Department proposes to amend the rule to make minor grammatical changes to make the rule more concise.

The Department allows an agent to assist, or act on behalf of, the license holder. The Department proposes to amend the rule to clarify the agent's role and responsibilities to make the rule more concise.

7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.

The Department received the following written criticism of the rule:

Written Comment: November 15, 2017. What we have encountered, repeatedly, at both the federal and state levels is that biologists use the word "collecting" to mean the permanent removal of an individual from the wild, either by lethal means (for museum collections and other forms of scientific research that require a specimen) or live capture for study in captivity. The agencies, however, use the term to mean "all forms of research" and in most states, that includes bird banding. As a result, many scientists mistakenly believe that they don't need a permit (except federal bird banding/marketing). We spend a lot of time and energy educating them about it: <https://birdnet.org/info-for-ornithologists/permits/states/> But that assumes that they find/use these resources in the first place. Some don't - it is very common to simply ask a faculty advisor or someone else who themselves may not have good, solid knowledge (that's a nice way of saying "mistaken").

Agency Response: The Department agrees and proposes to amend the rule to replace the term "collecting" with "activity" to make the rule more concise.

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

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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 October 6, 2015. The rule was amended to allow an applicant to submit a certification issued by an institutional animal care and use committee or similar committee instead of a description of how the facility complies with requirements established under R12-4-428; specify the license holder may only conduct activities authorized under the scientific collecting license at the locations and time periods specified on the scientific collecting license; and expand the requirement that the scientific collecting license holder dispose of wildlife as directed by the Department, including wildlife parts and the offspring of wildlife held under the license. The Commission anticipated the rulemaking would not result in any additional costs or burdens to persons regulated by the rulemaking.

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 completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

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 allows a person to use live wildlife for purposes related to the advancement of conservation, education, science, and wildlife management, to include authorized activities, permitted wildlife species, that may be held under the license, administrative compliance, and the restrictions and prohibitions necessary to protect public health and safety and existing wildlife habitat and resources. The public

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benefits from a rule that allows the public to collect, capture, mark, or salvage wildlife for scientific purposes. The Department benefits from a rule that aids in the furtherance of wildlife management and conservation. The public and Department benefit from a rule that is understandable. Currently, an applicant for a scientific collecting license is required to submit a separate written proposal providing information about the applicant's proposed activities and abilities. The Department proposes to amend the rule to incorporate the information required in the proposal into the application to reduce burdens and costs to persons regulated by the rule. Because the Department intends to implement an online special license application and reporting system, the Department proposes to remove the requirement that an applicant submit a separate application for each location where the applicant proposes to use wildlife. These changes are proposed to reduce the burdens and costs to persons regulated by the rule and the Department. 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.

The Department has determined that the rule is not more stringent than corresponding federal law. Federal law, 9 C.F.R. Subchapter A, Animal Welfare Act (AWA), governs the care and treatment of mammals, only. The Department regulates all wildlife, mammals, birds, and reptiles, to ensure all species receive humane and appropriate care and to protect public health and safety. While the rule is not based on corresponding federal law, the Department applies AWA requirements to all wildlife to further protect native wildlife populations, their habitat, and the public.

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 Scientific Collecting License 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 R12-4-418 as follows:

- Rename the scientific collecting license to scientific activity license to better reflect the purpose of the license. This change is proposed as a result of customer comments received by the Department.

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- Replace current Scientific Collecting commercial and noncommercial license types with academia, consulting, and personal/government/non-governmental organization license types for statistical purposes.
- Clarify the agent's role and responsibilities to make the rule more concise.
- Make minor grammatical changes to make the rule more concise.
- Remove the requirement that an applicant submit a separate application for each location where the applicant proposes to use wildlife. This change is proposed as a result of customer comments received by the Department.
- Replace references to the Department website url with "Department's website" to ensure the rule remains concise in the event the Department's url should change.
- Remove the FTIN requirement. This change is proposed as a result of customer comments received by the Department.
- Allow the applicant to provide a physical address or location and remove the requirement an applicant provide the Universal Transverse Mercator coordinates. This change is proposed as a result of customer comments received by the Department.
- Incorporate the information required in the proposal into the application to reduce burdens and costs to persons regulated by the rule.
- Specify that a person shall not administer any drug to wildlife without advance approval from the Department to increase consistency between Commission rules.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by May 2021.

R12-4-420. Zoo License

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-234, 17-238, 17-240(A), 17-250(A), 17-250(B), 17-306, 17-332, and 17-333

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish the requirements that allow a person to use captive live wildlife in a commercial facility where the principal business is exhibiting wildlife to the public and for purposes related to the advancement of science, conservation, education, or wildlife management, to include authorized activities,

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permitted wildlife species that may be held under the license, administrative compliance, and the restrictions and prohibitions necessary to protect public health and safety and existing wildlife habitat and resources. The rule was adopted to promote the conservation of wildlife species through education, exhibition, and wildlife management.

The Department issues approximately 20 zoo licenses on an annual basis.

The zoo license is valid until December 31st of each year.

The fee for the zoo license is \$115.

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

Overall, the rule appears to be effective in achieving the objective stated above.

However, public comment indicates the rule as written does not make it clear that a zoo license is issued only to commercial facility for the purpose of public exhibition of wildlife. The Department proposes to amend the rule to clarify that a zoo license may only be issued to a facility open to the public where the principal business is holding wildlife in captivity for exhibition purposes.

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.

Overall, the rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

The rule as currently written appears to be in conflict with the Legislature's definition of "zoo" as defined under A.R.S. § 17-101(A)(26) because the rule does not make it clear that a zoo license is issued only to commercial facility for the purpose of public exhibition of wildlife. The Department proposes to amend the rule to increase consistency between the rule and statute by specifying that a zoo license may only be issued to a facility open to the public where the principal business is holding wildlife in captivity for exhibition purposes.

In addition, the Department proposed to replace the reference to "scientific collecting license" with "scientific activity license" to reflect changes proposed to R12-4-418 (scientific collecting license).

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

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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 written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

The Department received the following written criticism of the rule:

Written Comment: May 15, 2018. Under R12-4-420(B), there are four criteria to satisfy in order to meet the overall requirements for a zoo license. However, under subsection (J), there is a requirement that the facility state the days of the week and the hours when the facility is open for viewing for the general public. Many facilities that specialize in breeding for science, wildlife management, or conservation may not be open to the public as their focus may not be on public education or entertainment. This would still meet the criteria as defined under R12-4-401 (live wildlife definitions). However, there is a discrepancy in definitions as stated in the opening statement in R12-4-401. Under R12-4-401, "zoo" means any facility licensed by the Arizona Game and Fish Department under R12-4-420 or, for facilities located outside of Arizona, licensed or recognized by the applicable governing agency. Under A.R.S. § 17-101, "zoo" means a commercial facility open to the public where the principal business is holding wildlife in captivity for exhibition purposes. A.R.S. § 17-101 conflicts with R12-4-420(A) and subsection (B)(1), (2), and (4). A.R.S. § 17-101 uses an archaic definition of zoo from a time of traveling menageries. By using this archaic definition, it puts facilities that focus on research, wildlife management, and wildlife conservation at a disadvantage and burdens these facilities with a requirement to be open to the public. We request clarification of subsection (B)(1), "Advancement of science or commercial purpose (as defined under R12-4-401) for the maintenance of captive live wildlife (as defined under R12-4-401) management." We request removal of subsection (J)(8) or replace with "Animals will be held on a zoo license for science or commercial purpose (as defined under R12-4-401) for the maintenance of captive wildlife (as defined under R12-4-401), management, promotion of public health or welfare, public education, or wildlife conservation." We request a modernization of the A.R.S. § 17-101 definition that will bring R12-4-420 and A.R.S. § 17-101 in line with each other.

Agency Response: The rule as written is confusing. The Department proposes to amend the rule to conform with the definition of "zoo" as defined under A.R.S. § 17-101(A)(26). Any revision to the A.R.S. § 17-101(A)(26)

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definition of "zoo" requires an act by the Arizona Legislature.

- 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 October 6, 2015. The rule was amended to restrict the transfer of live wildlife listed under R12-4-406 from zoos to another zoo license holder, an appropriately licensed or permitted special license holder or facility in another state or country, or a medical or scientific research facility exempt from special license and allow the applicant to submit a photograph of the facility if they are not affiliated with a national accreditation association.

- 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 completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

- 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 allow a commercial facility to exhibit live wildlife to the public for purposes related to the advancement of science, conservation, education, or wildlife management, to include authorized activities, permitted wildlife species that may be held under the license, administrative compliance, and

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the restrictions and prohibitions necessary to protect public health and safety. The public benefits from a rule that clearly outlines the requirements in which a private entity may utilize live wildlife for public exhibition and education, while maintaining the standards necessary to ensure the health and safety of the public, wildlife, and wildlife habitat. The Department benefits from a rule that contributes to the advancement of science, conservation, education, and wildlife management. The public and Department benefit from a rule that is understandable. The current zoo license is valid for a period of up to one year depending on the date of issue; the Department proposes to amend the rule to extend the time in which the license is valid from a period of up to one year to a period up to three years. The Department will continue to maintain oversight throughout the licensing period through the required inspections and reports. Because the Department intends to implement an online special license application and reporting system, the Department proposes to remove the requirement that an applicant submit a separate application for each location where the applicant proposes to use wildlife. These changes are proposed to reduce the burdens and costs to persons regulated by the rule and the Department. 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.

The Department has determined that the rule is not more stringent than corresponding federal law. Federal law, 9 C.F.R. Subchapter A, Animal Welfare Act (AWA), governs the care and treatment of mammals, only. The Department regulates all wildlife, mammals, birds, and reptiles, to ensure all species receive humane and appropriate care and to protect public health and safety. While the rule is not based on corresponding federal law, the Department applies AWA requirements to all wildlife to further protect native wildlife populations, their habitat, and the public.

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 Zoo License 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.

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The Department proposes to amend R12-4-420 as follows:

- Increase the amount of time in which a special license is valid from one to three years to reduce costs and burdens to the Department and persons regulated by the rule.
- Replace the reference to “scientific collecting license” with “scientific activity license” to reflect changes proposed to R12-4-418.
- Replace references to the Department website url with "Department's website" to ensure the rule remains concise in the event the Department's url should change.
- Remove the FTIN requirement. This change is proposed as a result of customer comments received by the Department.
- Allow the applicant to provide a physical address or location and remove the requirement an applicant provide the Universal Transverse Mercator coordinates. This change is proposed as a result of customer comments received by the Department.
- Incorporate the information required in the proposal into the application to reduce burdens and costs to persons regulated by the rule.
- Establish a time period of five-years for all records maintained by the special license holder that are subject to Department inspection.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by May 2021.

R12-4-421. Wildlife Service License

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-238(A), 17-239(D), 17-240(A), 17-306, 17-332, and 41-1005

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish the requirements that allow a person to facilitate the removal of wildlife that causes property damage, poses a threat to public health or safety, or when the health or well-being of the wildlife is threatened by its immediate environment to include authorized activities, permitted wildlife species, administrative compliance, and the restrictions and prohibitions necessary to protect public health and safety and

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existing wildlife habitat and resources. Under A.R.S. § 17-102, wildlife, both resident and migratory, native or introduced, found in this state, except fish and bullfrogs impounded in private ponds or tanks or wildlife and birds reared or held in captivity under permit or license from the commission, are property of the state and may be taken at such times, in such places, in such manner and with such devices as provided by law or rule of the Commission. The rule was adopted to ensure a person working in the wildlife service industry handles wildlife in a practical, humane, and environmentally acceptable manner.

The Department issues approximately 130 wildlife service licenses on an annual basis.

The wildlife service license is valid until December 31st of each year.

There is no fee for the wildlife service licenses.

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, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

Overall, the rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

Subsection (B) of the rule references an incorrect statutory citation. The Department proposes to amend the rule to correct the statutory reference.

As a result of changes made to R12-4-414 during the most recent rulemaking, the Department proposes to amend the rule to allow the applicant to provide a physical address or general location and remove the requirement that an applicant provide the Universal Transverse Mercator coordinates. This change is proposed as a result of customer comments received by the Department.

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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.

The Department has determined the anticipated benefits of requiring an applicant to provide their Federal Tax Identification Number (FTIN) and, when applicable, their wildlife supplier's FTIN has not been realized. The Department proposes to amend the rule to remove the FTIN requirement.

Subsection (B) identifies what species of animal do not require a wildlife service license and may be removed under a Pest Management license issued by the Arizona Department of Agriculture. Because most doves are considered to be migratory birds, there is some confusion as to whether Rock pigeons are protected under the Migratory Bird Treaty Act (MBTA). The Department proposes to add Rock pigeons, also known as Rock Doves, to this list. This change is proposed as a result of customer comments received by the Department.

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 rule references "peach-faced love birds." The Department proposes to amend the rule to replace the term "peach-faced love birds" with "rose-colored lovebirds" to reflect current scientific terminology.

The Department proposes to amend the rule to remove the Department website Uniform Resource Location (url) and simply reference "Department's website" to ensure the rule remains concise in the event the Department's url should change.

7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.

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

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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 October 6, 2015. The rule was amended to prohibit the possession of wildlife carcasses or parts as this practice is not consistent with the intent of the rule; and identify what species of animal do not require a wildlife service license and may be removed under a Pest Control license issued by the Department of Agriculture. The improper disposal of wildlife carcasses or parts after an animal is removed and/or euthanized often poses a threat to the public health, safety, and welfare; and native wildlife and wildlife habitat. The Commission anticipated the public and the Department would benefit from a rulemaking that protects native wildlife species and wildlife habitat. The Commission anticipated businesses that provide wildlife removal services would benefit from the amendment that clarifies which species may be removed without having to possess a Wildlife Service License. The Commission anticipated the rulemaking would not result in additional burdens or costs to persons regulated by the rule.

9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.

The Department did not receive any analyses.

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

The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

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 allow a person to facilitate the removal of wildlife that causes property damage, poses a threat to public health or safety, or if the health or well-being of the wildlife is affected by its

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immediate environment to include authorized activities, permitted wildlife species, administrative compliance, and the restrictions and prohibitions necessary to protect public health and safety and existing wildlife habitat and resources. Because the Commission holds and manages all aquatic and terrestrial wildlife for the benefit of the public, the rule is necessary to ensure wildlife is handled in a practical, humane, and environmentally acceptable manner. The public and the Department benefit from a rule that protects public health and safety, personal property, native wildlife species and wildlife habitat. The Department, the public, and businesses that provide wildlife removal services benefit from a rule that is understandable. The current wildlife service license is valid for a period of up to one year depending on the date of issue; the Department proposes to amend the rule to extend the time in which the license is valid from a period of up to one year to a period up to three years. The Department will continue to maintain oversight throughout the licensing period through the required inspections and reports. This change is proposed to reduce the burdens and costs to persons regulated by the rule and the Department. 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.

The Department has determined that the rule is not more stringent than corresponding federal law. Federal law, 9 C.F.R. Subchapter A, Animal Welfare Act (AWA), governs the care and treatment of mammals, only. The Department regulates all wildlife, mammals, birds, and reptiles, to ensure all species receive humane and appropriate care and to protect public health and safety. While the rule is not based on corresponding federal law, the Department applies AWA requirements to all wildlife to further protect native wildlife populations, their habitat, and the public.

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 Wildlife Service License 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 R12-4-421 as follows:

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- Correct the statutory reference provide in subsection (B).
- Replace the term "peach-faced love birds" with "rosey-faced lovebirds" to reflect current scientific terminology.
- Increase the amount of time in which a special license is valid from one to three years to reduce costs and burdens to the Department and persons regulated by the rule.
- Replace references to the Department website url with "Department's website" to ensure the rule remains concise in the event the Department's url should change.
- Remove the FTIN requirement. This change is proposed as a result of customer comments received by the Department.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by May 2021.

R12-4-422. Sport Falconry License

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-234, 17-235, 17-236(B), 17-238(A), 17-306, 17-307, 17-331, 17-332, 17-333, 17-371(D), 25-320(P), and 41-1005

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish the requirements that allow a person to take and use raptors listed in the Migratory Bird Treaty Act (MBTA) for the sport of falconry, to include authorized activities, permitted raptor species, administrative compliance, and the restrictions and prohibitions necessary to protect existing wildlife habitat and resources. The rule was initially adopted to supplement the federal migratory bird hunting regulations to ensure the Department maintained oversight of, and the ability to manage, Arizona's wildlife resources.

In 2008, 50 C.F.R. 21.29 (falconry standards and falconry permitting) was amended to eliminate the dual permitting system and transfer falconry permitting administration to the individual states, provided the state's laws, rules, processes, and forms met the minimum standards under 50 C.F.R. 21.29. If a state failed to meet the standards for certification, any persons possessing a Migratory Bird Treaty Act species (MBTA) raptor for falconry in that state would be required to permanently release into the wild, euthanize, or transfer their raptor to a

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licensed falconer in a certified state or jurisdiction, a captive propagation program, or the Department. In order to continue permitting sport falconry using MBTA raptors in Arizona, the rule must remain in place and continue to meet USFWS standards for certification. The Department's rules, processes, and forms were certified as meeting the standards under 50 C.F.R. 21.29; see 77 FR 66406 - 66408, November 5, 2012.

The Department issues approximately 55 sport falconry licenses on an annual basis.

The sport falconry license is valid until the last day of the third December from the date of issuance.

The fee for the sport falconry license is \$87.50.

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

Overall, 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, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

Under 50 C.F.R. 21.29 (falconry standards and falconry permitting), a falconer who houses their raptors in an indoor facility must ensure the facility has an area large enough to allow the raptor to fly when untethered or to fully extend its wings or attempt to fly when tethered without damaging its feathers or contacting other raptors. There have been instances where licensed falconers were unaware of the federal requirement. While the Department provides a packet of information that includes information on where to find the federal regulations, the packet does not include a copy of the actual regulations due to the volume of paper required and the fact that many people lose interest in obtaining a license once they understand that it is an expensive and time-consuming hobby. The Department proposes to amend the rule to require a falconer to ensure the facility has an area large enough to allow the raptor to fly when untethered or to fully extend its wings or attempt to fly when tethered without damaging its feathers or contacting other raptors to protect Arizona's wildlife resources.

Under 50 C.F.R. 21.29 (falconry standards and falconry permitting), USFWS is required to maintain an electronic reporting system that allows persons conducting lawful activities with MBTA raptors to enter information regarding the acquisition and disposal (death, loss, purchase, sale, theft, transfer, etc.) of raptors they possess. Because the states were supposed to have access to the online reporting system for administrative purposes, the rule was previously amended to no longer require the person to provide a copy of the federal 3-186A form to the

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Department. Due to issues with the electronic reporting system, the Department currently requires falconry license holders to provide a copy of the 3-186A form to the Department whenever a reportable activity occurs. Requiring a paper copy of the 3-186A form is authorized under 50 C.F.R. 21.29, regardless of whether the electronic reporting system is fully functional or not. However, full compliance has not been achieved. Furthermore, under 50 C.F.R. 21.27 (special purpose permits) and 21.30 (raptor propagation permits) respectively, unless the state requires an abatement or propagation permit, a person need only possess a federal permit to conduct abatement activities with, or propagate, MBTA raptors. Both federal permits have liberal possession limits and raptors held under the federal permits do not count towards the falconers possession limit established in rule. Because the federal regulations allow a person to use any lawfully possessed falconry raptor for abatement activities or for propagation, a licensed falconer can transfer their falconry raptor to their federal permit for abatement or propagation purposes at any time, as applicable. Under 50 C.F.R. 21.17 and 21.30, a person is only required to notify the governing state agency of this transfer when that state requires notification. Again - because the Department believed it would be made aware of these transfers through the electronic reporting system, the Department did not require persons to notify the Department when a raptor was transferred to the federal permit. For these reasons, the Department proposes to amend the rule to require a person to submit a paper copy of the 3-186A form and the annual federal propagation report at the same time the person submits these forms (reports) to USFWS. In addition, the Department proposes to amend the rule to replace the definition of "abatement services" with "abatement" to make the rule more concise.

Falconry requires long hours of unceasing dedication, expertise, and skill. A falconer must train a raptor to fly to hunt and then willingly return to being captive. An apprentice (beginner) must learn about the various raptors, their stages of life, characteristics, prey, care, feeding, and suitability for the falconer and the hunting environment. A falconer must know the rules and regulations that govern sport falconry and the raptors they possess, be able to provide proper housing (captivity standards) for the raptors they possess, know what equipment is required and how to use it, and recognize and treat health problems. While there are many things a person can easily learn long distance; how to properly care for and fly a raptor is not considered to be one of them. The Department proposes to amend the rule to require a sponsor or licensed general or master falconer to be physically present when the apprentice falconer is capturing a raptor.

Wildlife rehabilitators provide treatment and care to sick, injured, or orphaned wildlife with the goal of releasing the wildlife back to their natural habitats in the wild once they are capable of functioning in their natural habitats as normal members of their species. A licensed falconer may assist a wildlife rehabilitator in conditioning a raptor in preparation for releasing it back into the wild. Effective conditioning meets the unique physical and psychological needs of each species. Because the rule does not restrict the falconer to the type of raptor they are authorized to possess, a falconer who has no experience with a particular raptor species may inadvertently harm the raptor or delay its release into the wild. In addition, because conditioning requires effective conditioning, the

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Department does not believe the average apprentice falconer has the necessary skills to provide effective and appropriate conditioning. For these reasons, the Department proposes to amend the rule to limit the ability to assist a wildlife rehabilitator in conditioning a raptor to general and master falconers and restrict those general and master falconers to raptors they are authorized to possess to protect Arizona's wildlife resources.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

The rule incorporates by reference the October 1, 2013 edition of 50 C.F.R. 21.3 (definitions) and the October 1, 2013 edition of 50 C.F.R 17.11 (endangered and threatened wildlife). The Department also proposes to amend the rule to reference the most recent editions of the federal regulations incorporated by reference.

Under 50 C.F.R. 21.27 (special purpose permits) and 21.30 (raptor propagation permits) respectively, unless the state requires an abatement or propagation permit, a person need only possess a federal permit to conduct abatement activities with, or propagate, MBTA raptors. Both federal permits have liberal possession limits and raptors held under the federal permits do not count towards the falconers possession limit established in rule. Because the federal regulations allow a person to use any lawfully possessed falconry raptor for abatement activities or for propagation, a licensed falconer can transfer their falconry raptor to their federal permit for abatement or propagation purposes at any time, as applicable. Under 50 C.F.R. 21.27 and 21.30, a person is only required to notify the governing state agency of this transfer when that state requires notification. The Department proposes to amend the rule to require a person to submit a paper copy of the annual federal propagation report at the same time the person submits the report to USFWS.

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.

Under 50 C.F.R. 20.21(what hunting methods are illegal) and R12-4-422, a master falconer may conduct abatement activities with any raptor they possess for falconry, provided the falconer meets certain criteria. There is some concern about potential enforcement difficulties for State and federal law enforcement officers because the federal regulations do not allow falconry raptors held under a sport falconry license to be used for abatement and

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propagation activities and the potential exploitation of the liberal possession limits for master falconers under the falconry regulations. The Department proposes to amend the rule to require a person to submit a properly completed 3-186A form to the Department when transferring a falconry raptor to the person's federal abatement or propagation permit. In addition, the Department proposes to amend the rule to require a person to submit a paper copy of the annual federal propagation report at the same time the person submits the report to USFWS.

A captive-bred raptor is not supposed to be released into the wild; under subsection (M), a licensed falconer is allowed to capture the raptor for the purpose of removing it from the wild and returning the raptor to its owner. The Department proposes to amend the rule to make it more understandable by clarifying references to the falconer who captured the raptor.

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.

Under subsection (M), a person is not required to tether an unflighted eyas. The Department proposes to amend the rule to replace the term "unflighted eyas" with "nestling" as it is a common term and, thus, more easily understood.

The rule defines "abatement services" to clarify subsection (W). The Department proposes to amend the rule to repeal the definition of "abatement services" and define "abatement" to make the rule more concise.

Under subsection (H), an apprentice falconer is prohibited from possessing a raptor that has imprinted on a human. The Department proposes to amend the rule to define "imprint" by incorporating the definition under 50 C.F.R. 21.3 (definitions) to make the rule more concise.

The Department proposes to amend the rule to remove the Department website Uniform Resource Location (url) and simply reference "Department's website" to ensure the rule remains concise in the event the Department's url should change.

In most cases where an examination is required, a person must submit an application before taking the examination. For the sport falconry license, the application is the last step in the process. The person must first pass the examination, then undergo a facilities inspection, and finally submit an application. Because this is not the typical process and there is some confusion, the Department proposes to amend the rule to clarify the licensing process.

A person is required to report information regarding the capture of any raptor displaying a federal Bird Banding

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Laboratory (BBL) aluminum research band or tag to BBL by calling a telephone number. Since the rule was last amended, BBL has implemented an online reporting system. The Department proposes to amend the rule to replace the reference to the telephone number with a reference to the BBL website to make the rule more concise.

A licensed falconer may charge a fee for presenting a conservation education program that provides information about the biology, ecological roles, and conservation needs of raptors and other migratory birds. The intent behind the fee is not for the falconer to make a profit from the use of the raptor in the education program or to cover any or all costs related to the treatment, care, and housing of the raptor. The intent behind the fee is to reimburse the falconer for costs related travel to and from the program site, any related educational documents such as brochures or pamphlets, any fees charged by the venue, etc. The Department proposes to amend the rule to clarify the intent of the rule to make the rule more concise.

The National Eagle Repository (Repository) is managed and operated the USFWS; its purpose is to provide a central location for the receipt, storage, and distribution of bald and golden eagle carcasses and parts of carcasses throughout the U.S. The eagle carcasses and their parts are shipped to Native Americans and Alaskan Natives enrolled in federally recognized tribes for use in Indian religious ceremonies. The collection efforts of USFWS provides a legal means for Native Americans to acquire eagle feathers for religious purposes, which in turn, reduces the pressure to take birds from the wild and thereby protecting eagle populations. The distribution of bald and golden eagles and their parts to Native Americans is authorized by the Bald and Golden Eagle Protection Act and Regulations found in 50 CFR 22. The numbers of requests for eagle carcasses and parts of carcasses far exceeds the number of available eagle carcasses and parts of carcasses. For this reason, federal and state conservation agencies, zoological parks, federal rehabilitators, and others who may legally possess and transport carcasses and parts of carcasses are encouraged to send them to the Repository where they will be distributed to Native Americans. The Repository will not accept the carcass and parts of carcass of a raptor that is suspected or confirmed with West Nile Virus or poisoning, except for lead poisoning, and requires the person possessing such raptor to disposed of the carcass by incineration. The Department proposes to clarify the actions required to dispose of a deceased eagle or other raptor.

- 7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

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**

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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.

Overall, 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 October 6, 2015. The rule was amended to incorporate the October 1, 2014 version of 50 C.F.R. 17.11 (endangered and threatened wildlife); reference the definition of "resident" under A.R.S. § 17-101; require the license holder to remove "any other falconry equipment" prior to releasing a raptor; prohibit a falconer from transferring permit tag and quota regulated raptor species to out-of-state falconers within one-year of the date of capture; and require a person to report the theft of a raptor to the State and USFWS Regional Law Enforcement office within 10 days of the theft of the bird. The Commission anticipated the rulemaking would improve the administrative aspects of the license and result in a more efficient process that benefited both the Department and persons regulated by the rule. The Commission did not anticipate a person possessing a falconry license under the rule would incur any additional costs or undue regulation. The Commission anticipated the rulemaking would have a positive impact sport falconry license holders, specifically improving the administrative aspects of the license.

- 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 completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

- 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.**

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The rule establishes the requirements necessary to allow a person to take and use MBTA raptors for the sport of falconry, to include authorized activities, permitted raptor species, administrative compliance, and the restrictions and prohibitions necessary to protect existing wildlife habitat and resources. The rule ensures the continued permitting sport falconry using MBTA raptors in Arizona. The Department and public benefits from a rule that allows regulation and oversight of the legal take of raptors for use in sport falconry. Persons regulated by the rule benefit from a rule that allows them to practice falconry, the hunting of wild animals in their natural state and habitat by means of a trained bird of prey. The public and Department benefit from a rule that is understandable. 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, 50 C.F.R. 10.13 (list of migratory birds), is applicable to the subject of the rule. The Department has determined the rule is not more stringent than the federal law.

Federal law, 50 C.F.R. 21(migratory bird permits) and 22 (eagle permits), are applicable to the subject of the rule. The Department has determined the rule is more restrictive than the federal law in requiring a re-inspection when a licensed falconer changes address and the Department cannot verify the facility at the new location is similar to the one approved during a prior inspection. A re-inspection is also proposed when a falconer acquires additional raptors and the previous inspection does not indicate the facilities can accommodate a new species or additional raptors. 50 C.F.R. 21.29(b)(1)(iii) (falconry standards and falconry permitting) states, "State, tribal, or territorial laws may be more restrictive than these Federal standards but may not be less restrictive." In addition, A.R.S. § 17-231(A)(1) authorizes the Commission to "[a]dopt rules and establish services it deems necessary to carry out the provisions and purposes of this title" and A.R.S. § 17-235 states, the Commission "may shorten or modify seasons, bag and possession limits and other regulations on migratory birds as it deems necessary."

It is important to note, under 50 C.F.R. 21.29 (falconry standards and falconry permitting) a state is required to submit their laws, rules, processes, and forms to USFWS for compliance review and certification whenever any one of the four items listed above are substantially amended. The Department's rules, processes, and forms were certified as meeting the standards under 50 C.F.R. 21.29; see 77 FR 66406 - 66408, November 5, 2012.

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 Sport Falconry License described in the rule falls within the

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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 R12-4-422 as follows:

- Replace the definition of "abatement services" with "abatement" to make the rule more concise.
- Define "abatement" to make the rule more concise.
- Define "imprint" by incorporating the definition under 50 C.F.R. 21.3 (definitions) to make the rule more concise.
- Require a person to submit a paper copy of the 3-186A form at the same time the person submits these forms to USFWS.
- Require a person to submit the annual federal propagation report at the same time the person submits the report to USFWS.
- Incorporate by reference the most recent editions of 50 C.F.R. 10.13 (list of migratory birds), 50 C.F.R. 17.11 (endangered and threatened wildlife), and 50 C.F.R. 21.3 (definitions).
- Require a licensed general or master falconer to be physically present when the apprentice falconer is capturing a raptor.
- Clarify the licensing process for the sport falconry license.
- Require a falconer to ensure the facility has an area large enough to allow the raptor to fly when untethered or to fully extend its wings or attempt to fly when tethered without damaging its feathers or contacting other raptors to protect Arizona's wildlife resources.
- Replace the term "unflighted eyas" with "nestling" as it is a common term and, thus, more easily understood.
- Clarifying references to the falconer who captured the raptor displaying a seamless band.
- Limit a person to only being able to capture a raptor when authorized by Commission Order, regardless of whether the raptor is displaying a seamless band or a transmitter to protect Arizona's wildlife resources.
- Replace the reference to the BBL telephone number with a reference to the BBL website to make the rule more concise.
- Limit the ability to assist a wildlife rehabilitator in conditioning a raptor to general and master falconers.
- Restrict the ability to assist a wildlife rehabilitator in conditioning a raptor solely to raptors the falconer is authorized to possess to protect Arizona's wildlife resources.
- Clarify a falconer may only be reimbursed for the actual costs of providing each individual conservation education event to make the rule more concise.
- Clarify the actions required to dispose of a deceased eagle or other raptor.

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Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by May 2021.

R12-4-423. Wildlife Rehabilitation License

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-238, 17-240(A), 17-306, 17-332, and 41-1005

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish the requirements that allow a person to rehabilitate and release live wildlife, to include authorized activities, permitted wildlife species, administrative compliance, and the restrictions and prohibitions necessary to protect existing wildlife habitat and resources. Wildlife Rehabilitation is defined as the treatment and temporary care of injured, diseased, and displaced native wildlife, and the subsequent release of healthy individuals to appropriate habitats in the wild. The rule was adopted to allow persons to provide treatment and care to live injured, disabled, orphaned, or otherwise debilitated wildlife to assist the Department in protecting Arizona's wildlife resources.

The Department issues approximately 10 wildlife rehabilitation licenses on an annual basis.

The wildlife rehabilitation license is valid until the last day of the third December from the date of issuance.

There is no fee for the wildlife rehabilitation license.

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, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

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Under subsection (L)(3), an applicant for a wildlife rehabilitation license must also submit an affidavit affirming either the applicant is a licensed veterinarian or that a licensed veterinarian is reasonably available to provide veterinary services as necessary to facilitate the rehabilitation of wildlife they may possess under the license. The intent behind this requirement is that any wildlife the applicant may possess will receive appropriate medical care from a licensed veterinarian whenever necessary. The Department recently became aware of a situation where a license holder with no formal veterinary medical education performed medical procedures, including surgery, on wildlife held by the licensee. The Department proposes to amend the rule to clarify the wildlife rehabilitation license does not authorize the license holder to conduct any activities defined as the practice of veterinary medicine under A.R.S. § 32-2231 whether or not a fee, compensation, or reward is offered, received, or accepted by the licensed rehabilitator.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

The rule incorporates by reference the October 10, 2013 edition of 50 C.F.R. 17.11 (endangered and threatened wildlife). The Department proposes to amend the rule to reference the most recent edition of the federal regulation incorporated by reference.

As a result of changes made to R12-4-414 during the most recent rulemaking, the Department proposes to amend the rule to allow the applicant to provide a physical address or general location and remove the requirement that an applicant provide the Universal Transverse Mercator coordinates. This change is proposed as a result of customer comments received by the Department.

Under subsection (L), an applicant for a wildlife rehabilitation license must provide proof of at least six months months experience performing wildlife rehabilitative work with an average of at least eight hours each week. This requirement ensures the license holder has the minimum amount of experience required to satisfactorily provide rehabilitative care to wildlife in their possession. Under subsection (O), an agent may conduct rehabilitative activities on the wildlife license holder's behalf. Because an agent is authorized to conduct rehabilitative activities without direct supervision, the Department believes an agent should be held to the same standards under subsection (L)(1)(b). The Department proposes to amend the rule to establish an agent for a wildlife rehabilitation license holder shall provide proof of at least six months experience performing wildlife rehabilitative work to protect Arizona's wildlife resources.

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Under R12-4-422 (sport falconry license), a licensed falconer is required to conduct specific activities when possessing the carcass or parts of a deceased MBTA raptor. Because a wildlife license holder also handles deceased MBTA raptors, the Department proposes to amend the rule to specify the actions required to dispose of a deceased eagle or other raptor.

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.

The Department proposes to clarify a wildlife rehabilitation license holder may lawfully possess, treat, and care for wildlife received from the public.

Under subsection (J), an applicant must successfully complete an examination conducted by the Department before a wildlife rehabilitation license may be issued to the person. The Department proposes to clarify the rule by establishing the applicant must correctly answer at least 80% of the questions on the Department administered examination to make the rule more concise.

Under subsection (Y), a wildlife rehabilitation license holder may permanently hold wildlife determined to be unsuitable for release into the wild; however, the rule does not establish who is qualified to make this determination. The Department proposes to amend the rule to specify that only a licensed veterinarian may determine whether or not an animal is suitable for release.

Under subsection (Z), a wildlife rehabilitation license holder is required to submit an annual report containing specific information to the Department by January 31 of each year. The license holder is required to provide the permit or license number of any federal permits or licenses that relate to any rehabilitative function performed by the license holder. A license holder may submit copy of the rehabilitator's federal permit report of activities related to federally-protected wildlife in lieu of the federal permit or license numbers. The way the information is presented has contributed to some confusion because some license holders believe the copy of the federal permit report satisfies the reporting requirement. The Department proposes to clarify the federal permit report may only

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be submitted to satisfy the report's permit or license number requirement.

- 7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

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 October 6, 2015. The rule was amended to incorporate the October 1, 2014 version of 50 C.F.R. 17.11 (endangered and threatened wildlife); reduce the amount of time in which the results of the required license examination remain valid from five years to three years; require an applicant to disclose how they intend to euthanize wildlife; eliminate the Department's responsibility to provide continuing education courses for license holders and expand options for continuing education courses applicable to their license renewal; require the wildlife rehabilitation license holder to ensure their facility is inspected by a licensed, practicing veterinarian; require an applicant to submit an affidavit affirming the applicant is either a licensed, practicing veterinarian or the applicant has access to a licensed, practicing veterinarian who is reasonably available to give veterinary services as necessary to facilitate rehabilitation of wildlife; and clarify that the wildlife rehabilitation license holder is responsible for all expenses incurred as a result of activities authorized under the license, including veterinary expenses. The Commission anticipated the rulemaking would not increase costs and burdens to most licensees; that those license holders who were not practicing acceptable euthanasia techniques could incur costs of \$150 or higher, depending on the method they chose for euthanasia. The few license holders who participated in the continuing education courses offered by the Department could incur costs for local or online seminars that ranged from approximately \$50-\$100, or costs of \$1,000 or more to attend an out-of-state conference. However, there are no-cost alternatives as well, such as shadowing a veterinarian or more experienced rehabilitation license holder.

- 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.

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

The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

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 allow a person to rehabilitate and release live wildlife, to include authorized activities, permitted wildlife species, administrative compliance, and the restrictions and prohibitions necessary to protect existing wildlife habitat and resources. The public benefits from a rule that protects and conserves Arizona's wildlife resources in a manner that allows the wildlife to be returned to their natural environment. The Department benefits from a rule that allows a person to provide rehabilitative care and treatment to Arizona's wildlife without impacting the Department's resources. The public and Department benefit from a rule that is understandable. Because the Department intends to implement an online special license application and reporting system, the Department proposes to remove the requirement that an applicant submit a separate application for each location where the applicant proposes to use wildlife. This change is proposed to reduce the burdens and costs to persons regulated by the rule and the Department. 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.

The Department has determined that the rule is not more stringent than corresponding federal law. Federal law, 9 C.F.R. Subchapter A, Animal Welfare Act (AWA), governs the care and treatment of mammals, only. The Department regulates all wildlife, mammals, birds, and reptiles, to ensure all species receive humane and appropriate care and to protect public health and safety. While the rule is not based on corresponding federal law, the Department applies AWA requirements to all wildlife to further protect native wildlife populations, their habitat, and the public.

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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 Wildlife Rehabilitation License 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 R12-4-423 as follows:

- Clarify a wildlife rehabilitation license holder may lawfully possess, treat, and care for wildlife received from the public.
- Incorporate by reference the most recent editions of 50 C.F.R. 17.11 (endangered and threatened wildlife).
- Clarify the wildlife rehabilitation license does not authorize the license holder to conduct any activities that could be construed as the practice of veterinary medicine as prescribed under A.R.S. 32-2231 to protect Arizona's wildlife resources.
- Establish the applicant must correctly answer at least 80% of the questions on the Department administered examination to make the rule more concise.
- Remove the requirement that an applicant submit a separate application for each location where the applicant proposes to use wildlife. This change is proposed as a result of customer comments received by the Department.
- Allow the applicant to provide a physical address or general location and remove the requirement that an applicant provide the Universal Transverse Mercator coordinates. This change is proposed as a result of customer comments received by the Department.
- Establish an agent working on behalf of a wildlife rehabilitation license holder to provide proof of at least six months experience performing wildlife rehabilitative work to protect Arizona's wildlife resources.
- Specify that only a licensed veterinarian may determine whether or not an animal is suitable for release.
- Specify the actions required to dispose of a deceased eagle or other raptor.
- Clarify the federal permit report may only be submitted to satisfy the report's permit or license number requirement.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by May 2021 .

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R12-4-424. White Amur Stocking and Holding License

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-238(A), 17-240(A), 17-306, 17-317, 17-332, 17-333, and 41-1005

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish the requirements that allow a person to possess and transport white amur, to include authorized activities, administrative compliance, and the restrictions and prohibitions necessary to protect existing aquatic habitat and resources. Triploid white amur are virtually sterile and are an effective biological control tool and can consume its body weight in plant material every day. The rule was adopted to allow for the use of triploid white amur in vegetation control in closed aquatic systems while protecting the natural aquatic ecosystem from the adverse effects of the unwanted expansion and establishment of white amur.

The Department issues approximately 240 commercial white amur licenses and 160 noncommercial white amur licenses on an annual basis.

The fee for the commercial white amur license is \$115; there is no fee for the noncommercial white amur license.

- 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, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

- 4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

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As a result of changes made to R12-4-414 during the most recent rulemaking, the Department proposes to amend the rule to allow the applicant to provide a physical address or general location and remove the requirement that an applicant provide the Universal Transverse Mercator coordinates. This change is proposed as a result of customer comments received by the Department.

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

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

6. Clarity, conciseness, and understandability of the rule.

Overall, the rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

An overabundance of freshwater vegetation can result in dense mats of vegetation that interfere with navigation and recreational activities, clogged power generation and irrigation equipment, stagnant water (which provides a good breeding ground for mosquitoes), and degraded water quality due to rising pH levels, decreased oxygen, and increased temperature. White amur are used as a natural alternative to remove unwanted freshwater vegetation. They are stocked in a private or public pond until the desired effect has been achieved and then they are transported to another location where they can be of service. White amur are capable of fast growth and can live for 10 to 15 years; when they reach maturity, their rate of weed consumption declines, and restocking of additional white amur is required every 5 to 6 years. Therefore, the Department proposes to amend the rule to remove references to "holding."

The white amur stocking and holding license is valid for a period of 20 consecutive days. In most cases, due to the life expectancy of white amur, persons will not need another for years, if at all. The Department proposes to amend the rule to remove references pertaining to license renewal to make the rule more concise.

Scientific terminology is the part of the language that is used by scientists in the context of their professional activities. While studying nature, scientists often encounter or create new material or immaterial objects and concepts and are compelled to rename or redefine them. As a result, scientific terms and definitions continue to evolve over time. The Department proposes to amend the definition of "triploid" to reflect language used by modern fishery biologists.

The Department is aware of some confusion regarding the use of the terms "commercial" and "noncommercial"

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activity and how those terms apply to the white amur license. Under R12-4-401 (live wildlife definitions), “commercial purpose” means the bartering, buying, leasing, loaning, offering to sell, selling, trading, exporting or importing of wildlife or their parts for monetary gain. When viewed through this definition, the use of white amur by an applicant for vegetation control purposes cannot be viewed as a commercial purpose. In addition, an entity maintaining white amur for a commercial purpose as defined under R12-4-401 would be operating under an aquaculture (fish farm) license issued by the Department of Agriculture. Therefore, differentiating between "commercial" and "noncommercial" is not necessary and the Department proposes to amend the rule to remove language pertaining to "commercial" and "noncommercial" purpose.

The Department proposes to replace reference to “On-Line Environmental Review Tool” with “Online Environmental Review Tool” to reflect current terminology.

- 7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

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 October 6, 2015. The rule was amended to revise the definition of "triploid" to reflect language used by modern fishery biologists; clarify the activities authorized under the license include stocking, holding, and restocking; require an applicant to conduct an assessment of the impacts to sensitive species using the Department’s On-Line Environmental Review Tool; establish a protocol for disease control; to increase consistency between rules within Article 4; and establish the Department’s ability to perform inspections of the stocking location. The Commission anticipated the rulemaking would have no significant impact on persons regulated by the rule.

- 9. Any analysis submitted to the agency by another person regarding the rule’s impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

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

The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

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 allow a person to possess and transport white amur, to include authorized activities, administrative compliance, and the restrictions and prohibitions necessary to protect existing aquatic habitat and resources. The public benefits from a rule that allows persons to use of triploid white amur in vegetation control in closed aquatic systems in private and public waters. The public and the Department benefit from a rule that is understandable and protects the natural aquatic ecosystem from the adverse effects of the unwanted expansion and establishment of white amur. The Department proposes to amend the rule to establish a restocking license. In most cases, the costs incurred by the Department when processing a restocking license are anticipated to be less than an initial license because the Department believes the issuance of a white amur stocking license should take less time to review as there would be no need for the required inspection(s) and background or reference check(s). 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 White Amur Stocking and Holding License described in the rule falls within the definition of "general permit" as defined under A.R.S. § 41-1001(11).

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- 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 R12-4-424 as follows:

- Remove references to "holding" to make the rule more concise.
- Revise the definition of "triploid" to reflect language used by modern fishery biologists.
- Remove language pertaining to "commercial" and "noncommercial" purpose.
- Allow the applicant to provide a physical address or general location and remove the requirement that an applicant provide the Universal Transverse Mercator coordinates. This change is proposed as a result of customer comments received by the Department.
- Replace reference to "On-Line Environmental Review Tool" with "Online Environmental Review Tool" to reflect current terminology.
- Remove references pertaining to license renewal to make the rule more concise.
- Establish a white amur restocking license to aid in facilitating a more efficient application review process.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by May 2021.

R12-4-425. Restricted Live Wildlife Lawfully Possessed without License or Permit

Before the Effective Date of this Article

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-234, 17-238(A), 17-240(A), and 17-306

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish administrative compliance requirements for the continued possession and use of wildlife lawfully possessed before becoming classified as restricted live wildlife list under R12-4-406 (restricted live wildlife) without having to apply for and obtain a special license. The rule requires a person who

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lawfully possessed wildlife prior to being classified as restricted live wildlife to notify the Department of the possession and use of the wildlife. The Commission restricts certain wildlife species from possession because they pose a threat to human health and safety, have a negative biological impact on species and ecosystems, have a negative economic impact, and to be consistent with federal, state, and county regulatory agencies. Notification is required so the Department can track and monitor these species. The rule was adopted to provide a mechanism that allows a person continue to possess and use wildlife that was lawfully possessed prior to becoming classified as restricted live wildlife without the person having to apply for and obtain a special license.

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, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and 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 written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.

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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 October 6, 2015. The rule was amended to require a person to specifically identify wildlife possessed under the rule in the written notification; require a person to permanently mark wildlife possessed under the rule; restrict the propagation of live wildlife lawfully possessed under the rule; require a person who possesses any offspring prior to the effective date of this amendment to report any currently held offspring; and replace "designated Department employee" with "Department" to prevent the impression that only a specific designated employee may request documentation. The Commission believed the benefits of the rulemaking, specifically taking a stronger stance in the regulation of live wildlife for the principal purpose of protecting native wildlife species, outweighed any costs. The Commission anticipated a person could incur minor costs associated with the requirement to permanently mark the animal with a tattoo, microchip, or other means. Costs were expected to be insignificant. The Commission anticipated a veterinarian who provides spay and neuter, microchip or tattooing services would benefit from the requirements that a person permanently mark the animal. Veterinarians charge up to \$50 to permanently mark an animal and the office visit can cost up to \$100. Costs to spay or neuter an animal are difficult to quantify as the cost varies greatly depending on the species and required after-care. However, compliance may also be achieved at no cost by keeping males and females separated or by possessing only male or female animals.

- 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 completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.

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- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

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 administrative compliance requirements for the continued possession and use of wildlife lawfully possessed prior to becoming classified as restricted live wildlife list under R12-4-406 (restricted live wildlife). The rule requires a person who lawfully possessed wildlife prior to being classified as restricted live wildlife to notify the Department of the possession and use of the wildlife. This notification is required so the Department is aware of the location of restricted wildlife for tracking and monitoring purposes. The public benefits from a rule that allows a person continue to possess and use wildlife that was lawfully possessed prior to becoming classified as restricted live wildlife without the person having to apply for and obtain a special license. The Department benefits from a rule that enables it to track and monitor restricted live wildlife lawfully possessed prior to being classified as restricted live wildlife. The public and Department benefit from a rule that is understandable. The Department has determined 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.

R12-4-426. Possession of Nonhuman Primates

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1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-234, 17-238(A), and 17-306

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 possession of nonhuman primates, to include containment, transportation, incident reporting and laboratory testing should a bite, scratch, or other incident occur, and the restrictions necessary to protect public health and safety. The rule was adopted as a result of a petition from the Arizona Department of Health Services (ADHS) which compiled data documenting primate exposures to humans (35 documented exposure incidents from 1994 to 1997). The risks posed by primates include zoonotic diseases, pathogenic organisms, and physical injury.

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, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and 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.

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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 written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

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 October 6, 2015. The rule was amended to restrict the possession of primates to zoo license holders, research facilities, and persons exempt under R12-4-425; include additional zoonotic diseases subject to testing requirements; require a person to transport a primate in a secure cage, crate, or carrier; replace the terms "Director" and "Director's designee" with "Department;" require a zoo license holder or person using primates at a research facility that bit, scratched, or otherwise exposed a human to pathogenic organisms to use procedures recommended by the American Association of Zoo Veterinarians (AAZV) or Centers for Disease Control (CDC); and require a person lawfully possessing a primate under R12-4-425 to comply with the applicable captivity standards established under R12-4-428. The Commission believed the benefits of the rulemaking, specifically taking a stronger stance in the regulation of live wildlife for the principle purpose of protecting human health, outweighed any costs. The Commission anticipated a person possessing wildlife could incur minor costs associated with the requirement to permanently mark the animal with a tattoo, microchip, or other means. Costs were expected to be insignificant. The Commission anticipated a veterinarian who provides spay and neuter, microchip or tattooing services would benefit from the requirements that a person permanently mark the animal and the prohibition on propagation. Veterinarians charge up to \$50 to permanently mark an animal and the office visit can cost up to \$100. Costs to spay or neuter an animal are difficult to quantify as the cost varies greatly depending on the species and required after-care. However, compliance may also be achieved at no cost by keeping males and females separated or by possessing only male or female animals.

- 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.**

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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 completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

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 necessary requirements for the possession of nonhuman primates, to include containment, transportation, incident reporting and laboratory testing should a bite, scratch, or other incident occur, and the restrictions necessary to protect public health, safety, and welfare. The public benefits from a rule that protects the public from risks posed by nonhuman primates because primates held as pets expose the public to potential pathogenic organisms and physical injury. The Department benefits from a rule that clearly protects the public and Arizona's wildlife resources. The public and Department benefit from a rule that is understandable. 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.

The Department has determined that the rule is not more stringent than corresponding federal law. Federal law, 9 C.F.R. Subchapter A, Animal Welfare Act (AWA), governs the care and treatment of mammals, only. The Department regulates all wildlife, mammals, birds, and reptiles, to ensure all species receive humane and appropriate care and to protect public health and safety. While the rule is not based on corresponding federal law, the Department applies AWA requirements to all wildlife to further protect native wildlife populations, their habitat, and the public.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency

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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.

R12-4-427. Exemptions from Requirements to Possess a Wildlife Rehabilitation License

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(3), 17-231(B)(8), 17-234, 17-238(A), and 17-306

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish criteria that allow a person to possess and care for specific live wildlife species without having to apply for and obtain a wildlife rehabilitation license, to include authorized activities, wildlife species that may be held without a wildlife rehabilitation license, and the restrictions and prohibitions necessary to protect wildlife habitat and resources. The rule was adopted to provide a mechanism that allows a private person to provide care for displaced, injured, or orphaned wildlife with minimal risk of causing injury to other wildlife or posing a threat to the public health and safety.

- 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, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

- 4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of**

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the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and 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 written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.

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 October 6, 2015. The rule was amended to replace "Wildlife of Special Concern" with "Species of Greatest Conservation Need" to ensure consistency in language within Article 4. Because the amendments made to the rule were not substantive, the Commission anticipated 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.

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

The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

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 criteria that allow a person to possess and care for specific live wildlife species without a wildlife rehabilitation license, to include authorized activities, wildlife species that may be held and the restrictions and prohibitions necessary to protect wildlife habitat and resources. With thousands of interactions between the public and baby birds and rabbits each year, the Department believes it is appropriate for persons to pick up birds fallen from nests or small mammals displaced or trapped in urban environments in an attempt to help these species. Without this exemption someone who picks up a baby bird or rabbit and brings it home to temporarily care for it would be in violation of Game and Fish Commission laws and rules. The Department believes the rule works well for its intended purpose. This rule is specifically for Good Samaritans who wish to help the injured wildlife found in their yards and does not prohibit or prevent persons from taking injured wildlife directly to a licensed wildlife rehabilitator or veterinarian. The public benefits from a rule that protects and conserves Arizona's wildlife resources in a manner that allows the wildlife to be returned to their natural environment. The Department benefits from a rule that allows a person to provide rehabilitative care and treatment to Arizona's wildlife without impacting the Department's resources. The public and Department benefit from a rule that is understandable. 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

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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

R12-4-428. Captivity Standards

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-234, 17-238(A) , and 17-306

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish the minimum standards for living spaces, furnishings, equipment, dietary needs, veterinary care, and social groupings to ensure the humane treatment of wildlife possessed under a lawful exemption or special license issued by the Department. Wildlife requires specialized care to survive; without species appropriate feeding, facilities, handling, and veterinary care, wildlife may suffer or die. The rule was adopted to ensure humane handling, care, and treatment of wildlife in captivity.

- 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, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

- 4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of**

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the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

The Department proposes to amend R12-4-409 (general provisions and penalties for special licenses) to allow the Department to place additional stipulations on a special license believes it is necessary to have the ability to add or remove stipulations during the licensing period to address changing conditions that may arise. The Department proposes to amend the rule to reflect changes made to R12-4-409 to increase consistency between rules within Article 4.

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

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

6. Clarity, conciseness, and understandability of the rule.

Overall, the rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

However, the Department proposes to make nonsubstantial grammatical amendments to make the rule more concise.

7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.

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.

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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 October 6, 2015. The rule mirrors the federal requirements applicable to dealers, research facilities, and exhibitors under 9 C.F.R. 2 (animal welfare). The environment must contain sufficient useable space, complexity, and enrichment and promote a species-appropriate repertoire of behaviors. The cost of ensuring the captive environment is minimally enriching are difficult to quantify as the cost varies greatly depending on the species and existing conditions. Modifications could range from simple changes in daily procedures, to changes in the enclosures costing hundreds to thousands of dollars. The Commission believed the benefits of the rulemaking, specifically ensuring license holders consider the psychological well-being of their animals, outweighs any costs. It is important to note that possessing live wildlife is a voluntary activity and only those persons who choose to possess live wildlife will incur costs.

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 completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

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 standards for living spaces, furnishings, equipment, dietary needs, veterinary care, and social groupings to ensure the humane treatment of animals possessed under a lawful exemption or special license issued by the Department. Wildlife requires specialized care to survive; without species appropriate feeding, facilities, handling, and veterinary care, wildlife may suffer or die. The Department and public benefits from a rule that ensures humane handling, care, and treatment of wildlife possessed in captivity. The public and

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Department benefit from a rule that is understandable. The Department has determined 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.

The Department has determined that the rule is not more stringent than corresponding federal law. Federal law, 9 C.F.R. Subchapter A, Animal Welfare Act (AWA), governs the care and treatment of mammals, only. The Department regulates all wildlife, mammals, birds, and reptiles, to ensure all species receive humane and appropriate care and to protect public health and safety. While the rule is not based on corresponding federal law, the Department applies AWA requirements to all wildlife to further protect native wildlife populations, their habitat, and the public.

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 R12-4-428 as follows:

- Make grammatical amendments to make the rule more concise.
- Reflect amendments made to R12-4-409 (general provisions and penalties for special licenses) to increase consistency between rules within Article 4.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by May 2021.

R12-4-430. Importation, Handling, and Possession of Cervids

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

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Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-234, 17-238(A), 17-240(A), 17-250(A), 17-250(B), 17-306, 17-318

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish the requirements for the importation, handling, and possession of captive cervids necessary to prevent disease transmission from captive cervids to wildlife and domestic animals, and the restrictions and prohibitions necessary to protect existing habitat and wildlife resources. The rule was adopted to impose regulations on cervids, including a ban on their importation into Arizona to prevent the introduction of chronic wasting disease (CWD) to free-ranging or captive wildlife in the state.

The intent behind the rule is to protect native wildlife and their habitats from the introduction of disease carried by captive cervids and prevent the introduction of nonnative cervids in Arizona ecosystems. The economic costs associated with wildlife disease outbreaks and control can be severe. Costs of disease outbreaks are generally recurring and additive due to annual costs of monitoring and eradicating diseased animals. Outbreaks can lead to significant decreases in license revenue sales due to decreased hunter participation. If wildlife diseases are introduced into Arizona and spread to native wildlife, the Department will have to divert resources to disease prevention and mitigation instead of wildlife management and habitat enhancement. Rural economies would also be adversely impacted. The U.S. Department of Agriculture disperses \$17 to \$19 million annually to help states monitor CWD.

At this time, the detection of CWD in new areas is expanding; at the time of the last rulemaking, eight additional states and a Canadian province became CWD positive. According to the most recent maps, 24 states and two Canadian provinces are now CWD positive.

To date, the Department has collected and tested 1,332 cervid samples (elk, mule deer, and white-tailed deer) and none have tested positive for CWD.

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

Overall, 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, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is

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effective.

CWD has the potential to negatively impact deer herds wherever the disease occurs; it is always fatal and could have serious negative impacts on the state's deer population if it becomes established in Arizona (Almberg et al. 2011). CWD infection decreases deer survival odds and lowers total life expectancy (Miller et al. 2008). If a large percentage of the population were to become infected there could be negative impacts for the population, including: A decline in doe survival, which results in an overall reduced population (Gross and Miller 2001); Fewer older bucks, as male animals may be more likely to be infected due to specific male social and behavioral tendencies (Miller et al. 2008, Jennelle et al. 2014); and An overall decline in population (Gross and Miller 2001, Almberg et al. 2011), as exhibited in Colorado and Wyoming. In an area of Colorado with high CWD prevalence, mule deer numbers have plummeted by 45%, in spite of good habitat and protection from human hunting. In Wyoming a monitored infected population experienced a 10.4% annual decline, with CWD-positive animals having a higher mortality rate than non-infected deer (Edmunds et al 2016). Taking action to prevent the spread of CWD to new areas helps to slow the transmission of the disease between individuals. The Department proposes to amend the rule to implement the following requirements necessary to the Department's monitoring and detecting diseases in cervids: require the holder of a private game farm license to mark each cervid they possess with an ear tag that identifies the farm of origin in a manner clearly visible from 100 feet; require a person possessing a cervid to report the death of any cervid to the Department within seven calendar days; include the results of chronic wasting disease testing for all cervids one year of age and older that dies during the current reporting period in the annual report; notify the Department within 72 hours of receiving a suspect or positive disease testing result; and require a person who possesses a cervid to maintain related records for a period of at least five years and make the records available for inspection to the Department upon request.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

Under R12-4-425 (restricted live wildlife lawfully possessed without license or permit before the effective date of article 4 or any subsequent amendments) a person who lawfully possessed wildlife prior to being classified as restricted live wildlife to notify the Department of the possession and use of the wildlife. This notification is required so the Department is made aware of the location of the restricted wildlife for tracking and monitoring purposes. Cervids are listed as restricted live wildlife under R12-4-406 (restricted live wildlife), which means a person must have a lawful exemption or possess a special license in order to lawfully possess them in Arizona. Even though cervids have been listed as restricted live wildlife since 2002, the Department still encounters persons

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possessing cervids lawfully obtained prior to 2002 but who have not yet met the requirements of R12-4-425. The Department proposes to amend the rule to reference R12-4-425 to increase consistency between rules.

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 written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.

The Department received the following written criticism of the rule:

Written Comment: August 7, 2014. I realize the Arizona Department of Agriculture (DoA)"controls" swine, goats, and sheep. These animals are held in captivity across the state with seemingly little concern by the DoA about the diseases they might spread to natural game in Arizona should they "escape." Feral hogs are spreading almost uncontrollably in parts of Arizona, yet there is so little oversight on the fencing of domestic hogs. Swine, goats, and sheep carry many more communicable diseases than fallow deer. Fallow deer are probably the hardest and most disease-free animals of any grazing animal. There is not a single known case of CWD in any fallow deer in any state. Bottom line, I do not know why the Commission would want to vote "no" to letting Arizonans fence fallow deer. I would ask each Commissioner to imagine one scenario with two outcomes before they vote to support the committee recommendation of not allowing fencing of fallow deer: Probably greater than 75% of people in Arizona that want to graze fallow deer will be forced to either move away from Arizona or graze hogs, sheep, and/or goats and pose greater risk to all of Arizona's natural wildlife. There is nothing particularly scientific about my 75% statistic; I talked to nearly 100 people about this exact scenario and more than 75 persons said they would either move to another state to graze fallow deer or graze one of the other three animals listed above. I dare say that neither outcome is desirable. Perhaps the Commissioners should consider doing their own survey before making their final decision on the fencing of fallow deer? I recommend with great conviction and passion that the Commission allow for the fencing of fallow deer. I also recommend that if the Commissioners have any concern about the spread of fallow deer with existing wildlife, they amend the rule to require the fence to be inspected by

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an independent inspector at the cost of the fallow deer owner prior to the owner being allow to graze the fallow deer on the fenced property.

Agency Response: The Department appreciates the viewpoints expressed. As the commenter states, the Commission does not have statutory authority over domestic species and will not comment on the potential for the introduction of diseases by such animals. Regarding the potential for damage by these species, owners of livestock must have either a grazing allotment or other conditional use permit in order to lawfully graze livestock on public lands. Public land management agencies are responsible for enforcing lawful grazing practices. Regarding the Department's decision to include fallow deer (*Dama dama*), while CWD has not been documented in the species by the oral route, it has been induced through intracerebral inoculation. They are also susceptible to other disease of concern for wildlife, human, and livestock health such as exotic lice, bovine tuberculosis, pasteurellosis, liver flukes, meningeal worms, babesiosis, and hepatitis E virus. In addition, the Department receives regular reports of fallow deer at large that have escaped from enclosures (some are legally held under R12-4-425 which allows individuals to continue to hold live wildlife placed on the restricted list if legally held before the rule change). For these reasons, fallow deer will remain on the restricted live wildlife list and may only be held by licensed zoos and researchers as authorized under R12-4-420 (zoo license) and R12-4-418 (scientific collecting permit).

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 October 6, 2015. The rule was amended to submit tissues from any cervid over one-year of age that die or are killed or slaughtered for testing for CWD. This requirement is comparable to the requirements for herd certification programs for farmed cervids in other states. The sample must be collected by a licensed veterinarian or the Department and then submitted to a USDA APHIS certified laboratory. There are 28 approved diagnostic laboratories nationwide. The license holder may pay the cost of sample collection, shipping, and testing. The Department does not charge a fee to remove a sample. The Commission anticipated the rulemaking would not have a significant impact on the one game farm regulated by the rule because they were already required to test all cervids that die while in their possession. Reports submitted by the private game farm indicate approximately 22 animals die or are killed or slaughtered on an annual basis. If all of these animals were over one-year of age, the Commission estimated costs for testing would range from \$550 to \$770. However, the Department does not charge a fee to remove a sample. Shipping costs vary greatly depending on the shipping company and delivery date, but typical shipping costs are under \$20. The Commission

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anticipated the Department would realize a reduction in costs due to the license holder being responsible for shipping and testing the samples, an approximate savings of \$600 annually.

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 completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 20 A.A.R. 2396, August 29, 2014.
- Notice of Proposed Rulemaking: 20 A.A.R. 2293, August 29, 2014.
- Public Comment Period: August 29, 2014 through September 29, 2014.
- G.R.R.C. approved the Notice of Final Rulemaking at the October 6, 2015 Council Meeting.
- Notice of Final Rulemaking: 21 A.A.R. 2813, November 20, 2015.

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 for the importation, handling, and possession of captive cervids necessary to prevent disease transmission from captive cervids to wildlife and domestic animals, and the restrictions and prohibitions necessary to protect existing habitat and wildlife resources. The rule was adopted to impose regulations on cervids, including a ban on their importation into Arizona to prevent the introduction of chronic wasting disease to free-ranging or captive wildlife in the state. The public benefits from a rule that protects native wildlife and their habitats from the introduction of disease carried by captive cervids and prevent the introduction of nonnative cervids in Arizona ecosystems. The costs associated with wildlife disease outbreaks and control can be severe, are generally recurring, and additive due to annual costs of monitoring and eradicating diseased animals. The Department benefits from a rule that prevents a significant decrease in hunting license revenue due to increased hunter/public caution and decreased hunter participation. Such loss of hunting-related revenue to rural economies can be disastrous to the state's economic stability and may decrease the Department's operating budget, thus causing a greater negative impact on wildlife resources. 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.

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- 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.**

The Department has determined that the rule is not more stringent than corresponding federal law. Federal law, 9 C.F.R. Subchapter A, Animal Welfare Act (AWA), governs the care and treatment of mammals, only. The Department regulates all wildlife, mammals, birds, and reptiles, to ensure all species receive humane and appropriate care and to protect public health and safety. While the rule is not based on corresponding federal law, the Department applies AWA requirements to all wildlife to further protect native wildlife populations, their habitat, and the public.

- 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 R12-4-430 as follows to improve the Department's CWD monitoring program:

- Reference R12-4-425 to increase consistency between rules.
- Require the holder of a private game farm license to mark each cervid they possess with an ear tag that identifies the farm of origin in a manner that is clearly visible from 100 feet.
- Report the death of any cervid to the Department within seven calendar days.
- Notify the Department within 72 hours of receiving a suspect or positive disease testing result.
- Include the results of chronic wasting disease testing for all cervids one year of age and older that dies during the current reporting period in the annual report.
- Require a person who possesses a cervid to maintain related records for a period of at least five years and make the records available for inspection.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by May 2021.

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The Department received the following written criticism that either addressed multiple rules or did not apply to current Article 4 rules:

Written Comment: July 23, 2013. The Humane Society of the United States (HSUS) appreciates that the Department is reviewing Article 4, Live Wildlife, and we request the following changes. We have attached detailed comments and suggested regulatory language for your consideration. *Designate All Non-Human Primates as Restricted Live Wildlife:* Currently, great apes (chimpanzees, gorillas, orangutans, and bonobos) are the only primates designated as restricted live wildlife (R12-4-406 G.4), yet monkeys and prosimians are the species most likely to be kept in private hands and are readily available from breeders and dealers, at auctions, and on the internet. The private possession of primates is inhumane, poses unacceptable physical and zoonotic disease risks to the community and emergency responders, and is detrimental to true wildlife conservation efforts. We recommend designating all non-human primates as restricted wildlife under R12-4-406. *Define Dangerous Wild Animals:* Wild animals retain their basic instincts, even if they are born in captivity and hand-raised. When kept in private hands, many wild animal species can cause death, inflict serious injury and spread deadly diseases. Potentially dangerous wild animals should be kept only in qualified facilities that employ knowledgeable and experienced staff. We recommend designating big cats, bears, wolves, hyenas, non-human primates, and all species of procyonidae as Dangerous Wild Animals. *Prohibit Public Contact with Dangerous Wild Animals:* Baby tigers, lions, and bears, as well as primates of all ages, are frequently used by unaccredited facilities for public handling and other unsafe close encounters such as photo-ops or petting-and play-sessions. These animals are typically used until they are just a few months old, at which point they are discarded. Although the exhibition of warm blooded animals is regulated by the U.S. Department of Agriculture (USDA), public handling of these animals is largely unmonitored and USDA enforcement policies currently allow the harmful practice of handling these animals to flourish. A cycle of breeding and then discarding animals after a few months fuels the exotic pet trade, puts animals at risk, endangers the public, undermines conservation efforts, and creates a burden for law enforcement, sanctuaries, and taxpayers. We recommend banning all public contact with Dangerous Wild Animals, defined as big cats, bears, wolves, hyenas, non-human primates, and all species of procyonidae. *Restrict the Breeding of Dangerous Wild Animals:* Commercial breeding of dangerous wild animals to produce babies to attract visitors for use in public contact activities, or to sell in the exotic animal trade, is rampant. Such breeding is done without regard to lineage and genetic diversity or planning for the lifetime care of the animals, many of whom are long-lived. The captive breeding of dangerous wild animals should be prohibited for all entities other than institutions accredited by the Association of Zoos and Aquariums (AZA), certified related facilities that coordinate with AZA Species Survival Plan (SSP) Programs for breeding of species listed as threatened or endangered pursuant to 16 U.S.C. § 1533, or facilities that are actively seeking accreditation or certification by the AZA. We recommend prohibiting the breeding of Dangerous Wild Animals, defined as big cats, bears, wolves, hyenas, non-human primates, and all species of procyonidae. Please see the attached supporting documents that provide additional information justifying the recommended changes. We urge the Department to include our proposed changes in its recommendations to the Commission at its scheduled meeting on August 2-3. Thank you for allowing us to participate in this process. Attachments: Map of state dangerous animal

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laws, HSUS Review of Arizona Game and Fish Article 4, Restricted Live Wildlife, Dangerous incidents involving captive primates, Incidents involving the use of big cats, bears, and primates for close encounters with the public.

The following comment was sent in response to the Notice of Proposed Rulemaking (see Notice of Proposed Rulemaking: 22 A.A.R. 2558, September 16, 2016), but was received after the public comment period had ended. The Commission amended R12-4-402. Live Wildlife; Unlawful Acts to clarify that federal agencies or employees are not exempt from obtaining a state permit or license when conducting any activity listed under R12-4-402(A) and to ensure the Commission maintains jurisdiction and effective conservation over Arizona's wildlife and wildlife habitat.

Written Comment: February 27, 2017. The data show a clear and remarkable linkage between the presence of wolves and the health of an entire streamside ecosystem, including two species of cottonwoods and the myriad of roles they play in erosion control, stream health, and nurturing diverse plant and animal life. The findings of these studies were recently published in Ecological Applications, a journal of the Ecological Society of America, and the journal Forest Ecology and Management.

Agency Response: While the immediate issue that prompted the internal review of the Commission's rules involved big river fish and the Mexican wolf, the broader concern with federal agencies obtaining state licenses and permits relates to a variety of activities involving many species of native terrestrial and aquatic wildlife. The Commission's intent in proposing the amendments indicated in this rulemaking is to strengthen its rule to avoid any unintended interpretation that a federal agency is exempt from state permitting requirements when conducting any wildlife-related activities. The Commission has always operated under the premise that federal agencies need state authorization for any wildlife activities, and, as a result of an internal review of its rules, the Commission concluded that this requirement was not clearly codified in rule. Through this rulemaking, the Commission is codifying what has been a common practice with federal agencies. The change will avoid any legal ambiguity and should avoid any disagreement over the applicability of the Commission's rules.

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 4. LIVE WILDLIFE

R12-4-401, R12-4-402, R12-4-403, R12-4-404, R12-4-405, R12-4-406, R12-4-407, R12-4-408, R12-4-409, R12-4-410, R12-4-411, R12-4-412, R12-4-413, R12-4-414, R12-4-415, R12-4-416, R12-4-417, R12-4-418, R12-4-419, R12-4-420, R12-4-421, R12-4-422, R12-4-423, R12-4-424, R12-4-425, R12-4-426, R12-4-427, R12-4-428, and R12-4-430

Economic, Small Business and Consumer Impact Statement

A. Economic, small business and consumer impact summary:

1. Identification of the proposed rulemaking.

The Arizona Game and Fish Commission proposes to amend its Article 4 rules, governing live wildlife, to enact amendments developed during the preceding Five-year Review. After evaluating the scope and effectiveness of the proposed amendments specified in the review, the Commission proposes additional amendments to further implement original proposals.

The Commission's rules protect native wildlife in many ways, including preventing the spread of disease, reducing the risk of released animals competing with native wildlife, discouraging illegal trade of native wildlife, and preventing interactions between humans and wildlife that may threaten public health or safety.

In addition to the amendments made to ensure consistency between Commission rules and conformity with the Arizona Administrative Procedure Act and the Secretary of State's rulemaking format and style requirements and standards, the Commission proposes to amend Article 4. Live Wildlife rules as follows:

For R12-4-401 Live Wildlife Definitions, the objective of the rule is to establish definitions that assist persons in understanding the unique terms that are used throughout Article 4. The rule is amended to establish definitions for terms that are not self-defining or differ from the common-use definition. The term "adoption" is defined to clarify the Commission's intent regarding when the public is required to have a special license to possess wildlife. The term "aversion training" is defined to clarify that a person may use reptiles or amphibians to teach dogs how to avoid them in the wild for the purpose of "snake/frog breaking" dogs. Dog owners and persons who provide the training believe the training helps to keep them and their pets safe, especially when recreating in suburban fringes and backcountry. The term "educational institution" is defined to clarify the intent of R12-4-417 as it applies to educational displays. The rule was amended to incorporate the October 1, 2013 version of 50 C.F.R. 17.11 and October 1, 2014 version of 50 C.F.R. 10.13. The term "noncommercial purpose" is defined as this is not a self-defining term and is necessary to assist in understanding rules within Article 4 and replaces references to "personal use," which is an ambiguous term. The term "nonhuman primate" is defined as this is not a self-defining term and is necessary to assist in understanding amendments made to R12-4-406 and R12-4-426. The term "person" is defined to clarify the extent of the regulated community. The term "captive-reared" is defined to assist in

understanding R12-4-413 and R12-4-414. The term "species of greatest conservation need" is defined and replaces the definition for "wildlife of special concern" to incorporate the federally-approved Arizona's State Wildlife Action Plan, which provides a list of species of greatest conservation need. The term "unique identifier" is defined to provide examples of acceptable permanent identifiers. The term "USFWS"(United States Fish and Wildlife Service) is defined to make the Article more concise. The terms "health certificate," "migratory birds," "taxa," "volunteer," "wildlife disease," and "zoo" are defined as these is not a self-defining terms and are necessary to assist in understanding rules within Article 4. The rule is also amended to clarify some definitions. The definition of "agent" is amended to clarify the term has the same meaning as "sublicensee" and "subpermittee" which is used in federal permitting language. This amendment is made to address those instances when a federal permit and a special license are required. The definition of "cervid" is amended to reference the Integrated Taxonomic Information System, a nationally recognized taxonomic reference that is easily accessible to the public. The definition of "endangered or threatened" is amended to insert the term "wildlife" and incorporate the most recent version of the Federal Endangered and Threatened Wildlife regulation. The definition of "live baitfish" is amended to reference R12-4-317, which establishes requirements for the lawful use of live baitfish. The definition of "zoonotic" is amended to clarify the term and assist in understanding rules within Article 4. In addition, the rule is amended to remove the definitions for "collect," "native," and "propagate," as their meaning is addressed in rule language or the common-use definition is satisfactory.

For R12-4-402 Live Wildlife; Unlawful Acts, the objective of the rule is to establish unlawful activities for persons taking and possessing live wildlife and the Department's authority to take possession of wildlife for a violation of the rule. The rule is amended to allow the Department to euthanize lawfully possessed wildlife that poses a threat to public health, safety, or welfare, or wildlife populations to officially codify the Department's current process. The rule is also amended to enable the Department to recoup costs associated with the care, feeding, and housing of seized potentially dangerous wildlife. Owners of lawfully possessed wildlife that pose a threat to public health, safety, or welfare, or wildlife populations will be held responsible for all costs associated with their temporary care. The amendment clarifies that, although all wildlife is held in the public trust, the State and Department is not responsible for any costs incurred by the person possessing the wildlife. In addition, the rule is amended to establish the Department's authority to euthanize wildlife acquired or seized by the Department in response to a violation of any requirement of the rule to provide additional clarity and that the Department will make a reasonable attempt to suitably place wildlife before making the decision to euthanize the animal.

For R12-4-403 Escaped or Released Wildlife, the objective of the rule is to establish the Department's authority to take possession of any escaped or released wildlife that poses an actual or potential threat to native wildlife, wildlife habitat, or to the safety, health, and welfare of the public. The rule is amended to provide additional clarity and establish owner responsibilities and to allow the Department to seize, quarantine, or euthanize any wildlife that has escaped or is likely to escape and poses a threat to public health, safety, or welfare, wildlife populations or wildlife habitat until it is properly contained or rehomed.

In general, persons who possess captive animals hold them in a secure, safe, and humane manner. However, on occasion the animals are not held in a secure, safe, and humane manner and escape their enclosures. On occasion, exotic animals are intentionally released from their enclosures by irresponsible owners who are unable to take care of or no longer want to care for their animals. Special license holders and owners of escaped or unlawfully released wildlife will be held responsible for all costs associated with their temporary care. The rule is also amended to remove the reference to A.R.S. § 17-306 as it implies the statute establishes the conditions for release when the statute only authorizes the Commission to determine those conditions. In addition, the rule is amended to provide additional options necessary for the evaluation of any situation where native wildlife protection and the safety, health and welfare of the public are concerned. These options include permitting the temporary possession of live wildlife under the instruction and oversight of the Department.

For R12-4-404 Possession of Live Wildlife Taken Under an Arizona Hunting or Fishing License, the objective of the rule is to establish lawful activities for persons taking and possessing live wildlife under a valid hunting or fishing license and to regulate the take and disposition of live wildlife when live bag and possession limits are specified in a Commission Order. The rule is amended to provide additional clarity and ensure consistency between rules within Article 4. The Commission believes the term "personal use" is an ambiguous and proposes to replace the term with "noncommercial purpose" as this term is defined. The rule is amended to prohibit the release of propagated wildlife into the wild to assist in preventing the transmission of wildlife diseases. The Commission believes translocated and propagated wildlife has the potential to transmit wildlife disease into healthy wildlife populations. This also ensures consistency between rules within Article 4 as the Commission also proposes to amend R12-4-404 to prohibit the release of propagated offspring. The rule is also amended to allow the use of reptiles or amphibians for aversion or avoidance training, provided the reptiles or frogs were taken under a valid Arizona hunting license and the current Commission Order authorizes a live bag and possession limit for that wildlife. Aversion training, also known as snake/frog breaking, trains the dog to run away from a snake or frog. The use of reptiles and amphibians for aversion training is considered a lawful activity, but the current rule does not address this activity. The intent of the amendment is to clarify the already legal practice of using reptiles and frogs for the purpose of providing aversion training. In addition, the rule is amended to remove "photograph" from the list of authorized noncommercial uses and add a new subsection (I), indicating a special license is not required to sell photographs of wildlife taken under a valid hunting or fishing license. This amendment was added as a result of comments received, which indicated clarification was required in regards to when a special license is required to photograph wildlife.

For R12-4-405 Importing, Purchasing, and Transporting Live Wildlife Without an Arizona License or Permit, the objective of the rule is to establish lawful activities and limitations for a person importing, purchasing, or transporting wildlife or the offspring of wildlife taken without a Department-issued license or permit to prevent harm to native wildlife of this state or to endanger public safety. The rule is amended to require a person who is importing mammals, birds, amphibians, or reptiles into this state to ensure the

wildlife is accompanied by a health certificate to mirror federal and state importation requirements. The Department's management of both game and nongame species as a public resource depends on sound science, which indicates there is a potential for imported wildlife to transmit disease into healthy wildlife populations. The Commission believes it is beneficial to amend the rule to increase consistency with both federal and the Department of Agriculture's importation requirements; wherever possible and practical to do so.

For R12-4-406 Restricted Live Wildlife, the objective of the rule is to establish a list of live wildlife for which a special license is required in order to possess the wildlife and/or to engage in activities that may otherwise be prohibited under A.R.S. § 17-306 and R12-4-402. The rule is amended to increase its effectiveness by indicating that, unless otherwise specified, all transgenic wildlife is live restricted wildlife. The rule is amended to replace the term "use" with "possess" to increase the potential for proper enforcement. "Use" is a generic term that is undefined for the Article, whereas "possess" has a specific meaning relative to the Article. The rule is amended to incorporate the online taxonomic authority, www.itis.gov, a nationally recognized authority for all taxa. The Integrated Taxonomic Information System is readily available online and is easier for the public to access. The rule is amended to group the various types of species throughout the rule to reflect current taxonomy for scientific accuracy. The rule is amended to replace the term "Blue Grouse" with "Dusky Grouse" as this is the current reference for the species. The rule is amended to remove hedgehogs from the restricted live wildlife list to allow their use as pets. Although traditionally classified in the order Insectivora, hedgehogs are not exclusively insectivores but are almost omnivorous. Hedgehogs feed on berries, bird eggs, carrion, frogs and toads, grass roots, insects, melons, mushrooms, snails, and snakes. When foraging, they rely upon their senses of hearing and smell because their eyesight is weak. The hedgehog habitat is mainly hedgerows, woodlands, and meadows; they seem to prefer lush or riparian habitats. Most of the hedgehogs in the pet industry are African pygmy hedgehogs or hybrids of same with the European hedgehog. Natural predators are canids and owls as they are nocturnal. Because Arizona has plenty of natural predators and a minimal amount of suitable habitat, the Department has determined it is highly unlikely that a hedgehog that escapes or is intentionally released into the wild will survive. Currently, the rule only restricts all species of the family Pongidae of the order of Primates. The rule is amended to expand "restricted primates" to include all nonhuman primates. Nonhuman primates are known to be injurious to the public and have the potential to have or carry dangerous diseases that can have a significant impact on human health. Further regulation of primates through this Section and R12-4-426 will improve the Department's ability to regulate the importation and personal possession of those primates that regularly expose the public to potential danger. Nonhuman primates require professional, well-managed care and are capable of transmitting diseases to humans and contracting diseases from humans. Nonhuman primates includes: apes, baboons, chimpanzees, gibbons, gorillas, lemurs, lorises, marmosets, orangutans, and tamarins. Many people remain undaunted by the risks of adopting nonhuman primates in their homes. Most nonhuman primates are bred in captivity in the U.S. and some are sold to the pet trade. Viewed as status symbols or substitute children, nonhuman primates are

commonly sold for up to thousands of dollars through newspaper ads and the Internet. It is uncertain how many primates enter the trade through captive breeding each year in the U.S., but the number is estimated to be in the thousands. The conditions in which privately owned nonhuman primates are kept raise serious animal welfare concerns. Most people cannot provide the special care, social grouping, housing, diet, and maintenance that nonhuman primates require. Once an owner realizes they can no longer handle the nonhuman primate, they try to place them in other homes. Others are sent to laboratories, sanctuaries, or used in breeding programs. Many animals who have become too difficult for their owners to care for, or who have outgrown their usefulness as "pets" or profit-makers, end up languishing in small pens in backyards, doomed to live in deplorable conditions. Sadly, most end up being sold and resold over and over again. The influx of unwanted animals has become overwhelming for the dozens of sanctuaries in the U.S. and most primate/exotic animal sanctuaries are full, or near capacity. Typically, nonhuman primates cannot be effectively toilet trained and sometimes engage in distasteful activities involving their feces and urine. Environmental contamination from pet nonhuman primates is of great concern. Poor hygiene and improper disposal of contaminated feces pose a serious problem. Many disease organisms can persist in the environment for long periods of time and may pose a serious threat to humans. Environmental contamination may be a significant danger to the communities where pet nonhuman primates are kept. As the nonhuman primate grows older, stronger and more unpredictable, they may turn aggressively on anyone, including the person with whom they are the closest. As a primate reaches sexual maturity, it will often become more aggressive and may start biting or fighting people to establish dominance, including attacking their owners or visitors to the owner's home. With larger primates, these behaviors can turn dangerous or even deadly for humans; as in the case of the Connecticut woman who lost her face and hands after being mauled by a friend's 200-pound chimpanzee. Some owners may attempt to change the animal's natural behavior by confinement in small enclosures, chaining, shocking, beating, and removal of teeth and nails to prevent scratching and biting. Compounding the risk of physical injury to the public, nonhuman primates of all sizes have the potential to carry dangerous zoonotic diseases that can affect human health and safety. Eighty to ninety percent of all macaque nonhuman primates are infected with herpes B virus or simian B, a virus that is harmless to nonhuman primates but fatal to 70 percent of humans who contract it. Nonhuman primates shed the virus intermittently in saliva or genital secretions, which generally occur when the nonhuman primate is ill, under stress, or during periods of sexual receptivity. A person who is bitten, scratched, sneezed on, or spat on while the shedding occurs runs the risk of contracting the disease. The Centers for Disease Control and Prevention (CDC) asserts that the increase in macaque nonhuman primates in the pet trade may constitute an emerging infectious disease threat in the U.S. Disease organisms, particularly viruses, tend to live only in a small group of animal species to which they have adapted. Zoonotic diseases and viruses, to be spread successfully, must not kill their animal host. In the host, the organism often does little or no damage. However, when present in the human body, strategies that kept the organism in check do not work, causing them to multiply out of control and attack tissues and organs in ways it does not do when present in an animal host. This same, wrong-host phenomenon is why bird flu,

equine encephalitis, and hanta viruses are dangerous or fatal in humans but rarely kill their animal host. Some of the zoonotic diseases that nonhuman primates carry and that can be transmitted to people are monkey pox, simian herpes B virus, simian immunodeficiency virus (SIV, the primate form of HIV), measles, rabies, Marburg virus, cercopithecine herpes virus I, salmonella, influenza virus, filoviruses (ebola), streptococcus pneumonia, viral hepatitis, and tuberculosis. Most of these diseases spread through a bite or exposure to the saliva or nasal secretions of the nonhuman primate, while others spread through exposure to nonhuman primate feces. If specific precautions are not followed, nonhuman primates may easily transfer disease organisms they harbor to persons who are exposed to the nonhuman primate. As it currently stands, there is no blanket federal rule on nonhuman primate ownership in the U.S., although the U.S. Centers for Disease Control (CDC) banned the commercial importation of primates as pets in 1975. As a result, responsibility for protecting people and nonhuman primates falls to the individual states. Currently there is a patchwork of state laws regarding "pet" nonhuman primates. Twenty-two states have a full ban on private ownership of nonhuman primates: Alaska, California, Colorado, Georgia, Hawaii, Illinois, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Montana, New Hampshire, New Jersey, New York, Oregon, Pennsylvania, Utah, Vermont, and Washington. Three states have a partial ban on private ownership of some nonhuman primates: Connecticut, Florida, and Tennessee. Seven states require a permit or registration to possess nonhuman primates as pets: Delaware, Idaho, Missouri, New Mexico, North Dakota, Rhode Island, and Wyoming. Three states require a permit to possess some nonhuman primates as pets, while allowing others without a permit: Mississippi, Texas, and Wisconsin. Fourteen states allow nonhuman primates as pets: Alabama, Arkansas, Indiana, Kansas, Michigan, Nebraska, Nevada, North Carolina, Ohio, Oklahoma, South Carolina, South Dakota, Virginia, and West Virginia. The Arizona Department of Agriculture requires a person importing any member of the genus *Macaca* into Arizona to obtain a health certificate prior to importation and Arizona Game and Fish Commission rules currently prohibit persons from bartering, gifting, importing, purchasing, selling, and trading of nonhuman primate infants; place restrictions on the import of nonhuman primates; specifies requirements for containment and transportation of nonhuman primates; and establishes a protocol for persons to follow when a nonhuman primate bites, scratches, or otherwise exposes a human to pathogenic organisms. The current trend across the country is adopting regulations to prohibit specific species of dangerous animals, including nonhuman primates, from future possession. This is important in allowing for a more uniform approach to successfully handle this issue nationwide. Forty-eight nonhuman primate exposure incidents have been recorded in Arizona since the Department began tracking nonhuman primate exposure incidents in 1994, many more are suspected. This does not include complaints of nonhuman primate escapes and numerous inquiries by the public and cooperating agencies regarding legality and housing requirements for nonhuman primates they have encountered. Nonhuman primates are not currently identified as restricted live wildlife in Arizona, but should be due to their potential negative impact on human health and safety. The Maricopa County Department of Public Health and the Humane Society of the U.S. have submitted letters in full support of the proposed restriction contained in this rule. The rule is also amended to improve consistency between

federal regulations and state rules by including all birds listed under the Migratory Bird Treaty Act (MBTA) as restricted live wildlife; in addition the rule was amended to incorporate the October 1, 2014 version of 50 C.F.R. 10.13. In addition, the rule is amended to add apple snails, Chinese mystery snails, false dark mussels, Red Shiners, and five species of tilapia, paddlefish and sturgeon to the list of restricted live wildlife. Apple snails (genus *Pomacea*) are large aquatic snails that were introduced into Arizona through the pet trade and aquaculture; currently being sold as "mystery snails" at local pet stores and other stores in the aquarium trade. Two South American species are recognized as invasive, nuisance species in the United States (U.S.): the channeled apple snail (*Pomacea canaliculata*) and island apple snail (*P. insularum*). Apple snails are voracious herbivores and will eat eggs and juveniles of other snails and decomposing organic matter. Every 12 to 15 days, the female apple snail lays a bright pink clutch of eggs (typically 200 to 300 eggs) on the stems of emergent plants and branches above the water. They are moderately amphibious and equipped with a shell door to prevent drying out while hiding in the mud during dry periods. From a human health perspective, apple snails are an intermediate host for the rat lungworm (*Angiostrongylus cantonensis*), a nematode that can cause meningitis in humans. In 2012, all species of apple snails are listed in the Department's Directors Order #1, which is a listing of all aquatic invasive species that are not native to Arizona's ecosystem and whose introduction or presence in this state may cause economic or environmental harm or harm to human health. Chinese mystery snails (*Bellamya chinensis*, synonym *Cipangopaludina chinensis*) are large freshwater snails. Though native to East Asia, this species has established itself in the U.S. This snail stays partially buried in the mud where water is low. Females give birth to live, crawling young and a single brood may have over 100 young. Mystery snails have been imported into the U.S. by the aquarium industry as well as for Asian food markets. Some releases were probably from hobbyists, and others may have been deliberate in an effort to create a local food source. They can clog the screens of water intake pipes and restrict water flow. They are also known to host parasites and diseases that can infect humans. They also compete with native snails for food and habitat resources and can serve as vectors for the transmission of parasites and diseases to our native aquatic species. False dark mussels *Mytilopsis leucophaeata* are a species of small bivalve mollusk in the false mussel family, Dreissenidae. They attach to hard substrates, including oyster and true mussel shells, rocks, boats, pilings, and ropes. The species is highly adaptable, has broad ecological tolerances, inhabits freshwater and can also be found in coastal and estuarine habitats, riparian zones, and wetlands, even occurring in cooling water conduits of power stations. This species is unlikely to be impacted by any major threats, although because of its bio-fouling abilities (causing huge economic damage to industry) it is targeted by biocides and other control measures. The Red Shiner is a common bait fish, and the emptying of bait buckets by anglers containing them is believed to be the main cause of introduction of this species into new areas. It is also commonly used as an aquarium fish. It has become a species of special concern in the U.S., as it has been implicated in the decline of native fish populations in the areas where it has been introduced and in doing so hinder the growth of those populations. They are omnivorous and eat both aquatic and terrestrial invertebrates, algae, and have been known to eat the eggs and larvae of native fish.

The average clutch size is 585 eggs and females may have 5 to 19 clutches in one reproductive season. Red Shiners are capable of generating viable hybrid offspring with closely related species. The Commission recently amended R12-4-316 to remove Red Shiner from the list of live bait minnows that can be lawfully possessed, transported, or imported by licensed anglers. The rule was also amended to allow anglers to collect Red Shiners in the wild to possess and use as bait only on the body of water where they are captured. Five tilapia species (*Oreochromis aureus*, *O. mossambica*; *O. niloticus*, *O. urolepis hornoru*, and *T. zilli*) and their hybrids are commonly used in backyard aquaculture facilities. In approximately 1972, they were imported into Florida as an experiment in fish farming. Today tilapia is the third most plentiful fish in aquaculture, surpassed only by carps and salmonids. Tilapia are generally large, fast growing, and breed rapidly; once introduced into a habitat they generally establish themselves very quickly. In doing so they compete with native fish fauna, create turbidity in the water (due to nesting behaviors) thus reducing the light available for aquatic plants, and consume a vast range of food sources causing changes in local aquatic flora. Impacts to rivers, creeks and ponds can be great, particularly the dramatic decreases in native fish populations due to predation and competition for food by the fast breeding tilapia. Native fish, invertebrates, and other organisms also experience reduced access to cover through the aggressive territorial defense of breeding and feeding sites by some tilapia species. Because tilapia are not currently restricted, there are no built in safeguards that prevent the illegal release of tilapia into Arizona waters. Adding these species to the list of restricted wildlife, as are all other game fish, would require a person to obtain an Aquatic Wildlife Stocking License in order to legally possess and stock tilapia. An applicant is required to provide information about the planned use and disposition of tilapia; thus allowing the Department the opportunity to assess the biological risk of issuing a permit as well as educate the public on the negative impacts of illegally stocking non-native tilapia into Arizona's waters. In addition, the rule is amended to add sturgeon and paddlefish, which can be purchased by an individual with a desire to start an angling opportunity or for their caviar. Illegally introduced sturgeon and paddlefish could survive in bigger rivers in Arizona such as the Colorado River, Verde River, Salt River, and Gila River, as well as lakes, and potentially survive and become established. If sturgeons become established, they have a long lifespan and could impact native fish populations as well as have impacts in areas we currently manage for sport fishing. Several species of sturgeons and paddlefish are harvested for their roe, which is made into caviar and makes an attractive choice for fish farming. In addition, California currently lists sturgeon as restricted live wildlife (via bony fishes within Class Osteichthyes; Fish and Game Code, Section 2116-2127). In addition, because sturgeon and paddlefish are not currently restricted under R12-4-406, there are no safeguards built in to prevent backyard fish farmers from illegally releasing unwanted fish into Arizona waters. Adding these species to the list of restricted wildlife, as are all other game fish, a person would be required to obtain an Aquatic Wildlife Stocking Permit in order to legally possess and stock sturgeon or paddlefish in their backyard pond. An applicant is required to provide information about the planned use and disposition of the fish, allowing the Department the opportunity to assess the geographic risk of issuing a permit as well as

educate these public on the negative impacts of illegally stocking non-native sturgeon or paddlefish into Arizona's waters.

For R12-4-407 Exemptions from Special License Requirements for Restricted Wildlife, the objective of the rule is to establish exemptions from special license requirements for restricted live wildlife. The rule is amended to require individuals who import wildlife into the state to possess a valid health certificate, as already required by the Arizona Department of Agriculture. The rule is amended to prohibit individuals from propagating lawfully possessed desert tortoises. Currently, there is an overabundance of captive-reared desert tortoises housed at Department and state-sanctioned adoption facilities in Arizona. As of September 2013, there were 260 unwanted captive desert tortoises available for adoption, 100 of which are under three years old. The current rule allows desert tortoise custodians to propagate captive desert tortoises and either gift the offspring to other members of the public or surrender them to the Department. A desert tortoise can lay up to 12 eggs per year, therefore captive hatchling desert tortoises are consistently surrendered at rates that are unsustainable for the Department's tortoise adoption Program. There is no conservation or scientific need to propagate desert tortoises and this practice places an undue burden on the Department and state-sanctioned adoption facilities. Captive desert tortoises pose risks to the wild populations from introduction of infectious diseases or affecting the genetic composition of wild populations and thus cannot be released into the wild. Therefore, the Department expends considerable resources on housing and placing new generations of unwanted captive desert tortoises into approved homes; funds that are meant to be used for desert tortoise conservation, monitoring, and research. Restricting desert tortoise propagation is consistent with efforts to restrict propagation of other restricted species. There is no conservation benefit to breeding captive desert tortoises; in fact caring for unwanted pet tortoises redirects valuable Department resources from conservation goals. In addition an overabundance of captive desert tortoises may provide complications if the species is listed under the Endangered Species Act. Propagation will only be allowed as authorized by the Department. The rule is amended to clarify the live game fish exemption applies only to restricted live game fish. The rule is also amended to establish guidelines for the disposal of animals that die while in transport through Arizona. In addition, the rule is amended to clarify that medical and scientific research facilities, regardless of whether they are licensed by the U.S. Department of Agriculture, are exempt from special licensing requirements when working with transgenic animals.

For R12-4-408 Holding Wildlife for the Department, the objective of the rule is to establish requirements that allow a person to possess and transport live wildlife needed as evidence in pending legal proceedings without a special license and lists the circumstances and restrictions placed on that authority. The rule is amended to provide the Department with greater latitude in the amount of time it may allow a person to hold or transport wildlife for the Department. This benefits both the Department and the person who is holding or transporting the wildlife. In addition, the rule is amended to replace "designated Department employee" with "Department" to prevent the impression that only a specific employee may allow a person to temporarily hold or transport wildlife for the Department.

For all special license rules, the rules are amended to provide additional clarity and to maintain consistent language and format within the Article. The rules are amended to increase consistency between Commission rules by replacing the term "permit" with "license," wherever applicable. The rules are amended to clarify the special license does not allow the license holder to conduct any activities using federally-protected wildlife unless the license holder possesses a valid license, permit, or other form of documentation issued by the United States. The rules are amended to clarify the special license holder is responsible for compliance with all applicable regulatory requirements. The rules are amended to clarify the special license does not exempt the license holder from complying with all applicable city, county, state, and federal codes, ordinances, rules, laws, and regulations. The rules are amended to clarify application requirements to ensure an applicant submits the correct information at the time of the initial application. The rules are amended to require an applicant to provide their Federal Tax Identification Number when the person intends to use the special license for a commercial purpose and the supplier's Federal Tax Identification Number when the person obtains wildlife from a commercial supplier. The rules are amended to require an applicant to include the Universal Transverse Mercator or Global Positioning System coordinates as these are more commonplace for location descriptors and are becoming the standard for identifying locations. The rules are amended to require an applicant to affirm the information provided on the application is true and correct. The affirmation replaces the signature requirement and enables the Department to accept applications electronically. The rules are amended to reference "R12-4-412 Special License Fees" rule to incorporate Commission-approved License Simplification changes that became effective January 1, 2014. The rules are amended to require the license holder to possess the special license and present the license to a Department employee or agent upon request to allow the Department employee or agent to readily identify any additional stipulations placed on the license holder and to ensure compliance with A.R.S. § 17-331. The rules are amended to expand reporting requirements to include persons who have not conducted activities authorized under the license. Currently, the rule only requires a report if activities are performed. In reality, a person will obtain a license and then fail to perform the permitted activities. This information is necessary for the Department to ensure license holders are performing authorized activities.

For R12-4-409 General Provisions and Penalties for Special Licenses, the objective of the rule is to establish general provisions relating to administrative compliance, licensing requirements, and penalties applicable to all special licenses issued by the Department. The Commission believes providing general provisions in one overarching rule ensures consistency between special license rules. The rule is amended to ensure consistent application of the rule and to address current nomenclature. The rule is amended to combine all game bird license rules into one overarching game bird rule: game bird field trial, game bird hobby, and game bird shooting preserve licenses. The rule is amended to require an applicant to affirm the information provided on the application is true and correct. The rule is amended to expand the time-frame for which the Department may deny a special license, when an applicant has been convicted of illegally holding or possessing wildlife, from three years to five years immediately preceding application for a special license to increase consistency between rules within 12 A.A.C. 4. The rule is also amended to clarify

the license holder is responsible for all costs associated with the testing and treatment of contaminated or affected wildlife, the Department is not responsible for these costs. In addition, the rule is amended to provide the Department with greater flexibility by including an additional option for actions the Department may take should a special license holder fail to adhere to the requirements of all applicable laws and rules.

For R12-4-410 Aquatic Wildlife Stocking Permit, the objective of the rule is to establish requirements that allow a person to stock restricted aquatic wildlife in an open system, to include authorized activities, administrative compliance, and the restrictions and prohibitions necessary to protect existing aquatic wildlife and wildlife habitat. The rule is amended to require an applicant to further examine the potential for adverse impacts of stocking on existing wildlife species in the licensed area. The rule is amended to clarify that the aquatic wildlife stocking license is only required when an applicant intends to stock restricted aquatic wildlife; thus reducing the Department's and regulated community's burden and costs. Because the rule does not state the license is specific to restricted aquatic species, persons expend resources completing and submitting unnecessary applications and the Department expends resources receiving, reviewing, and responding to unnecessary applications. The rule is also amended to establish a protocol for disease control as this is a priority within the Department and to increase consistency between rules within Article 4. In addition, the rule is amended to require an applicant to include additional information regarding common names of aquatic wildlife, physical location, and stocking facilities to provide the Department with the information necessary to make an informed licensing decision.

For R12-4-411 Live Bait Dealer's License, the objective of the rule is to establish requirements that allow a person to conduct a commercial live bait operation, to include authorized activities, administrative compliance, and the restrictions and prohibitions necessary to protect existing aquatic wildlife resources. The rule is amended to remove Red Shiner as an authorized live bait species to address emerging concerns about the interactions between Red Shiners and native aquatic species and to increase consistency between rules within 12 A.A.C. 4. R12-4-316 was recently amended to remove Red Shiner from the list of live bait minnows that can be lawfully possessed, transported, or imported by licensed anglers and to allow anglers to collect Red Shiners in the wild to possess and use them as bait only on the body of water where they are captured to aid in the conservation of native aquatic species. The rule is amended to require an applicant to include additional information regarding common names of live bait and physical location to provide the Department with the information necessary to make an informed licensing decision.

For R12-4-412 Special License Fees, the objective of the rule is to establish special license fees for those licenses listed under Article 4 Live Wildlife. The rule is amended to include no-fee special licenses and establish a new and renewal special license structure.

For R12-4-413 Private Game Farm License, the objective of the rule is to establish requirements that allow a person to operate a commercial game farm, to include authorized activities, wildlife species that may be held under the license, administrative compliance, and the restrictions and prohibitions necessary to protect existing wildlife and wildlife habitat. The rule is amended to clarify language regarding propagation as it may be misinterpreted as preventing the possession of domestic animals with captive game animals.

The rule is amended to replace the term "Blue Grouse" with "Dusky Grouse" as this is the current reference for the species. The rule is amended to clarify the locations where the Department will not issue a private game farm license to raise Northern Bobwhite quails as this nonnative quail poses a threat to native birds if it escapes or is released. The rule is amended to require an applicant to provide additional information on the application to enable the Department to more adequately evaluate and issue the application for the requested activities. The rule is amended to better regulate the use of "hybrid wildlife," specifically in R12-4-406, which lists restricted live wildlife species, and R12-4-413, dealing with private game farms. With the amendments to R12-4-413, the Commission is attempting to address the growing number of misinterpretations regarding the use of a private game farm license, and to reaffirm the purpose for which this license was authorized. Some applicants obtain the license for the personal or recreational use of wildlife, which is not consistent with the objective of the rule. The license is intended to authorize the commercial use of wildlife for purposes such as slaughter and sale of meat and hides. The rule is amended to clearly state that a private game farm license is indeed a commercial license. The rule is amended to address the attempted sport harvest of wildlife held under this license. The rule is also amended to clearly state that, if breeding takes place, a private game farm license is issued to authorize only the breeding of wildlife species to the same species; not to authorize breeding of wildlife to domestic species to produce a hybrid that qualifies as a domestic animal. In recent years, the Department has issued private game farm licenses for the possession of servals or other types of African leopard cat (ALC). These mammals are purchased or traded for the purpose of breeding them with domestic cats to produce a hybrid. There are many different names for these domestic hybrids depending on the species that they are bred with: savannas, chausis, bengals, etc. Although the Department has issued licenses to allow people to possess an ALC, the intent for authorizing a private game farm license is not to allow people to breed wildlife with domestic animal species. The rule is amended to clarify the Department shall not issue a private game farm license if the escape of the proposed species could create a threat to native species and or habitat. In addition, the rule is amended to require the game farm license holder to ensure their facility is inspected by a licensed, practicing veterinarian.

For R12-4-414 Game Bird Shooting Preserve License, the objective of the rule is to establish requirements that allow a person to possess, release, and take captive-reared game birds, to include authorized activities, game bird species that may be held under the license, administrative compliance, and the restrictions and prohibitions necessary to protect existing habitat and wildlife resources. The rule is amended to combine the requirements of R12-4-414 (Game Bird Shooting Preserve License: proposed title, "Game Bird License"), R12-4-415 (Game Bird Field Trial License), R12-4-416 (Game Bird Field Trial Training Permit), and R12-4-419 (Game Bird Hobby License) into one overarching game bird rule. R12-4-415, R12-4-416, and R12-4-419 will be repealed. Currently, under the authority of these four rules, four different licenses or permits are issued for each type of game bird activity. Revising the rule as necessary to include the relevant language from the four rules into one overarching rule provides one point of reference for all requirements related to the handling of captive-reared game birds. In addition, the rule is amended to

require the Game Bird License Holder to ensure their facility is inspected by a licensed, practicing veterinarian. The Commission anticipates this will lessen the administrative burden for the Department and be less confusing to the regulated community.

For R12-4-417 Wildlife Holding License, the objective of the rule is to establish requirements that allow a person to possess and care for restricted and nonrestricted live wildlife lawfully taken under a valid hunting or fishing license, scientific collecting permit, or wildlife rehabilitation license to include authorized activities, wildlife species that may be held under the license, administrative compliance, and the restrictions and prohibitions necessary to protect existing habitat and wildlife resources. The rule is amended to allow the license holder to use an agent to assist the license holder in carrying out activities authorized under the license to increase consistency between rules within Article 4. The rule is amended to allow an applicant to submit photographs instead of a diagram and detailed description of the facility where an applicant proposes to hold wildlife. The rule is amended to allow an applicant to submit a certification issued by an institutional animal care and use committee or similar committee instead of a description of how the facility complies with requirements established under R12-4-428. Submitting photographs of a facility or a certification the license holder has already attained requires little effort or expense and is nondiscriminatory.

For R12-4-418 Scientific Collecting Permit, the objective of the rule is to establish requirements that allow a person to use live wildlife for purposes related to the advancement of science, conservation, education, or wildlife management, to include authorized activities, wildlife species that may be held under the license, administrative compliance, and the restrictions and prohibitions necessary to protect public health and safety and existing wildlife habitat and resources. The rule is amended to allow an applicant to submit a certification issued by an institutional animal care and use committee or similar committee instead of a description of how the facility complies with requirements established under R12-4-428. Submitting photographs of a facility or a certification the license holder has already attained requires little effort or expense and is nondiscriminatory. The rule is amended to specify the license holder may only conduct activities authorized under the scientific collecting license at the locations and time periods specified on the scientific collecting license. This will allow the Department to determine where the activities can take place to protect public health, safety and welfare, and wildlife and wildlife habitat. The rule is amended to expand the requirement that the scientific collecting license holder dispose of wildlife as directed by the Department, including wildlife parts and the offspring of wildlife held under the license.

For R12-4-420 Zoo License, the objective of the rule is to establish the requirements that allow a person to collect wildlife for educational purposes, to include authorized activities, wildlife species that may be held under the license, and restrictions and prohibitions necessary to protect existing habitat and wildlife resources. The rule is amended to restrict the transfer of live wildlife listed under R12-4-406 from zoos to another zoo license holder, an appropriately licensed or permitted special license holder or facility in another state or country, or a medical or scientific research facility exempt from special license requirements under R12-4-407 in an effort to protect wildlife resources and prevent unregulated commercial

breeding of wildlife, ensure risks to the public and native wildlife populations are minimized, and ensure the receiving facility is capable of correctly managing the species. The Department can authorize the transfer of restricted species following the evaluation of the receiving facility. The rule is amended to allow a new zoo license applicant to submit photographs of its existing facility if the applicant is not a member of a recognized zoological association to reduce the regulated community's burden and costs on applicant's who are members of a recognized zoological association. Submitting photographs of a facility requires little effort or expense and is nondiscriminatory. Nationally recognized associations have an accreditation process that is more stringent than Department rule or U.S. Department of Agriculture Animal Plant Health Inspection Services regulations. Currently there are two nationally recognized nonprofit groups: Association of Zoos and Aquariums and Zoological Association of America. The rule is amended to incorporate the January 1, 2012 version of 9 C.F.R. Subchapter A, Animal Welfare. The rule is also amended to require the zoo license holder to ensure their facility is inspected by a licensed, practicing veterinarian. In addition, the rule is amended to clarify that Department authorization is required before a zoo license holder can add a *new* species to its existing collection. Because the rule does not state authorization is only required when a zoo license holder wants to add a new species to its existing collection, license holders expend resources requesting authorization to acquire a new individual of a species they are already authorized to possess and the Department expends resources receiving, reviewing, and responding to unnecessary requests. This amendment will reduce the Department's and regulated community's burden and costs and allow the Department to evaluate a new species potential impact to ecosystems in Arizona should they escape or be released.

For R12-4-421 Wildlife Service License, the objective of the rule is to establish requirements that allow a person to facilitate the removal of nuisance wildlife, to include authorized activities, wildlife species, administrative compliance, and the restrictions and prohibitions necessary to protect public health and safety and existing wildlife habitat and resources. The rule is amended to prohibit the possession of wildlife carcasses or parts as this practice is not consistent with the intent of the rule. In addition, the rule is amended to identify what species of animal do not require a wildlife service license and may be removed under a Pest Control license issued by the Department of Agriculture.

For R12-4-422 Sport Falconry License, the objective of the rule is to establish requirements that allow a person to take and use raptors listed under the MBTA for the sport of falconry, to include authorized activities, raptor species, administrative compliance, and the restrictions and prohibitions necessary to protect existing wildlife habitat and resources. The rule is amended to incorporate the October 1, 2014 version of 50 C.F.R. 17.11. The rule is amended to reference the definition of "resident" under A.R.S. § 17-101 to increase consistency between Title 17 and Commission rules. The rule is amended to require the license holder to remove "any other falconry equipment" prior to releasing a raptor to help ensure the health and safety of purposely released falconry raptors. The proposed amendment clarifies that a license holder shall only transfer a raptor to a person who possesses an appropriate license to ensure consistency between rules within Article 4. The rule is amended to prohibit a falconer from transferring permit tag and quota

regulated raptor species to out-of-state falconers within one-year of the date of capture. Under 50 C.F.R. 21.29(b)(1)(iii), a state's rules may be more restrictive than the federal regulations; however, state rules must comply with the federal regulations in that state rules may not be less restrictive. Under 50 C.F.R. 21.29(e)(6)(ii) the license holder is required to report the theft of a raptor to the State and USFWS Regional Law Enforcement office within 10 days of the theft of the bird. The proposed rule is more restrictive in requiring a license holder to report the theft to the Department within 48 hours of discovering the theft. The Commission believes the theft of a raptor should be reported as soon as possible to allow the Department to take timely action. Reporting the theft of a raptor sooner than required by the federal regulation provides a benefit to the falconer by allowing the falconer to replace the raptor more quickly; a falconer who had reached the applicable limit may now add a replacement raptor without going over that limit.

For R12-4-423 Wildlife Rehabilitation License, the objective of the rule is to establish requirements that allow a person to rehabilitate and release live wildlife, to include authorized activities, wildlife species, administrative compliance, and the restrictions and prohibitions necessary to protect existing wildlife habitat and resources. The rule is amended to incorporate the October 1, 2014 version of 50 C.F.R. 17.11. The rule is amended to reduce the amount of time in which the results of the required license examination remain valid from five years to three years. This change allows for the examination to be updated on a more regular basis to include recent changes in procedures and also replicates the length of the licensing period. The rule is amended to require an applicant to disclose how they intend to euthanize wildlife to ensure the license holder uses the most humane methods. The rule is amended to eliminate the Department's responsibility to provide continuing education courses for licensees and expands the options for continuing education courses that are applicable to their license renewal. Few license holders choose to participate in the Department's biennial education sessions and instead utilize other sources to obtain mandatory continuing education. The Department expends considerable resources to prepare and provide education sessions to license holders. With each passing year and as acceptable online classes become increasingly available, attendance at the Department's continuing education courses has dwindled to the point that it does not benefit the Department or regulated community to continue providing these education courses. The rule is also amended to require the wildlife rehabilitation license holder to ensure their facility is inspected by a licensed, practicing veterinarian. In addition, the rule is amended to require an applicant to submit an affidavit affirming the applicant is either a licensed, practicing veterinarian or the applicant has access to a licensed, practicing veterinarian who is reasonably available to give veterinary services as necessary to facilitate rehabilitation of wildlife. This amendment is made to ensure licensees establish relationships with cooperating veterinarians so that basic medical services are provided to wildlife held under the license and prompt medical attention is provided to injured wildlife. The rule is amended to clarify that the Wildlife Rehabilitation License holder is responsible for all expenses incurred as a result of activities authorized under the license, including veterinary expenses.

For R12-4-424 White Amur Stocking and Holding License, the objective of the rule is to establish requirements that allow a person to possess and transport white amur, to include authorized activities,

administrative compliance, and the restrictions and prohibitions necessary to protect existing aquatic wildlife habitat and resources. The rule is amended to revise the definition of "triploid" to reflect language used by modern fishery biologists. The rule is amended to clarify the activities authorized under the license include stocking, holding, and restocking. The rule is amended to require an applicant to conduct an assessment of the impacts to sensitive species using the Department's On-Line Environmental Review Tool to further assess the impacts any authorized activity will have on existing wildlife species. The rule is also amended to establish a protocol for disease control as this is a priority within the Department and to increase consistency between rules within Article 4. In addition, the rule is amended to establish the Department's ability to perform inspections of the stocking location.

For R12-4-425 Restricted Live Wildlife Lawfully Possessed without License or Permit Before the Effective Date of Article 4 or Any Subsequent Amendments, the objective of the rule is to establish administrative compliance requirements for the continued possession and use of wildlife lawfully possessed prior to being classified as restricted live wildlife under R12-4-406. The Commission restricts certain wildlife species from possession in Arizona because they pose a threat to native fish, wildlife, agriculture, or public health and safety. The rule requires a person who lawfully possessed wildlife prior to being classified as restricted live wildlife under R12-4-406 to notify the Department of the possession and use of the wildlife. The rule is amended to require a person to specifically identify wildlife possessed under the rule in the written notification to ensure the Department is better able to monitor possession. The rule is amended to require a person to permanently mark wildlife possessed under the rule to allow the Department to better identify wildlife held under the rule in the future. The rule is amended to restrict the propagation of live wildlife lawfully possessed under the rule. The Commission believes restricted wildlife should not be possessed as pets and allowing a person to propagate wildlife held under the rule goes against the intent of R12-4-406. The rule is also amended to require a person who possesses any offspring prior to the effective date of this amendment to report any currently held offspring in order to maintain the exemption established under this Article. In addition, the rule amended to replace "designated Department employee" with "Department" to prevent the impression that only a specific designated employee may request documentation.

For R12-4-426 Possession of Primates, the objective of the rule is to establish requirements for the possession of a primate, to include containment, transportation, reporting, and laboratory testing requirements should a bite or other incident occur; and restrictions and prohibitions necessary to protect public health, safety, and welfare. The Commission believes the current rule is too lenient and, despite amendments made in 2006, primates held as pets continue to expose the public to potential pathogenic organisms and physical injury. The rule is amended to restrict possession of primates to zoo license holders, research facilities, and persons exempt under R12-4-425. The rule is amended to include additional zoonotic diseases to ensure the regulated community is aware of the various testing requirements. The rule is amended to require a person to transport a primate in a secure cage, crate, or carrier to reduce the risk of escaping and threat to public health, safety, and welfare. The rule is amended to replace the terms

"Director" and "Director's designee" with "Department" to prevent the impression that only the Director or a specific designated employee may request documentation. The rule is also amended to require a zoo license holder or person using primates at a research facility that possesses a primate that bit, scratched, or otherwise exposed a human to pathogenic organisms to use procedures recommended by the American Association of Zoo Veterinarians (AAZV) or Centers for Disease Control (CDC). The procedures recommended by AAZV and CDC are more stringent than the procedures established under this rule. In addition, the rule is amended to require a person lawfully possessing a primate under R12-4-425 to comply with captivity standards established under R12-4-428, as applicable, to ensure the animal's physical and psychological needs are met.

For R12-4-427 Exemptions from Requirements to Possess a Wildlife Rehabilitation License, the objective of the rule is to establish criteria allowing a person to possess and care for specific live wildlife species without having to apply for and obtain a wildlife rehabilitation license, to include authorized activities, wildlife species that may be held under the license, administrative compliance, and the restrictions and prohibitions necessary to protect wildlife habitat and resources. The rule is amended to replace "Wildlife of Special Concern" with "Species of Greatest Conservation Need" to ensure consistency in language within Article 4.

For R12-4-428 Captivity Standards, the objective of the rule is to establish the minimum standards for living spaces, furnishings, dietary needs, veterinary care, and social groupings to ensure the humane treatment of animals possessed under a lawful exemption or special license issued by the Department. The rule is amended to require the facility and holding environment for the captive wildlife to be structured to reasonably promote the psychological well-being of the animals to mirror federal requirements applicable to dealers, research facilities, and exhibitors under 9 C.F.R. 3.81. The environment must contain sufficient useable space, complexity, and enrichment and promote a species-appropriate repertoire of behaviors. When applicable, social housing should be the general rule and individual housing should be the exception. In addition, the rule is amended to remove the requirement that all special license holders ensure their facility is inspected by a licensed, practicing veterinarian as this requirement places an undue burden on license holders who possess small holdings. This requirement will be added to the private game farm, game bird, zoo, and rehabilitation license rules.

For R12-4-430 Importation, Handling, and Possession of Cervids, the objective of the rule is to establish requirements for the importation, handling and possession of captive cervids necessary to prevent the transmission of disease from captive cervids to wildlife and domestic animals, to include authorized activities, administrative compliance, and the restrictions and prohibitions necessary to protect existing habitat and wildlife resources. The rule is amended to clarify cervid species governed by the rule. The rule is amended to reference R12-4-305, which establishes requirements for transporting cervid carcasses or parts from a private game farm or another state. The rule is also amended to clarify disease testing requirements to reflect current methods and the state of science regarding cervid diseases. The rule is also amended to expand disease testing options to reduce the Department's and regulated community's burden

and costs. In addition, the rule is amended to incorporate the most recent publications of "Brucellosis in Cervidae: Uniform Methods and Rules" U.S.D.A. A.P.H.I.S. 91-45-16, effective September 30, 2003 and "Bovine Tuberculosis Eradication: Uniform Methods and Rules" USDA APHIS 91-45-011, revised January 1, 2005.

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

Overall, the Commission believes the amendments proposed in this rulemaking result in rules that are either less burdensome or have no significant impact on the regulated community. Therefore, this subsection will address only those rules deemed to have a significant impact on the regulated community.

For R12-4-402, currently, the Department is forced to bear the expense of caring for seized wildlife when the wildlife cannot be released into the wild or lawfully placed with a special license holder. The Commission is unable to establish the frequency of occurrence as there is currently no mechanism in place to track these types of incidents, but estimates the frequency of occurrence to be less than ten times each year.

For R12-4-403, the Department or willing volunteers are forced to bear the expense of caring for these animals until the owner is found and the enclosure is repaired or a new home is identified. The Commission is unable to establish the frequency of occurrence as there is currently no mechanism in place to track these types of incidents, but estimates the frequency of occurrence to be less than ten times each year.

For R12-4-404, a person who finds that they can no longer afford, care for, or handle the wildlife they possess may try to place the animal or their offspring with a zoo, special license holder, or member of the public. When the person cannot find a home for the animal, the person could release the animal into the wild and ecosystems. When released into the wild, captive wildlife poses a health and safety threat to native wildlife. For example, although native to Arizona, captive desert tortoises released into the wild can severely jeopardize local wild populations through the introduction of upper respiratory tract disease (URTD), which has been implicated in large tortoise die offs in California. The Department's special license administrators expend resources receiving and answering calls from members of the public regarding the lawful use of reptiles and amphibians for use in providing aversion training. The Commission is unable to establish the frequency of each occurrence as there is currently no mechanism in place to track these types of incidents.

For R12-4-405, any wildlife imported into this State poses a threat to native wildlife due to its potential to escape or be released into the wild as stated above. The Commission is unable to establish the frequency of occurrence as there is currently no mechanism in place to track these types of incidents.

For R12-4-406, tilapia is the third most plentiful fish in aquaculture, surpassed only by carps and salmonids, and are readily available for purchase on the internet along with instructions on how to culture a tilapia farm. Tilapia have been documented in many waters in southern Arizona, likely due to

illegal releases. Currently there are no built in safeguards that prevent backyard fish farmers from illegally releasing unwanted tilapia into Arizona waters. Illegally introduced sturgeon and paddlefish could survive in bigger rivers in Arizona such as the Colorado River, Verde River, Salt River, and Gila River, as well as lakes, and potentially survive and become established. If sturgeons become established, they have a long lifespan and could impact native fish populations as well as have impacts in areas we currently manage for sport fishing. Several species of sturgeons and paddlefish are harvested for their roe, which is made into caviar and makes an attractive choice for fish farming. In addition, California currently lists sturgeon as restricted live wildlife (via bony fishes within Class Osteichthyes; Fish and Game Code, Section 2116-2127). Because sturgeon and paddlefish are not currently restricted under R12-4-406, there are no safeguards built in to prevent backyard fish farmers from illegally releasing unwanted fish into Arizona waters. Adding these species to the list of restricted wildlife, as are all other game fish, a person would be required to obtain an Aquatic Wildlife Stocking Permit in order to legally possess and stock sturgeon or paddlefish in their backyard pond. An applicant is required to provide information about the planned use and disposition of the fish, allowing the Department the opportunity to assess the geographic risk of issuing a permit as well as educate these public on the negative impacts of illegally stocking non-native sturgeon or paddlefish into Arizona's waters. All species of apple snails are listed in the Department's Directors Order #1, which is a listing of all aquatic invasive species that are not native to the ecosystem and whose introduction or presence in this state may cause economic or environmental harm or harm to human health. Chinese mystery snails are also marketed as "mystery snails" in the aquarium industry, and are known to clog the screens of water intake pipes and restrict water flow, and are known to host parasites and diseases that can infect humans when they establish. The Commission is unable to establish the frequency of occurrence as there is currently no mechanism in place to track these types of incidents.

For R12-4-407, currently, there is an overabundance of captive-reared desert tortoises housed at Department and state-sanctioned adoption facilities in Arizona. A desert tortoise can lay up to 12 eggs per year, therefore captive hatchling desert tortoises are consistently surrendered at rates that are unsustainable for the Department's tortoise adoption Program. This places an undue burden on the Department and state-sanctioned adoption facilities. Captive desert tortoises pose risks to the wild populations from introduction of infectious diseases or affecting the genetic composition of wild populations and thus cannot be released into the wild. The Department expends considerable resources on housing and placing new generations of unwanted captive desert tortoises into approved homes; funds that are meant to be used for desert tortoise conservation, monitoring, and research. The Department receives hundreds of unwanted and uncared for desert tortoises each year.

For R12-4-408, the Department experiences instances where it is unable to care for or place confiscated, orphaned, or injured wildlife in a permanent home within the designated 72 hour period. These instances place the Department in the awkward position and, in some cases, employees have taken the confiscated, orphaned, or injured wildlife into their own homes until the wildlife is placed in a

permanent home. The Commission is unable to establish the frequency of this occurrence as there is currently no mechanism in place to track these types of incidents, but estimates the frequency of occurrence to be less than ten times each year.

For R12-4-409, a special license holder may fail to meet the stipulations on their license and repeatedly violate reporting mandates. In these cases the Commission must have the ability to revoke an individual's special license without incurring additional costs. The Commission distributes and manages approximately 1,500 special licenses each year for the purposes stated under Article 4. The Commission is unable to establish the frequency of this occurrence as there is currently no mechanism in place to track these types of incidents but estimates the Commission revokes a special license approximately once each year. Occasionally, the Department either discovers or is made aware of a license holder who possesses wildlife in a manner that poses an immediate threat to the public or the welfare of wildlife. When this occurs, the Department mandates testing for zoonotic treatment and human exposures. The Commission is unable to establish the frequency of this occurrence as there is currently no mechanism in place to track these types of incidents, but estimates the frequency of occurrence to be approximately three to six times each year.

For R12-4-418, the disposition of wildlife carcasses or parts in situations where a restricted animal is removed, euthanized, or collected dead under a Scientific Collecting License. Animals that are improperly disposed of pose a threat to the public health, safety, and welfare and native wildlife and wildlife habitat as stated above. The Commission is unable to establish the frequency of this occurrence as there is currently no mechanism in place to track these types of incidents.

For R12-4-420, the transfer of restricted live wildlife species from zoos to private game farms to allow the Department time to evaluate the risks to the public and native wildlife populations. The Commission is unable to establish the frequency of this occurrence as there is currently no mechanism in place to track these types of incidents.

For R12-4-421, the disposition of wildlife carcasses or parts in situations where a restricted animal is removed and or euthanized pose a threat to the public health, safety, and welfare and native wildlife and wildlife habitat as stated above. The Commission is unable to establish the frequency of this occurrence as there is currently no mechanism in place to track these types of incidents.

For R12-4-422, on occasion, out-of-state falconers have circumvented fees associated with out-of-state raptor capture. The Commission is unable to establish the frequency of this occurrence as there is currently no mechanism in place to track these types of incidents.

For R12-4-423, a potential license holder may not obtain their license in a reasonable period of time after having passed the Department's examination. Failure to do so could result in a license being issued to a person who is not aware of the most current treatment procedures. The Commission is unable to establish the frequency of this occurrence as there is currently no mechanism in place to track these types of incidents, but estimates occurrences of delayed license obtainment are infrequent. Department staff has discovered wide variation between licensees in their preferred methods to

euthanize wildlife. Although most methods used are humane, some are questionable. The Commission is unable to establish the frequency of this occurrence as there is currently no mechanism in place to track these types of incidents, but estimates only a small percentage of the euthanizations are handled incorrectly.

For R12-4-425, a person who holds a restricted animal that has a history of biting, scratching, or otherwise exposing a human to pathogenic organisms may sell or transfer this animal to another person. Because the person is not required to notify the Department of the transfer, any subsequent bite or scratch resulting from that animal is likely to be documented as a separate incident. The Commission is also aware that a person may sell or transfer a problem animal and then illegally replace it with another animal of the same species. Unlawfully releases propagated wildlife poses a threat to native wildlife due to its potential threat to wildlife and wildlife habitat as stated above. The Commission is unable to establish the frequency of this occurrence as there is currently no mechanism in place to track these types of incidents.

For R12-4-426, in spite of increased regulations for import of infant primates and the introduction of disease testing protocols, bites to humans from non-human primates continues to be a problem for the Department and place the general public at risk of contracting a zoonotic disease or physical injury. The Commission is unable to establish the frequency of this occurrence as most incidents go unreported and there is currently no mechanism in place to track these types of incidents.

For R12-4-428, captive live wildlife under special license may be held in conditions that do not contribute to the animal's psychological well-being. The Commission is unable to establish the frequency of this occurrence as there is currently no mechanism in place to track these types of incidents.

For R12-4-430, several zoos and one private game farm license holders possess cervids. When a cervid possessed by the license holder dies, the license holder must ensure the animal is tested by the Arizona Veterinary Diagnostic Laboratory for chronic wasting disease (CWD). Since the rule was adopted in 2006, the testing protocol for this disease has changed and there is a greater understanding of how long an animal may be infected before showing signs of the disease. Zoo license holders submit an average of two animals each year for testing and the one private game farm license holder submits an average of four animals a year. Researchers have also found that more cervid species are susceptible to CWD and that a greater number of animals held in groups should be tested in order to reliably detect the presence of the disease.

(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.

Overall, the Commission believes the amendments proposed in this rulemaking result in rules that are either less burdensome or have no significant impact on the regulated community. Therefore, this subsection will address only those rules deemed to have a significant impact on the regulated

community. For all rules identified in (A)(1)(b), the Commission believes the targeted conduct identified below will continue to occur if the rule is not amended as identified in (A)(1):

For R12-4-402, the Department incurs costs associated with the care and placement of wildlife when the wildlife cannot be released into the wild or lawfully placed into the care of a special license holder. Some species of released native or exotic wildlife can become established in local ecosystems and compete with native species for limited resources. This competition could eradicate native species or negatively impact their habitat. Captive native and nonnative species can expose wild populations to pathogens or parasites. The economic costs associated with wildlife disease outbreaks and control can be severe. Costs of disease outbreaks are generally recurring and additive due to annual costs of monitoring and eradicating diseased animals. If game species are affected, it could result in a significant decrease in hunting license revenue due to increased hunter/public caution and decreased hunter participation. Such loss of hunting-related revenue to rural economies can be disastrous to the state's economic stability and may decrease operating budgets of state agencies, thus further causing negative impact on wildlife resources.

For R12-4-403, the accidental or intentional release of native or exotic wildlife into public areas or local ecosystems could pose a substantive health and safety risk to the public. Some species of released native or exotic wildlife can become established in local ecosystems and compete with native species for limited resources. This competition could eradicate native species or negatively impact their habitat. Captive native and nonnative species can expose wild populations to ne pathogens or parasites. The economic costs associated with wildlife disease outbreaks and control can be severe. Costs of disease outbreaks are generally recurring and additive due to annual costs of monitoring and eradicating diseased animals. If game species are affected, it could result in a significant decrease in hunting license revenue due to increased hunter/public caution and decreased hunter participation. Such loss of hunting-related revenue to rural economies can be disastrous to the state's economic stability and may decrease operating budgets of state agencies, thus further causing negative impact on wildlife resources.

For R12-4-404, the release of propagated wildlife could pose a threat to Arizona's wildlife and wildlife habitat. Propagated wildlife released into the wild may transfer disease, bacteria, parasite, etc. (that farm animals or wildlife have no immunity to) and could spread these pathogens and parasites to wildlife, which can lead to significant damage to wild populations. The Department's special license administrators receive calls from members of the public asking if it is lawful to use reptiles and amphibians for use in providing aversion training.

For R12-4-405, the release of imported wildlife could pose a threat to Arizona's wildlife and wildlife habitat due to its potential to escape or be released into the wild as stated above.

For R12-4-406, tilapia, sturgeon, and paddlefish can compete with native fish fauna, create turbidity in the water (due to nesting behaviors) thus reducing the light available for aquatic plants, and consume a vast range of food sources causing changes in local aquatic flora. Apple snails are not native

to Arizona's ecosystems and their introduction or presence in this state may cause economic or environmental harm or harm to human health. Chinese mystery snails compete with native snails for food and habitat resources and can serve as vectors for the transmission of parasites and diseases to native aquatic species. They can clog the screens of water intake pipes and restrict water flow. They are also known to host parasites and diseases that can infect humans. False dark mussels have the potential to invade aquatic habitats quickly and their harmful impact on water delivery systems. Members of the public have been attacked and injured by non-human primates while at home, visiting another person's home, or conducting everyday activities. Persons who have been bitten or scratched by non-human primates testing positive for the Herpes B virus are subjected to painful injections, tested for a variety of zoonotic diseases, and treated for bite wounds.

For R12-4-407, currently, there is an overabundance of captive-reared desert tortoises housed at Department and state-sanctioned adoption facilities in Arizona. This places an undue burden on the Department and state-sanctioned adoption facilities. The Department expends considerable resources on housing and placing new generations of unwanted captive desert tortoises into approved homes; funds that are meant to be used for desert tortoise conservation, monitoring, and research. Captive desert tortoises pose risks to the wild populations from introduction of infectious diseases or affecting the genetic composition of wild populations and thus cannot be released into the wild. Animals that die in transport and are often improperly disposed of thus posing a threat to the public health, safety, and welfare and to native wildlife and wildlife habitat. For example, CWD is a transmissible spongiform encephalopathy (TSE) of cervids. TSEs are caused by unusual infectious agents known as prions. CWD prions persist in the environment and animals can become infected through exposure to a contaminated environment.

For R12-4-408, the Department experiences instances where it is unable to care for or place confiscated, orphaned, or injured wildlife in a permanent home within the designated 72 hour period. These instances place the Department in the awkward position and, in some cases, employees have taken the confiscated, orphaned, or injured wildlife into their own homes until the wildlife is placed in a permanent home.

For R12-4-409, in cases where a special license holder fails to meet the stipulations on their license, both the wildlife held under the license and the general public could be at risk. A licensee could continue to hold a species that poses a threat to native wildlife through disease transmission or an actual physical threat to members of the public. Often, animals are released into the wild or left with the Department, resulting in additional burdens and costs on the Department and a negative impact on native fish and wildlife, agriculture, or public health and safety, or as it seeks to place the animal.

For R12-4-418, wildlife populations could be over collected by scientific license activities. Animals that are improperly released pose a threat to the public health, safety, and welfare and to native wildlife and wildlife habitat as stated above.

For R12-4-420, species transferred to a private game farm could directly threaten the public health, safety, and welfare and may pose a threat to native wildlife and wildlife habitat due to its potential to escape or be released into the wild as stated above. Zoo license holders will continue to contact the Department to request authorization to add a new species to the existing collection or if uncertain of the rule, continue to call or email regional license administrators seeking clarification on this topic.

For R12-4-421, animals that are improperly disposed of pose a threat to the public health, safety, and welfare and to native wildlife and wildlife habitat as stated above. License holders may continue to possess wildlife carcasses or parts, which is not consistent with the intent of the rule.

For R12-4-422, out-of-state falconers may circumvent out-of-state raptor capture fees and could continue to exploit this regulatory oversight.

For R12-4-423, the Department will continue to have instances of applicants waiting extraordinary long times to obtain their license after taking the examination. Applicants will continue to disclose how they intend to humanely euthanize wildlife. The Department will realize a further decline in enrollment if continuing education courses are offered, resulting in unnecessary burdens and costs to the Department. License holders will continue to request medical assistance from the Department's care facility resulting in unnecessary burdens and costs to the Department's already overburdened staff.

For R12-4-425, although it is likely that most incidents go unreported, one animal protection organization's records indicate that more than 275 people have been injured by captive primates, alone, since 1990. Members of the public have been attacked and injured by wildlife while at home, visiting another person's home, or conducting everyday activities. Persons have been bitten or scratched by animals that have tested positive for the Herpes B virus, subjected to painful injections, tested for a variety of zoonotic diseases, suffered bite wounds that penetrated to the bone, and suffered other catastrophic injuries. The Commission believes these incidents are likely to continue if the rule is not amended to require a person to permanently mark wildlife and report this information to the Department. The rule allows a person to dispose of wildlife lawfully possessed under the rule by exporting the wildlife to a person in another state, transferring the wildlife to a special license holder for a lawful purpose, euthanasia, or as otherwise directed by the Department. Often, animals are released into the wild or left with the Department, resulting in a negative impact to native fish and/or wildlife, agriculture, or public health and safety, or an administrative burden on the Department as it seeks to place the animal.

For R12-4-426, although it is likely that many incidents go unreported, the Department has received reports of 48 primate exposure incidents since 1994. Members of the public have been attacked and injured by primates while at home, visiting another person's home, or conducting everyday activities. Persons who have been bitten or scratched by non-human primates testing positive for the Herpes B virus are subjected to painful injections, tested for a variety of zoonotic diseases, and treated for bite wounds.

For R12-4-428, failure to meet an animal's psychological needs can result in psychological distress indicated by an animal's continued pacing, walking in tight circles, swaying or rolling their heads, self-mutilation, and other atypical behavior.

For R12-4-430, the inability to use current methods and the state of science regarding cervid diseases and disease testing options will continue to result in unnecessary burdens and costs to the Department's and regulated community's burden and costs.

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

The Commission anticipates the rule changes will prevent or diminish the frequency of the targeted conduct. While it is not possible to quantify the actual change in frequency of the targeted conduct expected from the rule change, the Commission believes that over time, through continued education and enforcement of the rule changes identified under (A)(1), the frequency of the targeted conduct will be significantly reduced.

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

The Commission's intent in proposing these amendments is to protect native wildlife and their habitats in many ways, including preventing the spread of disease, reducing the risk of released animals competing with native wildlife, discouraging illegal trade of native wildlife, and avoiding conflict between humans and wildlife which may threaten public health or safety. The Commission anticipates the majority of the rulemaking is intended to benefit the regulated community, members of the public, and the Department by clarifying rule language to ease enforcement, creating consistency among existing Commission rules, reducing the burden on the regulated community where practical, and allowing the Department additional oversight where necessary. The Commission anticipates the rulemaking will result in an overall benefit to the regulated community, members of the public, and the Department. The Commission anticipates the rulemaking will result in little or no impact to political subdivisions of this state; private and public employment in businesses, agencies or political subdivisions; or state revenues. The Commission has determined that there are no less intrusive or costly alternative methods of achieving the purpose of the rulemaking. Other than the regular cost of rulemaking, there are no costs associated with the rulemaking. Therefore, the Commission has determined that the benefits of the rulemaking outweigh any costs.

For R12-4-401, definitions alone have no impact on the Department or regulated community; enforcement of the rule manifests itself through proper administration. It is not the term that is cited, but the violation. Thus, the Commission anticipates the proposed amendments will have little or no impact on the Department or regulated community. In general, the amendments to R12-4-401 are intended to clarify or establish definitions for terms that are used in this Article. Definitions that are clearer will make the rules more understandable.

For R12-4-402, the Commission anticipates the proposed amendments will impact persons who possess and hold wildlife in a manner that threatens public health, safety, or welfare, or wildlife populations. Based on recent history, the impact is expected to be negligible. By allowing the Department to take actions

intended to alleviate threats to public health, safety, or welfare or wildlife populations, the Commission anticipates the proposed amendments will benefit members of the public who may otherwise be exposed to these threats. The Commission anticipates the proposed amendments will benefit the Department and licensed wildlife sanctuaries, which currently bear the costs associated with seizure operations. This amendment will allow the Department to recoup costs from the individual or businesses that hold the wildlife in a manner that threatens public health, safety, or welfare, or wildlife populations.

For R12-4-403, the Commission anticipates the proposed amendments will impact special license holders and owners by requiring the license holder or owner to bear the expense for the animal's care; however, the Commission believes it is a reasonable economic burden. The cost of maintaining an exotic pheasant for a week (~\$5) is much less than the expense of maintaining an African lion for a week (~\$150). However, both are costs the license holder or owner would have had to expend regardless of whether it was in their possession, the Department's, or a wildlife sanctuary.

For R12-4-404, the Commission anticipates the proposed amendments will impact persons who possess wildlife taken under an Arizona hunting or fishing license by prohibiting propagation of restricted wildlife. In addition to the cost of a veterinary office visit, which may be anywhere from \$42 to \$100, costs to spay or neuter an animal may be incurred. They are difficult to quantify as the cost varies greatly depending on the species and required after-care. However, compliance may also be achieved at no cost by keeping males and females separated or by possessing only male or female animals. Veterinarians who provide spay and neuter services will benefit from the prohibition on propagation. Persons who use reptiles or amphibians to provide aversion training may benefit from the rulemaking. Typically, a business may charge anywhere from \$60 to \$125 for the initial aversion training sessions and \$30 to \$50 for a "recheck." While the use of legally acquired reptiles and amphibians for aversion training is already legal, clarifying this in rule may result in additional customers for businesses that offer aversion training for dogs.

For R12-4-405, the Commission anticipates the proposed amendments will impact persons who import wildlife into Arizona by requiring a valid health certificate for the animal being imported. Based on recent history, costs are expected to be insignificant as a health certificate may be obtained from a licensed veterinarian for \$42 to \$100. The amendment is intended to assist in alleviating potential threats to public health, safety, or welfare, and to promote the health and welfare of Arizona's wildlife populations. The Commission anticipates the proposed amendment will benefit members of the public, who may otherwise be exposed to these threats, from the requirement that a person obtain a health certificate for an animal before importing animals into Arizona.

For R12-4-406 Restricted Live Wildlife, the Commission anticipates the proposed amendments will impact persons and businesses that sell the live wildlife that the Commission proposes to add to the list of restricted live wildlife as they will no longer be able to sell Red Shiner, five tilapia species (*Oreochromis aureus*, *O. mossambica*; *O. niloticus*, *O. urolepis hornoru*, and *T. zilli*), sturgeon, paddlefish, Chinese mystery snail, apple snail, false dark mussels, non-human primates to persons in Arizona without a lawful exemption or a special license. When adding or removing a species from the restricted wildlife list, the

Department bases its decision on the following factors: protection of human health and safety; biological impact on species and ecosystems; consistency with federal, state, and county regulatory agencies; and potential economic impact.

For R12-4-407, the Commission anticipates the proposed amendments will impact persons and businesses that provide veterinary care or certified waste disposal facilities. Based on recent history, costs are expected to be insignificant as a health certificate may be obtained from a licensed veterinarian for \$42 to \$100. This requirement already exists through the Arizona Department of Agriculture and has been added to this rule because it addresses the exemptions related specifically to the importation of wildlife. While the need to dispose of wildlife that dies while in transport through the State is not a common occurrence, the potential for the spread of disease to wild populations exist when a deceased animal is illegally dumped in wildlife interface locations. The Department wishes to direct these individuals to certified waste disposal facilities. Since this requirement is isolated to certain situations the costs associated with it are minimal. The changes related to the propagation of desert tortoises will have some costs to the Department in law enforcement and administration. However, these same costs already exist and will be offset by the reduction in costs associated with caring for the surplus of tortoises in the tortoise adoption program.

For R12-4-408, the Commission anticipates the proposed amendments will impact persons who hold wildlife for the Department as they will bear the expense for the animal's care until it is placed in a permanent home. However, the Commission believes it is a reasonable economic burden. Costs vary greatly depending on the species, its physical condition, and housing requirements. The cost of maintaining an exotic pheasant for a week (~\$5) is much less than the expense of maintaining an African lion for a week (~\$150).

For R12-4-409, the Commission anticipates the proposed amendments will impact special license holders and the Department. In general, the Commission believes the benefits of the amendments, specifically ensuring special license procedures include revocation guidelines, outweighs any costs. The Commission anticipates a person possessing wildlife under special license may incur costs associated with the housing and veterinary requirements. However, the licensee will be advised of these responsibilities during the application process. In general, the amendments to the rule will require additional communication, verbal or electronic, between the licensee and the Department and some may incur minor costs associated with this requirement. The public benefits from a rule that provides the general provisions relating to administrative compliance, licensing requirements, and penalties applicable to all special licenses issued by the Department. The Commission believes that providing general provisions in one overarching rule ensures consistency between special license rules. Furthermore, the Commission anticipates the administrative changes will result in a more efficient process that benefits both the Department and the regulated community.

For R12-4-410, the Commission anticipates the proposed amendments will impact aquatic wildlife stocking license holders and the Department. Amendments to the rule requires applicants to further examine

the potential for adverse impacts of stocking on existing wildlife species in the proposed area, provide additional information about the proposed stocking location, and possess the license when conducting stocking activities and present it to a Department employee or agent upon request to ensure compliance with requirements prescribed under A.R.S. § 17-331. There is no fee for this license and the Department issues approximately 161 Aquatic Wildlife Stocking permits on an annual basis. The Commission does not anticipate a person possessing wildlife under this rule will incur additional costs as a result of the rulemaking.

For R12-4-411, the Commission anticipates the proposed amendments will have no impact on consumers because there are no registered live bait dealers that offer Red Shiners for sale as a baitfish. The Department issues approximately 28 Live Bait Dealer's licenses on an annual basis. During the rulemaking process, the Department contacted all businesses that currently hold a Live Bait Dealer's License; none sell red shiners. The Commission does not anticipate a person possessing wildlife under this rule will incur additional costs as a result of the rulemaking.

For R12-4-412, the Commission anticipates the proposed amendments will have no impact on the regulated community. The Department tasked a team of subject matter experts with evaluating the current license structure and associated administrative requirements to determine the feasibility of increasing license fees and charging a fee for the current no-fee licenses. The team made recommendations relating to fees and a new license structure that differentiates between initial and renewal special licenses. At this time, the Department chose to implement the recommended changes to the special license structure and maintain the current special license fees. The rule is amended to include no-fee special licenses and establish a new/renewal special license fee structure.

For R12-4-413, the Commission anticipates the proposed amendments will impact private game farm license holders and the Department. In general, the Commission believes the benefits of the amendments, specifically taking a stronger stance in the regulation of live wildlife for the principle purpose of protecting native wildlife species, outweighs any costs. The Department issues approximately 13 Private Game Farm licenses on an annual basis. The Commission anticipates a person possessing wildlife under this rule may incur minor costs associated with the requirement for submitting an annual report even when allowed activities have not occurred under the license.

For R12-4-414, the Commission anticipates the proposed amendments will impact game farm shooting preserve, game bird field trial, game bird field trial training, and game bird hobby license holders and the Department. In general, the Commission believes the benefits of the amendments, specifically consolidation of licenses into one rule and enhanced reporting procedures outweighs any costs. The Department issues approximately 7 Game Bird Shooting Preserve licenses, 42 Game Bird Field Trial licenses, 128 Game Bird Field Trial Training licenses, and 65 Game Bird Hobby licenses on an annual basis. The Commission does not anticipate a person possessing wildlife under this rule will incur additional costs as a result of the rulemaking.

For R12-4-417, the Commission anticipates the proposed amendments will impact wildlife holding license holders and the Department. In general, the Commission believes the benefits of the amendments, specifically allowing the license holder to use an agent, allowing an applicant to submit photographs and/or a certification issued by an institutional animal care and use committee or similar committee, result in a reduction of the burden and costs placed on the regulated community. There is no fee for this license and the Department issues approximately 151 Wildlife Service licenses on an annual basis. The Commission does not anticipate a person possessing wildlife under this rule will incur additional costs as a result of the rulemaking.

For R12-4-418, the Commission anticipates the proposed amendments will impact scientific collecting license holders and the Department. In general, the Commission believes the benefits of the amendments, specifically improving the administrative aspects of the license, providing a mechanism to restrict location of activities, and requiring proper disposal in the regulation of live wildlife and their parts for the principle purpose of protecting native wildlife species, outweighs any costs. There is no fee for this license and the Department issues approximately 312 Scientific Collecting permits on an annual basis. The Commission does not anticipate a person possessing wildlife under this rule will incur any additional costs as a result of the rulemaking.

For R12-4-420, the Commission anticipates the proposed amendments will impact zoo license holders and the Department. Commission believes the benefits of the amendments outweigh these minor costs and is not an undue burden. Requiring a new zoo license applicant to submit photographs with their application if they are not affiliated with a national accreditation association, could result in minor costs. If an applicant does not possess a camera to take the photographs, they would either need to borrow, purchase, or pay an individual to take the required photos. Costs range from less than \$15 for a disposable camera to \$60 for a low end digital camera. Alternatively, a photographer could be hired to shoot the photos for \$150 to \$200. If an applicant does not submit their license application electronically they would have to provide paper photographs at a cost of approximately .20¢ per photo. The number of paper photos needed would depend on the size of zoo and could range from 10 (\$2.00) to 100 (\$20.00). The Department issues approximately 19 Zoo licenses on an annual basis.

For R12-4-421, the Commission anticipates the proposed amendments will impact wildlife service license holders and the Department. In general, the Commission believes the benefits of the amendments, specifically taking a stronger stance in the regulation of live wildlife and their parts for the principle purpose of protecting native wildlife species, outweighs any costs. There is no fee for this license and the Department issues approximately 118 Wildlife Service licenses on an annual basis. The Commission does not anticipate a person possessing wildlife under this rule will incur any additional costs as a result of the rulemaking.

For R12-4-422, the Commission anticipates the proposed amendments will impact sport falconry license holders and the Department. In general, the Commission believes the benefits from the proposed amendments, specifically improving the administrative aspects of the license and restricting Arizona license

holders from transferring species managed through Commission Order or annual harvest quota system to a falconer in another state for at least one year from the date of capture, outweighs any costs. Furthermore, the Commission anticipates the administrative changes will result in a more efficient process that benefits both the regulated community and the Department. The Commission does not anticipate a person possessing a falconry license under this rule will incur any additional costs or undue regulation as a result of the rulemaking. The Department issues approximately 31 Sport Falconry licenses on an annual basis.

For R12-4-423, the Commission anticipates the proposed amendments will impact wildlife rehabilitation license holders and the Department. The Commission believes there are no anticipated costs to license holders in regards to shortening the expiration date of the license examination results and cessation of providing medical care at the Department's facility. License holders who are not practicing acceptable euthanasia techniques will be required to comply. The most acceptable, quick, and humane method is the use of carbon monoxide in a suitable chamber, costing approximately \$150. The few license holders who participate in the continuing education courses offered by the Department would be required to find alternative sources. In some cases there may be no cost for hands-on learning, costs for local or online seminars may range from approximately \$50-\$100, and costs for an out-of-state conference may cost \$1,000 or more to attend. There is no fee for this license and the Department issues approximately 11 Wildlife Rehabilitation licenses on an annual basis.

For R12-4-424, the Commission anticipates the proposed amendments will impact white amur stocking and holding license holders and the Department. Because no substantive amendments are proposed, the Commission anticipates the impacts on the regulated community will be insignificant. There is no fee for this license and the Department issues approximately 413 White Amur Stocking and Holding licenses on an annual basis.

For R12-4-425, the Commission anticipates the proposed amendments will impact persons who lawfully possess wildlife that subsequently became restricted and the Department. In general, the Commission believes the benefits of the proposed amendments, specifically taking a stronger stance in the regulation of live wildlife for the principle purpose of protecting native wildlife species, outweighs any costs. The Commission anticipates a person possessing wildlife under this rule may incur minor costs associated with the requirement that a person permanently mark the animal with a tattoo, microchip, or other means. Costs are expected to be insignificant and may be obtained from a licensed veterinarian. In addition to the office visit, which may cost anywhere from \$42 to \$100, costs to mark the animal with a tattoo or microchip range anywhere from \$30 to \$50. In addition, the Commission anticipates a person may incur minor costs to spay or neuter the animal due to the prohibition on propagation. Costs to spay or neuter an animal are difficult to quantify as the cost varies greatly depending on the species and required after-care. However, compliance may also be achieved at no cost by keeping males and females separated or by possessing only male or female animals. Veterinarians who provide spay and neuter, microchip or tattooing services will benefit from the requirements that a person permanently mark the animal and the prohibition on propagation.

For R12-4-426, the Commission anticipates the proposed amendments will impact persons who lawfully possess non-human primates and the Department. In general, the Commission believes the benefits of the amendments, specifically taking a stronger stance in the regulation of live wildlife for the principle purpose of ensuring the public's health and safety and protecting native wildlife species, outweighs any costs. The Commission anticipates a person possessing wildlife under this rule may incur minor costs associated with the requirement that a person permanently mark the animal with a tattoo, microchip, or other means as a result of restricted status. Costs are expected to be insignificant and may be obtained from a licensed veterinarian. In addition to the office visit, which may cost anywhere from \$42 to \$100, costs to mark the animal with a tattoo or microchip range anywhere from \$30 to \$50. Veterinarians who provide spay and neuter, microchip or tattooing services will benefit from the requirements that a person permanently mark the animal and the prohibition on propagation.

For R12-4-427, the Commission anticipates the proposed amendments will impact persons who temporarily hold orphaned or injured wildlife and the Department. The Commission believes the proposed amendments are nonsubstantive and will not have a significant impact on the regulated community.

For R12-4-428, the Commission anticipates the proposed amendments will impact persons who hold wildlife under a special license and the Department. The cost of ensuring the captive environment is minimally enriching are difficult to quantify as the cost varies greatly depending on the species and existing conditions. Modifications could range from simple changes in daily procedures, to changes in the enclosures costing hundreds to thousands of dollars. The Commission believes the benefits of the amendments, specifically ensuring license holders consider the psychological well-being of their animals, outweighs any costs.

For R12-4-430, the Commission proposes to amend the rule to require special license holders lawfully possessing cervids to submit tissues from any cervid over one-year of age that die or are killed or slaughtered for testing for CWD. This requirement is comparable to the requirements for herd certification programs for farmed cervids in other states. The Department pays the costs of collecting the sample and testing it for the presence of CWD by a laboratory certified by the National Veterinary Services Laboratory and United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS). If the proposed amendment is approved, the sample must be collected by a licensed veterinarian or the Department and then submitted to a USDA APHIS certified laboratory. There are 28 approved diagnostic laboratories nationwide. The license holder may pay the cost of sample collection, shipping, and testing. The Department does not charge a fee to remove a sample. The Commission anticipates the proposed rule will not have a significant impact on the regulated community because they are already required to test all cervids that die while in their possession. In addition to the cost for testing, a laboratory may charge a submission fee of \$7 to \$10. The average fee for an immunohistochemistry is \$35 and for enzyme linked immunosorbent assay is \$25; typically only one test is required. Currently, the Department licenses one private game farm to possess cervids. Reports submitted by the private game farm indicate approximately 22 animals die or are killed or slaughtered on an annual basis. If all of these animals were

over one-year of age, the Commission estimates costs for testing would range from \$550 to \$770. Shipping costs vary greatly depending on the shipping company and delivery date. The closest APHIS approved diagnostic laboratory is located in Colorado; typical shipping costs are under \$20. The Department would realize a reduction in costs due to the license holder being responsible for shipping and testing the samples, an approximate savings of \$600 annually.

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

Name: Pat Crouch, Field Operations Region 6 Field Supervisor

Address: Arizona Game and Fish Department
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B. The economic, small business and consumer impact statement:

1. Identification of the proposed rulemaking.

See paragraph (A)(1) above.

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

Overall, the Commission believes the amendments proposed in this rulemaking result in rules that are either less burdensome or have no significant impact on the regulated community. The Commission believes the general public and the Department benefit from the proposed rulemaking through clarification of rule language governing the lawful possession of live wildlife.

For R12-4-401 Live Wildlife Definitions, definitions alone have no impact on the Department or regulated community; enforcement of the rule manifests itself through proper administration. It is not the term that is cited, but the violation. Thus, the Commission anticipates the proposed amendments will have little or no impact on the Department or regulated community. In general, the amendments to R12-4-401 are intended to clarify or establish definitions for terms that are used in this Article. Definitions that are clearer will make the rules more understandable.

For R12-4-402 Live Wildlife; Unlawful Acts, the Commission anticipates the proposed amendments will impact persons who possess and hold wildlife in a manner that threatens public health, safety, or welfare, or wildlife populations. Based on recent history, the impact is expected to be negligible. By allowing the Department to take actions intended to alleviate threats to public health, safety, or welfare or wildlife populations, the Commission anticipates the proposed amendments will benefit members of the public who may otherwise be exposed to these threats. The Commission anticipates the proposed amendments will benefit the Department and licensed wildlife sanctuaries, which currently bear the costs associated with seizure operations. This amendment will allow the Department to recoup costs from the

individual or businesses that hold the wildlife in a manner that threatens public health, safety, or welfare, or wildlife populations.

For R12-4-403 Escaped or Released Wildlife, the Commission anticipates the proposed amendments will impact special license holders and owners by requiring the license holder or owner to bear the expense for the animal's care; however, the Commission believes it is a reasonable economic burden. The cost of maintaining an exotic pheasant for a week (~\$5) is much less than the expense of maintaining an African lion for a week (~\$150). However, both are costs the license holder or owner would have had to expend regardless of whether it was in their possession, the Department's, or a wildlife sanctuary.

For R12-4-404 Possession of Live Wildlife Taken Under an Arizona Hunting or Fishing License, the Commission anticipates the proposed amendments will impact persons who possess wildlife taken under an Arizona hunting or fishing license by prohibiting propagation of restricted wildlife. In addition to the cost of a veterinary office visit, which may be anywhere from \$42 to \$100, costs to spay or neuter an animal may be incurred. They are difficult to quantify as the cost varies greatly depending on the species and required after-care. However, compliance may also be achieved at no cost by keeping males and females separated or by possessing only male or female animals. Veterinarians who provide spay and neuter services will benefit from the prohibition on propagation. Persons who use reptiles or amphibians to provide aversion training may benefit from the rulemaking. Typically, a business may charge anywhere from \$60 to \$125 for the initial aversion training sessions and \$30 to \$50 for a 'recheck.' While the use of legally acquired reptiles and amphibians for aversion training is already legal, clarifying this in rule may result in additional customers for businesses that offer aversion training for dogs.

For R12-4-405 Importing, Purchasing, and Transporting Live Wildlife Without an Arizona License or Permit, the Commission anticipates the proposed amendments will impact persons who import wildlife into Arizona by requiring a valid health certificate for the animal being imported. Based on recent history, costs are expected to be insignificant as a health certificate may be obtained from a licensed veterinarian for \$42 to \$100. The amendment is intended to assist in alleviating potential threats to public health, safety, or welfare, and to promote the health and welfare of Arizona's wildlife populations. The Commission anticipates the proposed amendment will benefit members of the public, who may otherwise be exposed to these threats, from the requirement that a person obtain a health certificate for an animal before importing animals into Arizona.

For R12-4-406 Restricted Live Wildlife, the Commission anticipates the proposed amendments will impact persons and businesses that sell the live wildlife that the Commission proposes to add to the list of restricted live wildlife as they will no longer be able to sell Red Shiner, five tilapia species (*Oreochromis aureus*, *O. mossambica*; *O. niloticus*, *O. urolepis hornoru*, and *T. zilli*), sturgeon, paddlefish, Chinese mystery snail, apple snail, false dark mussels, non-human primates to persons in Arizona without a lawful exemption or a special license. When adding or removing a species from the restricted wildlife list, the Department bases its decision on the following factors: protection of human health and safety; biological

impact on species and ecosystems; consistency with federal, state, and county regulatory agencies; and potential economic impact.

For R12-4-407 Exemptions from Special License Requirements for Restricted Wildlife, the Commission anticipates the proposed amendments will impact persons and businesses that provide veterinary care or facilities certified for waste disposal. Based on recent history, costs are expected to be insignificant as a health certificate may be obtained from a licensed veterinarian for \$42 to \$100. This requirement already exists through the Arizona Department of Agriculture and has been added to this rule because it addresses the exemptions related specifically to the importation of wildlife. While the need to dispose of wildlife that dies while in transport through the state is not a common occurrence, the potential for the spread of disease to wild populations exist when a deceased animal is illegally dumped in wildlife interface locations. The Department wishes to direct these individuals to certified waste disposal facilities. Since this requirement is isolated to certain situations the costs associated with it are minimal. The changes related to the propagation of desert tortoises may increase costs to the Department due to law enforcement and administration. However, these same costs already exist and will be offset by the reduction in costs associated with caring for the surplus of tortoises in the tortoise adoption program.

For R12-4-408 Holding Wildlife for the Department, the Commission anticipates the proposed amendments will impact persons who hold wildlife for the Department as they will bear the expense for the animal's care until it is placed in a permanent home. However, the Commission believes it is a reasonable economic burden. Costs vary greatly depending on the species, its physical condition, and housing requirements. The cost of maintaining an exotic pheasant for a week (~\$5) is much less than the expense of maintaining an African lion for a week (~\$150).

For R12-4-409 General Provisions and Penalties for Special Licenses, the Commission anticipates the proposed amendments will impact special license holders and the Department. In general, the Commission believes the benefits of the amendments, specifically ensuring special license procedures include revocation guidelines, outweighs any costs. The Commission anticipates a person possessing wildlife under special license may incur costs associated with the housing and veterinary requirements. However, the licensee will be advised of these responsibilities during the application process. In general, the amendments to the rule will require additional communication, verbal or electronic, between the licensee and the Department and some may incur minor costs associated with this requirement. The public benefits from a rule that provides the general provisions relating to administrative compliance, licensing requirements, and penalties applicable to all special licenses issued by the Department. The Commission believes that providing general provisions in one overarching rule ensures consistency between special license rules. Furthermore, the Commission anticipates the administrative changes will result in a more efficient process that benefits both the Department and the regulated community.

For R12-4-410 Aquatic Wildlife Stocking Permit, the Commission anticipates the proposed amendments will impact aquatic wildlife stocking license holders and the Department. Amendments to the rule requires applicants to further examine the potential for adverse impacts of stocking on existing wildlife

species in the proposed area, provide additional information about the proposed stocking location, and possess the license when conducting stocking activities and present it to a Department employee or agent upon request to ensure compliance with requirements prescribed under A.R.S. § 17-331. There is no fee for this license and the Department issues approximately 161 Aquatic Wildlife Stocking permits on an annual basis. The Commission does not anticipate a person possessing wildlife under this rule will incur additional costs as a result of the rulemaking.

For R12-4-411, the Commission anticipates the proposed amendments will have no impact on consumers because there are no registered live bait dealers that offer Red Shiners for sale as a baitfish. The Department issues approximately 28 Live Bait Dealer's licenses on an annual basis. The Commission does not anticipate a person possessing wildlife under this rule will incur additional costs as a result of the rulemaking.

For R12-4-412 Special License Fees, the Commission anticipates the proposed amendments will impact all special license holders and applicants. The Commission does not anticipate a person who possesses a special license or an applicant for a special license will incur any additional costs as a result of the rulemaking.

For R12-4-413 Private Game Farm License, the Commission anticipates the proposed amendments will impact private game farm license holders and the Department. In general, the Commission believes the benefits of the amendments, specifically taking a stronger stance in the regulation of live wildlife for the principal purpose of protecting native wildlife species, outweighs any costs. The Department issues approximately 13 Private Game Farm licenses on an annual basis. The Commission anticipates a person possessing wildlife under this rule may incur minor costs associated with the requirement for submitting an annual report even when allowed activities have not occurred under the license.

For R12-4-414 Game Bird Shooting Preserve License, the Commission anticipates the proposed amendments will impact game farm shooting preserve, game bird field trial, game bird field trial training, and game bird hobby license holders and the Department. In general, the Commission believes the benefits of the amendments, specifically consolidation of licenses into one rule and enhanced reporting procedures outweighs any costs. The Department issues approximately 7 Game Bird Shooting Preserve licenses, 42 Game Bird Field Trial licenses, 128 Game Bird Field Trial Training licenses, and 65 Game Bird Hobby licenses on an annual basis. The Commission does not anticipate a person possessing wildlife under this rule will incur additional costs as a result of the rulemaking.

For R12-4-417 Wildlife Holding License, the Commission anticipates the proposed amendments will impact wildlife holding license holders and the Department. In general, the Commission believes the benefits of the amendments, specifically allowing the license holder to use an agent, allowing an applicant to submit photographs and/or a certification issued by an institutional animal care and use committee or similar committee, result in a reduction of the burden and costs placed on the regulated community. There is no fee for this license and the Department issues approximately 151 Wildlife Service licenses on an annual

basis. The Commission does not anticipate a person possessing wildlife under this rule will incur additional costs as a result of the rulemaking.

For R12-4-418 Scientific Collecting Permit, the Commission anticipates the proposed amendments will impact scientific collecting license holders and the Department. In general, the Commission believes the benefits of the amendments, specifically improving the administrative aspects of the license, providing a mechanism to restrict location of activities, and requiring proper disposal in the regulation of live wildlife and their parts for the principal purpose of protecting native wildlife species, outweighs any costs. There is no fee for this license and the Department issues approximately 312 Scientific Collecting permits on an annual basis. The Commission does not anticipate a person possessing wildlife under this rule will incur any additional costs as a result of the rulemaking.

For R12-4-420 Zoo License, the Commission anticipates the proposed amendments will impact zoo license holders and the Department. Commission believes the benefits of the amendments outweigh these minor costs and is not an undue burden. Requiring a new zoo license applicant to submit photographs with their application if they are not affiliated with a national accreditation association, could result in minor costs. If an applicant does not possess a camera to take the photographs, they would either need to borrow, purchase, or pay an individual to take the required photos. Costs range from less than \$15 for a disposable camera to \$60 for a low end digital camera. Alternatively, a photographer could be hired to shoot the photos for \$150 to \$200. If an applicant does not submit their license application electronically they would have to provide paper photographs at a cost of approximately .20¢ per photo. The number of paper photos needed would depend on the size of zoo and could range from 10 (\$2.00) to 100 (\$20.00). The Department issues approximately 19 Zoo licenses on an annual basis.

For R12-4-421 Wildlife Service License, the Commission anticipates the proposed amendments will impact wildlife service license holders and the Department. In general, the Commission believes the benefits of the amendments, specifically taking a stronger stance in the regulation of live wildlife and their parts for the principal purpose of protecting native wildlife species, outweighs any costs. There is no fee for this license and the Department issues approximately 118 Wildlife Service licenses on an annual basis. The Commission does not anticipate a person possessing wildlife under this rule will incur any additional costs as a result of the rulemaking.

For R12-4-422 Sport Falconry License, the Commission anticipates the proposed amendments will impact sport falconry license holders and the Department. In general, the Commission believes the benefits from the proposed amendments, specifically improving the administrative aspects of the license and restricting Arizona license holders from transferring species managed through Commission Order or annual harvest quota system to a falconer in another state for at least one year from the date of capture, outweighs any costs. Furthermore, the Commission anticipates the administrative changes will result in a more efficient process that benefits both the regulated community and the Department. The Commission does not anticipate a person possessing a falconry license under this rule will incur any additional costs or undue

regulation as a result of the rulemaking. The Department issues approximately 31 Sport Falconry licenses on an annual basis.

For R12-4-423 Wildlife Rehabilitation License, the Commission anticipates the proposed amendments will impact wildlife rehabilitation license holders and the Department. The Commission believes there are no anticipated costs to license holders in regards to shortening the expiration date of the license examination results and cessation of providing medical care at the Department's facility. License holders who are not practicing acceptable euthanasia techniques will be required to comply. The most acceptable, quick, and humane method is the use of carbon monoxide in a suitable chamber, costing approximately \$150. The few license holders who participate in the continuing education courses offered by the Department would be required to find alternative sources. In some cases there may be no cost for hands-on learning, costs for local or online seminars may range from approximately \$50-\$100, and costs for an out-of-state conference may cost \$1,000 or more to attend. There is no fee for this license and the Department issues approximately 11 Wildlife Rehabilitation licenses on an annual basis.

For R12-4-424 White Amur Stocking and Holding License, the Commission anticipates the proposed amendments will impact white amur stocking and holding license holders and the Department. Because no substantive amendments are proposed, the Commission anticipates the impacts on the regulated community will be insignificant. There is no fee for this license and the Department issues approximately 413 White Amur Stocking and Holding licenses on an annual basis.

For R12-4-425 Restricted Live Wildlife Lawfully Possessed without License or Permit Before the Effective Date of Article 4 or Any Subsequent Amendments, the Commission anticipates the proposed amendments will impact persons who lawfully possess wildlife that subsequently became restricted and the Department. In general, the Commission believes the benefits of the proposed amendments, specifically taking a stronger stance in the regulation of live wildlife for the principal purpose of protecting native wildlife species, outweighs any costs. The Commission anticipates a person possessing wildlife under this rule may incur minor costs associated with the requirement that a person permanently mark the animal with a tattoo, microchip, or other means. Costs are expected to be insignificant and may be obtained from a licensed veterinarian. In addition to the office visit, which may cost anywhere from \$42 to \$100, costs to mark the animal with a tattoo or microchip range anywhere from \$30 to \$50. In addition, the Commission anticipates a person may incur minor costs to spay or neuter the animal due to the prohibition on propagation. Costs to spay or neuter an animal are difficult to quantify as the cost varies greatly depending on the species and required after-care. However, compliance may also be achieved at no cost by keeping males and females separated or by possessing only male or female animals. Veterinarians who provide spay and neuter, microchip or tattooing services will benefit from the requirements that a person permanently mark the animal and the prohibition on propagation.

For R12-4-426 Possession of Primates, the Commission anticipates the proposed amendments will impact persons who lawfully possess primates. In general, the Commission believes the benefits of the amendments, specifically taking a stronger stance in the regulation of live wildlife for the principal purpose

of ensuring the public's health and safety and protecting native wildlife species, outweighs any costs. The Commission anticipates a person possessing wildlife under this rule may incur minor costs associated with the requirement that a person permanently mark the animal with a tattoo, microchip, or other means as a result of restricted status. Costs are expected to be insignificant and may be obtained from a licensed veterinarian. In addition to the office visit, which may cost anywhere from \$42 to \$100, costs to mark the animal with a tattoo or microchip range anywhere from \$30 to \$50. Veterinarians who provide spay and neuter, microchip or tattooing services will benefit from the requirements that a person permanently mark the animal and the prohibition on propagation.

For R12-4-427 Exemptions from Requirements to Possess a Wildlife Rehabilitation License, the Commission anticipates the proposed amendments will impact persons who temporarily hold orphaned or injured wildlife and the Department. The Commission believes the proposed amendments are nonsubstantive and will not have a significant impact on the regulated community.

For R12-4-428 Captivity Standards, the Commission anticipates the proposed amendments will impact persons who hold wildlife under a special license and the Department. The cost of ensuring the captive environment is minimally enriching are difficult to quantify as the cost varies greatly depending on the species and existing conditions. Modifications could range from simple changes in daily procedures, to changes in the enclosures costing hundreds to thousands of dollars. The Commission believes the benefits of the amendments, specifically ensuring license holders consider the psychological well-being of their animals, outweighs any costs.

For R12-4-430 Importation, Handling, and Possession of Cervids, the Commission proposes to amend the rule to require special license holders lawfully possessing cervids to submit tissues from any cervid over one-year of age that die or are killed or slaughtered for testing for CWD. This requirement is comparable to the requirements for herd certification programs for farmed cervids in other states. The Department pays the costs of collecting the sample and testing it for the presence of CWD by a laboratory certified by the National Veterinary Services Laboratory and United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS). If the proposed amendment is approved, the sample must be collected by a licensed veterinarian or the Department and then submitted to a USDA APHIS certified laboratory; there are 28 approved diagnostic laboratories nationwide. The license holder may pay the cost of sample collection, shipping, and testing. The Department does not charge a fee to remove a sample. The Commission anticipates the proposed rule will not have a significant impact on the regulated community because they are already required to test all cervids that die while in their possession. In addition to the cost for testing, a laboratory may charge a submission fee of \$7 to \$10. The average fee for an immunohistochemistry is \$35 and for enzyme linked immunosorbent assay is \$25; typically only one test is required. Currently, the Department licenses one private game farm to possess cervids. Reports submitted by the private game farm indicate approximately 22 animals die or are killed or slaughtered on an annual basis. If all of these animals were over one-year of age, the Commission estimates costs for testing would range from \$550 to \$770. Shipping costs vary greatly depending on the shipping company and delivery

date. The closest APHIS approved diagnostic laboratory is located in Colorado; typical shipping costs are under \$20. The Department would realize a reduction in costs due to the license holder being responsible for shipping and testing the samples, an approximate savings of \$600 annually.

The Commission's intent in proposing these amendments is to protect native wildlife and their habitats in many ways, including preventing the spread of disease, reducing the risk of released animals competing with native wildlife, discouraging illegal trade of native wildlife, and preventing interactions between humans and wildlife that may threaten public health or safety. The Commission anticipates the majority of the rulemaking is intended to benefit the regulated community, members of the public, and the Department by clarifying rule language to ease enforcement, creating consistency among existing Commission rules, reducing the burden on the regulated community where practical, and allowing the Department additional oversight where necessary. The Commission anticipates the rulemaking will result in an overall benefit to the regulated community, members of the public, and the Department. The Commission anticipates the rulemaking will result in little or no impact to political subdivisions of this state; private and public employment in businesses, agencies or political subdivisions; or state revenues. The Commission has determined that there are no less intrusive or costly alternative methods of achieving the purpose of the rulemaking. Other than the regular cost of rulemaking, there are no costs associated with the rulemaking. Therefore, the Commission has determined that the benefits of the rulemaking outweigh any costs.

3. Cost benefit analysis:

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

- (a) Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking. The probable costs to the implementing agency shall include the number of new full-time employees necessary to implement and enforce the proposed rule. The preparer of the Economic, Small Business, and Consumer Impact Statement shall notify the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by council.**

Overall, the Commission anticipates the proposed amendments will have little or no impact on the Department or other agencies directly affected by the implementation and enforcement of the proposed rulemaking. The Commission anticipates the implementation of the rulemaking will have no measurable impact on Department operations, as the Department has been fully engaged in addressing live wildlife concerns. The Commission believes the proposed rulemaking will enhance the Department's ability to protect the public health, safety, and welfare and native wildlife and wildlife habitat. The Commission anticipates the Department will benefit from the requirement that allows the Department to recover costs associated with the care and handling of unlawfully released or seized wildlife. The Commission anticipates the Department and the public will benefit from the requirement that a person obtain a health certificate for an animal before importing that animal into Arizona. Although additional opportunities are created, the Commission does not anticipate the Department will

incur additional costs associated with regulating these changes. The Commission has determined the rulemaking will not require any new full-time employees.

The Commission believes the benefits of the rulemaking outweigh any costs.

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

The Commission anticipates the proposed amendments will have little or no impact on political subdivisions of this state directly affected by the implementation and enforcement of the proposed rulemaking.

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

The Commission's intent in the proposed rulemaking is to promote public health, safety, and welfare, and allow the Department the management authority necessary to protect and manage wildlife and wildlife habitat. Many of the amendments will not affect businesses, their revenues, or their payroll expenditures. Of those that do or may have an impact, the Commission does not anticipate the impact will be significant. The Commission believes the benefits of the rulemaking outweigh any costs.

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

The Commission anticipates the proposed amendments will have minimal or no substantive impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the proposed rulemaking.

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

(a) Identification of the small businesses subject to the proposed rulemaking.

The Commission's intent in proposing these amendments is to protect native wildlife and their habitats in many ways, including preventing the spread of disease, reducing the risk of released animals competing with native wildlife, discouraging illegal trade of native wildlife, and preventing interactions between humans and wildlife that may threaten public health or safety. The Commission anticipates the majority of the rulemaking is intended to benefit the regulated community, members of the public, and the Department by clarifying rule language to ease enforcement, creating consistency among existing Commission rules, reducing the burden on the regulated community where practical, and allowing the Department additional oversight where necessary. The Commission anticipates the rulemaking will result in an overall benefit to the regulated community, members of the public, and the Department. The Commission anticipates the rulemaking will result in little or no impact to political subdivisions of this state; private and public employment in businesses, agencies or political subdivisions; or state revenues. The Commission has determined that there are no less intrusive or costly alternative methods of achieving the purpose of the rulemaking. Other than the regular cost of rulemaking, there are no

costs associated with the rulemaking. Therefore, the Commission has determined that the benefits of the rulemaking outweigh any costs.

The Commission anticipates a variety of small business may be impacted by the proposed rulemaking; these may include APHIS approved laboratories, businesses that provide animal care and housing supplies, businesses that provide general home repair, small construction contractors that build/repair animal enclosures, businesses that supply food, gas, or lodging for persons who are traveling, businesses that provide wildlife removal services under special license issued by the Department, commercial aquarium trade, commercial wildlife advertising, game farms, museums, pet stores, restaurant and market trade that serves fish and wildlife species as food, veterinarians, zoos, and similar possessors of live wildlife.

Because, in most instances, the rulemaking either reduces or makes no change to the current regulatory burden, the Commission anticipates the regulated community will not incur any additional costs as a result of the rulemaking. For most special license holders, any anticipated costs incurred are strictly administrative in nature and are believed to be insignificant. The following information addresses only those rules the Commission believes may result in additional costs and burdens.

For R12-4-402 Live Wildlife; Unlawful Acts, R12-4-403 Escaped or Released Wildlife, R12-4-408 Holding Wildlife for the Department, and R12-4-422 Sport Falconry License, the Commission anticipates businesses that provide animal care and housing supplies, small construction contractors that build/repair animal enclosures, veterinarians, and wildlife sanctuaries will benefit as a result of the rulemaking. Based on recent history and the fact that a person possessing wildlife illegally has already been providing care for such wildlife, the impact to these businesses is anticipated to be insignificant. The Commission anticipates wildlife sanctuaries will no longer bear the burden of costs associated with the care and keeping of the wildlife obtained through seizure operations. Costs savings will vary greatly depending on the species, its physical condition, and housing requirements. The cost of maintaining an exotic pheasant for a week (~\$5) is much less than the expense of maintaining an African lion for a week (~\$150).

For R12-4-404 Possession of Live Wildlife Taken Under an Arizona Hunting or Fishing License, the Commission anticipates businesses that use reptiles or amphibians to provide aversion training will benefit as a result of. While the use of legally acquired reptiles and amphibians for aversion training is already legal, clarifying this in rule may result in additional customers for businesses that offer aversion training for dogs. Typically, a business may charge anywhere from \$60 to \$125 for the initial aversion training sessions and \$30 to \$50 for a 'recheck." The Commission anticipates businesses that sell photographs of wildlife will benefit as a result of. Because the value of a photograph varies greatly depending on the quality of the photograph, species captured, public opinion, and recent events, it is difficult to quantify the value of a photograph.

For R12-4-405 Importing, Purchasing, and Transporting Live Wildlife Without an Arizona License or Permit, the Commission anticipates businesses importing live wildlife will incur costs

associated with the health certificate requirement. The Commission anticipates businesses that provide veterinary care will benefit from the proposed rulemaking. Based on recent history, costs are expected to be insignificant as a health certificate may be obtained from a licensed veterinarian for \$42 to \$100.

For R12-4-406 Restricted Live Wildlife, the Commission anticipates the proposed amendments will impact persons and businesses that sell the live wildlife that the Commission proposes to add to the list of restricted live wildlife as they will no longer be able to sell Red Shiner, five tilapia species (*Oreochromis aureus*, *O. mossambica*; *O. niloticus*, *O. urolepis hornoru*, and *T. zilli*), sturgeon, paddlefish, Chinese mystery snail, apple snail, false dark mussels, non-human primates to persons in Arizona without a lawful exemption or a special license. When adding or removing a species from the restricted wildlife list, the Department bases its decision on the following factors: protection of human health and safety; biological impact on species and ecosystems; consistency with federal, state, and county regulatory agencies; and potential economic impact. However, the proposed amendment that removed hedgehogs from the list of restricted live wildlife will benefit businesses that sell the live wildlife. These businesses may sell hedgehogs for \$70 to \$250, starter kits (cage, dishes, toys, litter, etc.) for approximately \$75, and food and litter for approximately \$20 a month.

For R12-4-407 Exemptions from Special License Requirements for Restricted Wildlife, the Commission anticipates businesses that provide veterinary care or facilities certified for waste disposal will benefit from the proposed rulemaking. Based on recent history, costs are expected to be insignificant as a health certificate may be obtained from a licensed veterinarian for \$42 to \$100. The fees for certified waste disposal will vary based on the size of the animal, costs are expected to be insignificant as the disposal of a carcass can be anywhere from \$60 to \$500.

For R12-4-409, the Commission anticipates wildlife sanctuaries will no longer bear the burden of costs associated with the care and keeping of the wildlife obtained through seizure operations. Costs savings will vary greatly depending on the species, its physical condition, and housing requirements. The cost of maintaining an exotic pheasant for a week (~\$5) is much less than the expense of maintaining an African lion for a week (~\$150).

For R12-4-421 Wildlife Service License, the Commission anticipates businesses that provide wildlife removal services will benefit from the amendment that clarifies which species may be removed without having to possess a Wildlife Service License. The Commission does not anticipate a business possessing wildlife under this rule will incur any additional costs as a result of the rulemaking.

For R12-4-423 Wildlife Rehabilitation License, the Commission anticipates the proposed amendments will impact wildlife rehabilitation license holders that operate as a nonprofit organization. The Commission believes there are no anticipated costs to license holders in regards to shortening the expiration date of the license examination results and cessation of providing medical care at the Department's facility. License holders who are not practicing acceptable euthanasia techniques will be required to comply. The most acceptable, quick, and humane method is the use of carbon monoxide in a suitable chamber, costing approximately \$150. The few license holders who participate in the

continuing education courses offered by the Department would be required to find alternative sources. In some cases there may be no cost for hands-on learning, costs for local or online seminars may range from approximately \$50-\$100, and costs for an out-of-state conference may cost \$1,000 or more to attend.

For R12-4-425 Restricted Live Wildlife Lawfully Possessed without License or Permit Before the Effective Date of Article 4 or Any Subsequent Amendments and R12-4-426 Possession of Primates, the Commission anticipates veterinarians who provide spay and neuter, microchip or tattooing services will benefit as a result of the rulemaking. These businesses charge anywhere from \$30 to \$50 to permanently mark an animal and the office visit can cost anywhere from \$42 to \$100. Costs to spay or neuter an animal are difficult to quantify as the cost varies greatly depending on the species and required after-care.

For R12-4-430 Importation, Handling, and Possession of Cervids, the Commission anticipates businesses that possess cervids, such as game farms, may incur costs as a result of the rulemaking due to the requirement to submit tissues from any cervid over one-year of age that die or are killed or slaughtered for testing for CWD. However, being able to obtain tissue collection services any licensed veterinarian will reduce the costs and burden currently in place. The Commission anticipates any costs incurred will be insignificant. Veterinarians who provide collection services will benefit as a result of the rulemaking.

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

Overall, the Commission believes the amendments proposed in this rulemaking result in rules that are either less burdensome or have no significant impact on the regulated community.

(c) Description of the methods that the agency may use to reduce the impact on small businesses.

The Commission believes establishing less stringent compliance requirements for small businesses is not necessary as the proposed rules do not place any compliance or reporting requirements on businesses.

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

The Commission anticipates the proposed rulemaking will benefit private persons and consumers by clarifying live wildlife and special license rules and establishing additional provisions for the protection of public welfare, and in doing so ensuring the continued integrity of and compliance with its rules. Overall, the Commission believes the amendments proposed in this rulemaking result in rules that are either less burdensome or have no significant impact on the regulated community. The Commission believes the general public and the Department benefit from the proposed rulemaking through clarification of rule language governing the lawful possession of live wildlife.

Because, in most instances, the rulemaking either reduces or makes no change to the current regulatory burden, the Commission anticipates the regulated community will not incur any additional

costs as a result of the rulemaking. The following information addresses only those rules the Commission believes may result in additional costs and burdens.

For R12-4-402 Live Wildlife; Unlawful Acts, R12-4-403 Escaped or Released Wildlife, R12-4-408 Holding Wildlife for the Department, and R12-4-422 Sport Falconry License, the Commission anticipates persons who possess and hold wildlife in a manner that threatens public health, safety, or welfare, or wildlife populations may incur costs associated with the temporary care of such wildlife. Based on recent history and because these persons are already incurring these costs, the Commission anticipates the impact is negligible.

For R12-4-404 Possession of Live Wildlife Taken Under an Arizona Hunting or Fishing License, the Commission anticipates persons may incur costs associated with the prohibition on propagation of restricted wildlife. In addition to the cost of a veterinary office visit, which may be anywhere from \$42 to \$100, costs to spay or neuter an animal may be incurred. They are difficult to quantify as the cost varies greatly depending on the species and required after-care. However, compliance may also be achieved at no cost by keeping males and females separated or by possessing only male or female animals.

For R12-4-405 Importing, Purchasing, and Transporting Live Wildlife Without an Arizona License or Permit, the Commission anticipates persons who import wildlife into Arizona will incur costs associated with the health certificate requirement. Costs are expected to be insignificant as a health certificate may be obtained from a licensed veterinarian for \$42 to \$100.

For R12-4-406 Restricted Live Wildlife, R12-4-425 Restricted Live Wildlife Lawfully Possessed without License or Permit Before the Effective Date of Article 4 or Any Subsequent Amendments, and R12-4-426 Possession of Primates, the Commission anticipates the proposed amendments will impact persons who possess restricted live wildlife will need to adhere to the requirements of R12-4-425. Persons possessing wildlife under this rule may incur minor costs associated with the requirement that a person permanently mark the animal with a tattoo, microchip, or other means. Costs are expected to be insignificant and may be obtained from a licensed veterinarian. In addition to the office visit, which may cost anywhere from \$42 to \$100, costs to mark the animal with a tattoo or microchip range anywhere from \$30 to \$50. In addition, the Commission anticipates a person may incur minor costs to spay or neuter the animal due to the prohibition on propagation. Costs to spay or neuter an animal are difficult to quantify as the cost varies greatly depending on the species and required after-care. However, compliance may also be achieved at no cost by keeping males and females separated or by possessing only male or female animals. Veterinarians who provide spay and neuter, microchip or tattooing services will benefit from the requirements that a person permanently mark the animal and the prohibition on propagation.

For R12-4-407 Exemptions from Special License Requirements for Restricted Wildlife, the Commission anticipates the proposed amendments will impact persons and businesses that provide veterinary care or facilities certified for waste disposal. Based on recent history, costs are expected to

be insignificant as a health certificate may be obtained from a licensed veterinarian for \$42 to \$100. Since the requirement to dispose of an animal that dies while being transported through Arizona is isolated to certain situations, the costs associated with it are minimal.

For R12-4-409 General Provisions and Penalties for Special Licenses and R12-4-410 Aquatic Wildlife Stocking Permit, the Commission anticipates any anticipated costs incurred will be strictly administrative in nature and are believed to be insignificant.

For R12-4-417 Wildlife Holding License, the Commission anticipates persons will benefit as the amendments result in a reduction of the burden and costs placed on the regulated community.

For R12-4-422 Sport Falconry License, the Commission does not anticipate a person possessing a falconry license will incur any additional costs or undue regulation as a result of the rulemaking.

For R12-4-423 Wildlife Rehabilitation License, the Commission anticipates the few license holders who participate in the continuing education courses offered by the Department will be impacted as a result of the rulemaking. Costs for local or online seminars may range from approximately \$50-\$100 and costs for an out-of-state conference may cost \$1,000 or more to attend. However, there may be no cost associated with hands-on learning.

6. Statement of the probable effect on state revenues.

The Commission anticipates the proposed amendments will have little or no impact on state revenues.

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

The Commission has determined that there are no alternative methods of achieving the objectives of the proposed rulemaking.

C. If for any reason adequate data are not reasonably available to comply with the requirements of subsection B of this section, the agency shall explain the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize the probable impacts in qualitative terms. The absence of adequate data, if explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic, small business and consumer impact statement.

The Department tasked a team of subject matter experts to review and make recommendations for rules contained within Article 4. In its review, the team considered all comments from agency staff that administer and enforce Article 4 rules, comments from the public, historical data, current processes and environment, and the Department's wildlife objectives. The team took a customer-focused approach, considering each recommendation from a resource perspective and determining whether the recommendation would cause undue harm to the state's wildlife or negatively affect the Department's wildlife objectives. The team then determined whether the request was consistent with the Department's overall mission, if it could be effectively implemented given agency resources, and if it was acceptable to the public. The Commission believes the data utilized in completing this economic, small business, and consumer statement is more than adequate.

Game and Fish Commission

- C. Except in hunt units with Commission-ordered special seasons under R12-4-115 and R12-4-120 and hunt units with seasons only for mountain lion and no other concurrent big game season, an individual shall not locate or assist in locating wildlife from or with the aid of an aircraft in a hunt unit with an open big game season. This restriction begins 48 hours before the opening of a big game season in a hunt unit and extends until the close of the big game season for that hunt unit.
- D. An individual who possesses a special big game license tag for a special season under R12-4-115 or R12-4-120 or an individual who assists or will assist such a licensee shall not use an aircraft to locate wildlife beginning 48 hours before and during a Commission-ordered special season.
- E. This Section does not apply to any individual acting within the scope of official duties as an employee or authorized agent of the state or the United States to manage or protect or aid in the management or protection of land, water, wildlife, livestock, domesticated animals, human life, or crops.
- c. Boat ramp,
 - d. Shooting range,
 - e. Occupied structure, or
 - f. Golf course.
2. Require an individual entering a city, county, or town park or preserve, for the purpose of hunting, to declare the individual's intent to hunt when entering the park or preserve, if the park or preserve has an entry station in operation.
 3. Allow an individual to take wildlife in a city, county, or town park or preserve only during the posted park or preserve hours.

Historical Note

New Section R12-4-321 renumbered from R12-4-301 and amended by final rulemaking at 18 A.A.R. 1458, effective January 1, 2013 (Supp. 12-2).

R12-4-322. Pickup and Possession of Wildlife Carcasses or Parts

- A. For the purposes of this Section, the following definitions apply:
1. "Fresh" means the majority of the wildlife carcass or part is not exposed dry bone and is comprised mainly of hair, hide, or flesh.
 2. "Not fresh" means the majority of the wildlife carcass or part is exposed dry bone due to natural processes such as scavenging, decomposition, or weathering.
- B. If not contrary to federal law or regulation, an individual may pick up and possess naturally shed antlers or horns or other wildlife parts that are not fresh without a permit or inspection by a Department officer.
- C. If not contrary to federal law or regulation, an individual may only pick up and possess a fresh wildlife carcass or its parts under this Section if the individual notifies the Department prior to pick up and possession and:
1. The Department's first report or knowledge of the carcass or its parts is voluntarily provided by the individual wanting to possess the carcass or its parts;
 2. A Department law enforcement officer is able to observe the carcass or its parts at the site where the animal was found in the same condition and location as when the animal was originally found by the individual wanting to possess the carcass or its parts; and
 3. A Department law enforcement officer, using the officer's education, training, and experience, determines the animal died from natural causes. The Department may require the individual to take the officer to the site where the animal carcass or parts were found when an adequate description or location cannot be provided to the officer.
- D. If a Department law enforcement officer determines that the individual wanting to possess the carcass or its parts is authorized to do so under subsection (C), the officer may authorize possession of the carcass or its parts.
- E. Wildlife parts picked up and possessed from areas under control of jurisdictions that prohibit such activity, such as other states, reservations, or national parks, are illegal to possess in this state.
- F. This Section does not authorize the pickup and possession of a threatened or endangered species carcass or its parts.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 826, effective July 1, 2013 (Supp. 13-2).

ARTICLE 4. LIVE WILDLIFE**R12-4-401. Live Wildlife Definitions****Historical Note**

Amended effective May 21, 1975 (Supp. 75-1). Amended effective May 3, 1976 (Supp. 76-3). Amended effective June 12, 1979 (Supp. 79-3). Amended effective April 22, 1980 (Supp. 80-2). Former Section R12-4-68 renumbered as Section R12-4-319 without change effective August 13, 1981 (Supp. 81-4). Repealed effective April 28, 1989 (Supp. 89-2). New Section R12-4-319 adopted as an emergency effective October 18, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-4). Emergency expired. New Section adopted by final rulemaking at 6 A.A.R. 211, effective December 14, 1999 (Supp. 99-4). Amended by final rulemaking at 10 A.A.R. 850, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 826, effective July 1, 2013 (Supp. 13-2). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

R12-4-320. Harassment of Wildlife

- A. In addition to the provisions established under A.R.S. § 17-301, it is unlawful to harass, molest, chase, rally, concentrate, herd, intercept, torment, or drive wildlife with or from any aircraft as defined under R12-4-301, or with or from any motorized terrestrial or aquatic vehicle.
- B. This Section does not apply to individuals acting:
1. In accordance with the provisions established under A.R.S. § 17-239; or
 2. Within the scope of official duties as an employee or authorized agent of the state or the United States to manage or protect or aid in the management or protection of land, water, wildlife, livestock, domesticated animals, human life, or crops.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 850, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 826, effective July 1, 2013 (Supp. 13-2).

R12-4-321. Restrictions for Taking Wildlife in City, County, or Town Parks and Preserves

- A. All city, county, and town parks and preserves are closed to hunting, unless open by Commission Order.
- B. Unless otherwise provided under Commission Order or rule, a city, county, or town may:
1. Limit or prohibit any individual from hunting or trapping within 1/4 mile of any:
 - a. Developed picnic area,
 - b. Developed campground,

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In addition to definitions provided under A.R.S. § 17-101, and for the purposes of this Article, the following definitions apply:

“Adoption” means the transfer of custody of live wildlife to a member of the public, initiated by either the Department or its authorized agent, when no special license is required.

“Agent” means the person identified on a special license and who assists a special license holder in performing activities authorized by the special license to achieve the objectives for which the license was issued. “Agent” has the same meaning as “sublicensee” and “subpermittee” as these terms are used for the purpose of federal permits.

“Aquarium trade” means the commercial industry and its customers who lawfully trade in aquatic live wildlife.

“Aversion training” means behavioral training in which an aversive stimulus is paired with an undesirable behavior in order to reduce or eliminate that behavior.

“Captive live wildlife” means live wildlife held in captivity, physically restrained, confined, impaired, or deterred to prevent it from escaping to the wild or moving freely in the wild.

“Captive-reared” means wildlife born, bred, raised, or held in captivity.

“Cervid” means a mammal classified as a Cervidae or member of the deer family found anywhere in the world, as defined in the taxonomic classification from the Integrated Taxonomic Information System, available online at www.itis.gov.

“Circus” means a scheduled event where a variety of entertainment is the principal business, primary purpose, and attraction. “Circus” does not include animal displays or exhibits held as an attraction for a secondary commercial endeavor.

“Commercial purpose” means the bartering, buying, leasing, loaning, offering to sell, selling, trading, exporting or importing of wildlife or their parts for monetary gain.

“Domestic” means an animal species that does not exist in the wild, and includes animal species that have only become feral after they were released by humans who held them in captivity or individuals or populations that escaped from human captivity.

“Educational display” means a display of captive live wildlife to increase public understanding of wildlife biology, conservation, and management without requiring or soliciting payment from an audience or an event sponsor. For the purposes of this Article, “to display for educational purposes” refers to display as part of an educational display.

“Educational institution” means any entity that provides instructional services or education-related services to persons.

“Endangered or threatened wildlife” means wildlife listed under 50 C.F.R. 17.11, revised October 1, 2013, which is incorporated by reference. A copy of the list is available at any Department office, online at www.gpoaccess.gov, or may be ordered from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000. This incorporation by reference does not include any later amendments or editions of the incorporated material.

“Evidence of lawful possession” means any license or permit authorizing possession of a specific live wildlife species or individual, or other documentation establishing lawful possession. Other forms of documentation may include, but are not limited to, a statement issued by the country or state of origin

verifying a license or permit for that specific live wildlife species or individual is not required.

“Exhibit” means to display captive live wildlife in public or to allow photography of captive live wildlife for any commercial purpose.

“Exotic” means wildlife or offspring of wildlife not native to North America.

“Fish farm” means a commercial operation designed and operated for propagating, rearing, or selling aquatic wildlife for any purpose.

“Game farm” means a commercial operation designed and operated for the purpose of propagating, rearing, or selling terrestrial wildlife or the parts of terrestrial wildlife for any purpose stated under R12-4-413.

“Health certificate” means a certificate of an inspection completed by a licensed veterinarian verifying the animal examined appears to be healthy and free of infectious, contagious, and communicable diseases.

“Hybrid wildlife” means an offspring from two different wildlife species or genera. Offspring from a wildlife species and a domestic animal species are not considered wildlife.

“Live baitfish” means any species of live freshwater fish designated by Commission Order as lawful for use in taking aquatic wildlife under R12-4-313 and R12-4-317.

“Live bait” means aquatic live wildlife used or intended for use in taking aquatic wildlife.

“Migratory birds” mean all species listed under 50 C.F.R. 10.13 revised October 1, 2014, and no later amendments or editions. The incorporated material is available from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000, and is on file with the Department.

“Noncommercial purpose” means the use of products or services developed using wildlife for which no compensation or monetary value is received.

“Nonhuman primate” means any nonhuman member of the order Primate of mammals including prosimians, monkeys, and apes.

“Nonnative” means wildlife or its offspring that did not occur naturally within the present boundaries of Arizona before European settlement.

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

“Photography” means any process that creates durable images of wildlife or parts of wildlife by recording light or other electromagnetic radiation, either chemically by means of a light-sensitive material or electronically by means of an image sensor.

“Rehabilitated wildlife” means live wildlife that is injured, orphaned, sick, or otherwise debilitated and is provided care to restore it to a healthy condition suitable for release to the wild or for lawful captive use.

“Research facility” means any association, institution, organization, school, except an elementary or secondary school, or society that uses or intends to use live animals in research.

“Restricted live wildlife” means wildlife that cannot be imported, exported, or possessed without a special license or

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lawful exemption. "Shooting preserve" means any operation where live wildlife is released for the purpose of hunting.

"Special license" means any license issued under this Article, including any additional stipulations placed on the license authorizing specific activities normally prohibited under A.R.S. § 17-306 and R12-4-402.

"Species of greatest conservation need" means any species listed in the Department's Arizona's State Wildlife Action Plan list Tier 1a and 1b published by the Arizona Game and Fish Department. The material is available for inspection at any Department office and online at www.azgfd.gov.

"Stock" and "stocking" means to release live aquatic wildlife into public or private waters other than the waters where taken.

"Taxa" means groups of animals within specific classes of wildlife occurring in the state with common characteristics that establish relatively similar requirements for habitat, food, and other ecological, genetic, or behavioral factors.

"Unique identifier" means a permanent marking made of alphanumeric characters that identifies an individual animal, which may include, but is not limited to, a tattoo or microchip.

"USFWS" means the United States Fish and Wildlife Service.

"Volunteer" means a person who:

Assists a special license holder in conducting activities authorized under the special license,

Is under the direct supervision of the license holder at the premises described on the license,

Is not designated as an agent, and

Receives no compensation.

"Wildlife disease" means any disease that poses a health risk to wildlife in Arizona.

"Zoo" means any facility licensed by the Arizona Game and Fish Department under R12-4-420 or, for facilities located outside of Arizona, licensed or recognized by the applicable governing agency.

"Zoonotic" means a disease that can be transmitted from animals to humans or, more specifically, a disease that normally exists in animals but that can infect humans.

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 9 A.A.R. 3186, effective August 30, 2003 (Supp. 03-3). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

R12-4-402. Live Wildlife: Unlawful Acts

- A. A person shall not perform any of the following activities with live wildlife unless authorized by a federal license or permit, this Chapter, or A.R.S. Title 3, Chapter 16:
1. Import any live wildlife into the state;
 2. Export any live wildlife from the state;
 3. Conduct any of the following activities with live wildlife within the state:
 - a. Display,
 - b. Exhibit,
 - c. Give away,
 - d. Lease,

- e. Offer for sale,
- f. Possess,
- g. Propagate,
- h. Purchase,
- i. Release,
- j. Rent,
- k. Sell,
- l. Sell as live bait,
- m. Stock,
- n. Trade,
- o. Transport; or

4. Kill any captive live wildlife.

- B. The Department may seize, quarantine, hold, or euthanize any lawfully possessed wildlife held in a manner that poses an actual or potential threat to the wildlife, other wildlife, or the safety, health, or welfare of the public. The Department shall make reasonable efforts to find suitable placement for any animal prior to euthanizing it.
- C. A person who does not lawfully possess wildlife in accordance with this Article shall be responsible for all costs associated with the care and keeping of the wildlife.

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended by final rulemaking at 7 A.A.R. 2732, effective July 1, 2001 (Supp. 01-2). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

R12-4-403. Escaped or Released Live Wildlife

- A. The Department may seize, quarantine, or euthanize any live wildlife that has been released, has escaped, or is likely to escape if the wildlife poses an actual or potential threat to:
1. Native wildlife;
 2. Wildlife habitat; or
 3. Public health, safety, or welfare; or
 4. Property.
- B. A person shall not release live wildlife, unless specifically directed to do so by the Department or authorized under this Article.
- C. The person possessing the wildlife shall be responsible for all costs incurred by the Department associated with seizing or quarantining the wildlife.
- D. All special license holders shall be subject to the requirements of this Section.

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

R12-4-404. Possession of Live Wildlife Taken Under an Arizona Hunting or Fishing License

- A. A person may take live wildlife from the wild under a valid Arizona hunting or fishing license provided the current Commission Order authorizes a live bag and possession limit for that wildlife and the individual possesses the appropriate hunting or fishing license and special license, when applicable.
- B. Except for live baitfish which may only be possessed and transported as established under R12-4-316, a person may conduct any of the following activities with wildlife taken under an Arizona hunting or fishing license provided the activity is for a noncommercial purpose:
1. Export,
 2. Kill,
 3. Place on educational display,

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4. Possess,
 5. Propagate, and
 6. Transport.
- C.** A person possessing wildlife or offspring of wildlife taken under this Section shall dispose of the wildlife or offspring of wildlife using any one or more of the following methods:
1. Giving the wildlife as a gift,
 2. Exporting the wildlife to another state or jurisdiction, or
 3. Disposing of the wildlife as directed by the Department.
- D.** A person shall not use wildlife or offspring of wildlife taken under this Section for commercial purposes.
- E.** A person exporting live wildlife for a noncommercial purpose shall verify exported live wildlife and offspring of wildlife shall not be:
1. Bartered,
 2. Leased,
 3. Offered for sale,
 4. Purchased,
 5. Rented,
 6. Sold, or
 7. Used for any commercial purpose.
- F.** A person may temporarily hold and release live wildlife possessed under this Section into the wild, provided the person did not remove the wildlife from the immediate area where it was taken.
- G.** A person shall not exceed the possession limit of live wildlife established by Commission Order for that species.
1. Offspring of wildlife possessed under this Section shall count towards the established possession limit.
 2. A person may possess offspring of amphibians or reptiles in excess of the possession limit for no more than 12 months from the date of birth or hatching.
 3. On or before the day the offspring reach 12 months of age, the person possessing them shall dispose of them as prescribed under subsection (C).
 4. A person is prohibited from releasing offspring of propagated wildlife into the wild.
- H.** A person may use reptiles and amphibians taken under a valid Arizona hunting license for the purpose of providing aversion or avoidance training when the current Commission Order authorizes a live bag and possession limit for that reptile or amphibian.
- I.** A person may sell photographs of wildlife taken under a valid hunting or fishing license.
- J.** A person who possesses live wildlife or offspring of wildlife taken under this Section shall comply with the requirements prescribed under R12-4-425 if the wildlife becomes listed as restricted wildlife under R12-4-406.

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

R12-4-405. Importing, Purchasing, and Transporting Live Wildlife Without an Arizona License or Permit

- A.** A person may import mammals, birds, amphibians, and reptiles not listed as restricted wildlife under R12-4-406 without a special license required under this Article, provided the animals are:
1. Lawfully possessed under a:
 - a. Lawful exemption; or
 - b. Valid license, permit, or other form of authorization from another state, the United States, or another country; and
 2. Accompanied by the health certificate required under 3 A.A.C. 2, Article 6, and this Article, when applicable.

- B.** A person may import live aquatic wildlife not listed as restricted wildlife under R12-4-406 without a special license under the following conditions:
1. The aquatic wildlife is lawfully possessed under a lawful exemption, valid license, permit, or other form of authorization from another state, the United States, or another country; and
 2. The aquatic wildlife is used only for restaurants or markets that are licensed to sell food to the public and the wildlife is killed before it is transported from the restaurant or market, or, if transported alive from the market, is conveyed directly to its final destination for preparation as food; or
 3. The aquatic wildlife is used only for the aquarium trade or a fish farm and is accompanied by a valid license or permit issued by another state or the United States that allows the wildlife to be transported into this state.
 - a. A person in the aquarium trade shall:
 - i. Only use aquatic wildlife used in the aquarium trade as a pet or in an educational display, and
 - ii. Keep aquatic wildlife used in the aquarium trade in an aquarium or enclosed pond that does not allow the wildlife to leave the aquarium or pond and does not allow other live aquatic wildlife to enter the aquarium or pond.
 - b. A person in the aquarium trade shall not use or possess aquatic wildlife listed as restricted live wildlife under R12-4-406.
- C.** A person shall obtain the appropriate special license listed under R12-4-409(A) before importing aquatic live wildlife for any purpose not stated under subsection (B), unless exempt under this Chapter.
- D.** A person may purchase, possess, exhibit, transport, propagate, trade, rent, lease, give away, sell, offer for sale, export, or kill wildlife or aquatic wildlife or its offspring without an Arizona license or permit if the wildlife is lawfully imported and possessed as prescribed under subsections (A) or (B).
- E.** An individual shall use and dispose of wildlife that is taken under an Arizona hunting or fishing license as prescribed by R12-4-404, or R12-4-417 and this Article, as applicable.

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

R12-4-406. Restricted Live Wildlife

- A.** In order to lawfully possess wildlife listed as restricted under this Section, for any activity prohibited under A.R.S. §§ 17-255.02, 17-306, R12-4-1102, or this Article, a person shall possess:
1. All applicable federal licenses and permits; and
 2. The appropriate special license listed under R12-4-409(A); or
 3. Act under a lawful exemption authorized under A.R.S. § 17-255.04, R12-4-316, R12-4-404, R12-4-405, R12-4-407, R12-4-425, R12-4-427, and R12-4-430.
- B.** The Commission recognizes the online taxonomic classification from the Integrated Taxonomic Information System as the

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authority in determining the designations of restricted live mammals, birds, reptiles, amphibians, fish, crustaceans, and mollusks referenced under this Article. The Integrated Taxonomic Information System is available at any Department office and at www.itis.gov.

- C. All of the following are considered restricted live wildlife and are subject to the requirements of this Article, unless otherwise specified:
1. Hybrid wildlife, as defined under R12-4-401, resulting from the interbreeding of at least one parent species of wildlife that is listed as restricted under this Section; and
 2. Transgenic species, unless otherwise specified under this Article. For the purposes of this Section, "transgenic species" means any organism that has had genes from another organism put into its genome through direct human manipulation of that genome. Transgenic species do not include natural hybrids or individuals that have had their chromosome number altered to induce sterility. A transgenic animal is considered wildlife if the animal is the offspring of at least one wildlife species.
- D. Domestic animals, as defined under R12-4-401, are not subject to restrictions under A.R.S. Title 17, 12 A.A.C. 4, or Commission Orders.
- E. Unless otherwise specified, all mammals listed below are considered restricted live wildlife:
1. All species of the order *Afrosoricida*. Common names include: tenrecs and golden moles.
 2. All species of the following families of the order *Artiodactyla*. Common name: even-toed ungulates:
 - a. The family *Antilocapridae*. Common name: pronghorns.
 - b. The family *Bovidae*. Common names include: cattle, buffalo, bison, oxen, duikers, antelopes, gazelles, goats, and sheep. Except the following genera which are not restricted:
 - i. The genus *Bubalus*. Common name: water buffalo.
 - ii. The genus *Bison*. Common name: bison, American bison or buffalo.
 - c. The family *Cervidae*. Common names include: cervid, deer, elk, moose, wapiti, and red deer.
 - d. The family *Tayassuidae*. Common name: peccaries.
 3. All species of the order *Carnivora*. Common names include: carnivores, skunks, raccoons, bears, foxes, and weasels.
 4. All species of the order *Chiroptera*. Common name: bats.
 5. All species of the genus *Didelphis*. Common name: American opossums.
 6. All species of the order *Erinaceomorpha*. Common names include: gymnures and moonrats. Except members of the family *Erinaceidae*, which are not restricted. Common name: hedgehogs.
 7. All species of the order *Lagomorpha*. Common names include: pikas, rabbits, and hares. Except for members of the genus *Oryctolagus* containing domestic rabbits, which are not wildlife and are not restricted.
 8. All nonhuman primates. Common names include: orangutans, chimpanzees, gorillas, macaques, and spider monkeys.
 9. All species of the following families of the order *Rodentia*. Common name: rodents:
 - a. The family *Capromyidae*. Common name: hutias.
 - b. The family *Castoridae*. Common name: beavers.
 - c. The family *Echimyidae*. Common names include: coypus and nutrias.
 - d. The family *Erethizontidae*. Common name: new world porcupines.
 - e. The family *Geomyidae*. Common name: pocket gophers.
 - f. The family *Sciuridae*. Common names include: squirrels, chipmunks, marmots, woodchucks, and prairie dogs.
10. All species of the order *Soricomorpha*. Common names include: shrews, desmans, moles, and shrew-moles.
11. All species of the order *Xenarthra*. Common names include: edentates; or sloths, anteaters, and armadillos.
- F. Birds listed below are considered restricted live wildlife:
1. The following species within the family *Phasianidae*. Common names: partridges, grouse, turkeys, quail, and pheasants:
 - a. *Callipepla gambelii*. Common name: Gambel's quail.
 - b. *Callipepla squamata*. Common name: scaled quail.
 - c. *Colinus virginianus*. Common name: northern bobwhite. Restricted only in game management units 34A, 36A, 36B, and 36C as prescribed under R12-4-108.
 - d. *Cyrtonyx montezumae*. Common name: Montezuma, harlequin, or Mearn's quail.
 - e. *Dendragapus obscurus*. Common name: dusky grouse.
 2. All species listed under the Migratory Bird Treaty Act listed under 50 C.F.R. 10.13 revised October 1, 2014, and no later amendments or editions. The incorporated material is available from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000, and is on file with the Department.
- G. Reptiles listed below are considered restricted live wildlife:
1. All species of the order *Crocodylia*. Common names include: gavials, caimans, crocodiles, and alligators.
 2. All species of the following families or genera of the order *Squamata*:
 - a. The family *Atractaspididae*. Common name: burrowing asps.
 - b. The following species and genera of the family *Colubridae*:
 - i. *Boiga irregularis*. Common name: brown tree snake.
 - ii. *Dispholidus typus*. Common name: boomslang.
 - iii. *Rhabdophis*. Common name: keelback.
 - iv. *Thelotornis kirtlandii*. Common names include: bird snake or twig snake.
 - c. The family *Elapidae*. Common names include: cobras, mambas, coral snakes, kraits, Australian elapids, and sea snakes.
 - d. The family *Helodermatidae*. Common names include: Gila monster and Mexican beaded lizard.
 - e. The family *Viperidae*. Common names include: true vipers and pit vipers, including rattlesnakes.
 3. The following species of the order *Testudines*:
 - a. All species of the family *Chelydridae*. Common name: snapping turtles.
 - b. All species of the genus *Gopherus*. Common names include: gopher tortoises, including the desert tortoise.
- H. Amphibians listed below are considered restricted live wildlife. The following species within the order *Anura*, common names frogs and toads:
1. The species *Bufo horribilis*, *Bufo marinus*, *Bufo schneideri*. Common names include: giant or marine toads.

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2. All species of the genus *Rana*. Common names include: leopard frogs and bullfrogs. Except bullfrogs possessed under A.R.S. § 17-102.
 3. All species of the genus *Xenopus*. Common name: clawed frogs.
- I.** Fish listed below are considered restricted live wildlife:
1. All species of the family *Acipenseridae*. Common name: sturgeon.
 2. The species *Amia calva*. Common name: bowfin.
 3. The species *Aplodinotus grunniens*. Common name: freshwater drum.
 4. The species *Arapaima gigas*. Common name: bony tongue.
 5. All species of the genus *Astyanax*. Common name: tetra.
 6. The species *Belonesox belizanus*. Common name: pike topminnow.
 7. All species, both marine and freshwater, of the orders *Carcharhiniformes*, *Heterodontiformes*, *Hexanchiformes*, *Lamniformes*, *Orectolobiformes*, *Pristiophoriformes*, *Squaliformes*, *Squatiniiformes*, and except for all species of the families *Brachaeluridae*, *Hemiscylliidae*, *Orectolobidae*, and *Triakidae*; genera of the family *Scyliorhinidae*, including *Aulohalaelurus*, *Halaalurus*, *Haploblepharus*, *Poroderma*, and *Scyliorhinus*; and genera of the family *Parascylliidae*, including *Cirrhoscyllium* and *Parascyllium*. Common name: sharks.
 8. All species of the family *Centrarchidae*. Common name: sunfish.
 9. All species of the family *Cetopsidae* and *Trichomycteridae*. Common name: South American catfish.
 10. All species of the family *Channidae*. Common name: snakehead.
 11. All of the species *Cirrhinus mrigala*, *Gibelion catla*, and *Labeo rohita*. Common name: Indian carp.
 12. All species of the family *Clariidae*. Common names include: labyrinth or airbreathing catfish.
 13. All species of the family *Clupeidae* except threadfin shad, species *Dorosoma petenense*. Common names include: herring and shad.
 14. The species *Ctenopharyngodon idella*. Common names include: white amur or grass carp.
 15. The species *Cyprinella lutrensis*. Common name: red shiner.
 16. The species *Electrophorus electricus*. Common name: electric eel.
 17. All species of the family *Esocidae*. Common names include: pike and pickerel.
 18. All species of the family *Hiodontidae*. Common names include: goldeye and mooneye.
 19. The species *Hoplias malabaricus*. Common name: tiger fish.
 20. The species *Hypophthalmichthys molitrix*. Common name: silver carp.
 21. The species *Hypophthalmichthys nobilis*. Common name: bighead carp.
 22. All species of the family *Ictaluridae*. Common name: catfish.
 23. All species of the genus *Lates* and *Luciolates*. Common name: Nile perch.
 24. All species of the family *Lepisosteidae*. Common name: gar.
 25. The species *Leuciscus idus*. Common names include: whitefish and ide.
 26. The species *Mapterurus electricus*. Common name: electric catfish.
 27. All species of the family *Moronidae*. Common name: temperate bass.
 28. The species *Mylopharyngodon piceus*. Common name: black carp.
 29. All species of the family *Percidae*. Common names include: walleye and pike perches.
 30. All species of the family *Petromyzontidae*. Common name: lamprey.
 31. The species *Polyodon spathula*. Common name: American Paddlefish.
 32. All species of the family *Potamotrygonidae*. Common name: stingray.
 33. All species of the genera *Pygocentrus*, *Pygopristis*, and *Serrasalmus*. Common name: piranha.
 34. All species of the family *Salmonidae*. Common names include: trout and salmon.
 35. The species *Scardinius erythrophthalmus*. Common name: rudd.
 36. All species of the family *Serranidae*. Common name: bass.
 37. The following species, and hybrid forms, of the Genus *Tilapia*: *O. aureus*, *O. mossambica*; *O. niloticus*, *O. urolepis hornorum* and *T. zilli*. Common name: tilapia.
 38. The species *Thymallus arcticus*. Common name: Arctic grayling.
- J.** Crustaceans listed below are considered restricted live wildlife:
1. All freshwater species within the families *Astacidae*, *Cambaridae*, and *Parastacidae*. Common name: crayfish.
 2. The species *Eriocheir sinensis*. Common name: Chinese mitten crab.
- K.** Mollusks listed below are considered restricted live wildlife:
1. The species *Corbicula fluminea*. Common name: Asian clam.
 2. All species of the family *Dreissenidae*. Common names include: zebra and quagga mussel.
 3. The species *Euglandina rosea*. Common name: rosy wolfsnail.
 4. The species *Mytilopsis leucophaeata*. Common names include: Conrad's false mussel or false dark mussel.
 5. All species of the genus *Pomacea*. Common names include: Chinese mystery snail or apple snail.
 6. The species *Potamopyrgus antipodarum*. Common name: New Zealand mud snail.
- L.** All wildlife listed within Aquatic Invasive Species Director's Order #1.

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 7 A.A.R. 2220, effective May 25, 2001 (Supp. 01-2). Amended by final rulemaking at 9 A.A.R. 3186, effective August 30, 2003 (Supp. 03-3). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 196, effective January 10, 2012 (Supp. 12-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

R12-4-407. Exemptions from Special License Requirements for Restricted Live Wildlife

- A.** All live cervids may only be imported, possessed, or transported as authorized under R12-4-430.

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- B. A person is not required to possess a special license to lawfully possess restricted live wildlife under the following circumstances:
1. A person may possess, transport, or give away a desert tortoise (*Gopherus morafkai*) or the progeny of a desert tortoise provided the person possessed the tortoise prior to April 28, 1989 or obtained the tortoise through a Department authorized adoption program. A person who receives a desert tortoise that is given away under this Section is also exempt from special license requirements. A person shall not:
 - a. Propagate lawfully possessed desert tortoises or their progeny unless authorized in writing by the Department's special license administrator.
 - b. Export a live desert tortoise from this state unless authorized in writing by the Department.
 2. A licensed veterinarian may possess restricted wildlife while providing medical care to the wildlife and may release rehabilitated wildlife as directed in writing by the Department, provided:
 - a. The veterinarian keeps records of restricted live wildlife as required by the Veterinary Medical Examining Board, and makes the records available for inspection by the Department.
 - b. The Department assumes no financial responsibility for any care the veterinarian provides, except care that is specifically authorized by the Department.
 3. A person may transport restricted live wildlife through this state provided the person:
 - a. Transports the wildlife through the state within 72 continuous and consecutive hours;
 - b. Ensures at least one person is continually present with, and accountable for, the wildlife while in this state;
 - c. Ensures the wildlife is neither transferred nor sold to another person;
 - d. Ensures the wildlife is accompanied by evidence of lawful possession, as defined under R12-4-401;
 - e. Ensures a health certificate required under this Article accompanies the wildlife described on the health certificate, when applicable; and
 - f. Ensures the carcasses of any wildlife that die while in transport through this state are disposed of only as directed by the Department.
 4. A person may exhibit, export, import, possess, and transport restricted live wildlife for a circus, temporary animal exhibit, or government-authorized state or county fair, provided the person:
 - a. Possesses evidence of lawful possession as defined under R12-4-401, for the wildlife;
 - b. Ensures the evidence of lawful possession accompanies the wildlife described on that evidence;
 - c. Ensures a health certificate required under this Article accompanies the wildlife described on the health certificate, when applicable;
 - d. Ensures the wildlife does not come into physical contact with the public;
 - e. Keeps the wildlife under complete control by safe and humane means; and
 - f. Ensures the wildlife is not in this state for more than 60 consecutive days.
 5. A person may export, import, possess, and transport restricted live wildlife for the purpose of commercial photography, provided the person:
 - a. Possesses evidence of lawful possession as defined under R12-4-401 for the wildlife;
 - b. Ensures the evidence of lawful possession accompanies the wildlife described on that evidence;
 - c. Ensures a health certificate required under this Article accompanies the wildlife described on the health certificate, when applicable;
 - d. Ensures the wildlife does not come into physical contact with the public;
 - e. Keeps the wildlife under complete control by safe and humane means; and
 - f. Ensures the wildlife is not in this state for more than 60 consecutive days.
 6. A person may exhibit, import, possess, and transport restricted live wildlife for advertising purposes other than photography, provided the person:
 - a. Ensures the wildlife is accompanied by evidence of lawful possession as defined under R12-4-401;
 - b. Ensures the evidence of lawful possession accompanies the wildlife described on that evidence;
 - c. Ensures a health certificate required under this Article accompanies the wildlife described on the health certificate, when applicable;
 - d. Maintains the wildlife under complete control by safe and humane means;
 - e. Prevents the wildlife from coming into contact with the public or being photographed with the public;
 - f. Does not charge the public a fee to view the wildlife; and
 - g. Exports the wildlife from the state within 10 days of importation.
 7. A person may export restricted live wildlife, provided the person:
 - a. Ensures the wildlife is accompanied by evidence of lawful possession as defined under R12-4-401;
 - b. Ensures the evidence of lawful possession accompanies the wildlife described on that evidence;
 - c. Maintains the wildlife under complete control by safe and humane means;
 - d. Prevents the wildlife from coming into contact with the public or being photographed with the public;
 - e. Does not charge the public a fee to view the wildlife; and
 - f. Exports the wildlife from the state within 10 days of importation.
 8. A person may possess restricted live wildlife taken alive under R12-4-404, R12-4-405, and R12-4-427, provided the person possesses the wildlife in compliance with those Sections.
 9. A person who holds a falconry license issued by another state or country is exempt from obtaining an Arizona Sport Falconry License under R12-4-422, unless remaining in this State for more than 180 consecutive days.
 - a. The falconer licensed in another state or country shall present a copy of the out-of-state or out-of-country falconry license, or its equivalent, to the Department upon request.
 - b. A falconer licensed in another state or country and who remains in this State for more than the 180-day period shall apply for an Arizona Sport Falconry License in order to continue practicing sport falconry in this state.
 10. A person may export, give away, import, kill, possess, propagate, purchase, trade, and transport restricted live wildlife provided the person is doing so for a medical or scientific research facility registered with the United States Department of Agriculture under 9 C.F.R. 2.30 revised January 1, 2012, which is incorporated by refer-

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ence in this Section. The incorporated material is available at any Department office, online at www.gpoaccess.gov, or may be ordered from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000. This incorporation by reference contains no future editions or amendments.

11. A person may import and transport restricted live game fish and crayfish directly to restaurants or markets that are licensed to sell food to the public.
 12. A person operating a restaurant or market licensed to sell food to the public may exhibit, offer for sale, possess, and sell restricted live game fish or crayfish, provided the live game fish and crayfish are killed before being transported from the restaurant or market.
 13. A person may export, giveaway, import, kill, possess, propagate, purchase, and trade transgenic animals provided the person is doing so for a medical or scientific research facility.
- C. An exemption granted under this Section is not valid for any wildlife protected by federal statute or regulation.

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 7 A.A.R. 2220, effective May 25, 2001 (Supp. 01-2). Amended by final rulemaking at 9 A.A.R. 3186, effective August 30, 2003 (Supp. 03-3). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

R12-4-408. Holding Wildlife for the Department

- A. A game ranger may authorize a person to possess or transport live wildlife on behalf of the Department if the wildlife is needed as evidence in a pending civil or criminal proceeding.
- B. With the exception of live cervids, the Department has the authority to allow a person to possess and transport captive live wildlife for up to 72 hours or as otherwise directed by the Department.
- C. The Director has the authority to allow a person to hold a live cervid on behalf of the Department.

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended by final rulemaking at 9 A.A.R. 3186, effective August 30, 2003 (Supp. 03-3). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

R12-4-409. General Provisions and Penalties for Special Licenses

- A. A special license is required when a person intends to conduct any activity using restricted live wildlife. Special licenses are listed as follows:
 1. Aquatic wildlife stocking license, established under R12-4-410;
 2. Game bird license, established under R12-4-414;
 3. Live bait dealer's license, established under R12-4-411;
 4. Private game farm license, established under R12-4-413;
 5. Scientific collecting license, established under R12-4-418;
 6. Sport falconry license, established under R12-4-422;
 7. White amur stocking and holding license, established under R12-4-424;

8. Wildlife holding license, established under R12-4-417;
9. Wildlife rehabilitation license, established under R12-4-423;
10. Wildlife service license, established under R12-4-421; and
11. Zoo license, established under R12-4-420.

- B. A person applying for a special license listed under subsection (A) shall:
 - a. Submit an application to the Department meeting the specific application requirements established under the applicable governing Section.
 - i. Applications for special licenses are furnished by the Department and are available at any Department office and online at www.azgfd.gov.
 - ii. An application is required upon initial application for a special license and when renewing a special license.
 - b. Pay all applicable fees required under R12-4-412.
- C. At the time of application, the person shall certify:
 1. The information provided on the application is true and correct to the applicant's knowledge;
 2. The applicant shall comply with any municipal, county, state or federal code, ordinance, statute, regulation, or rule applicable to the license held; and
 3. The applicant's live wildlife privileges are not currently suspended or revoked in this state, any other state or territory, or by the United States.
- D. A special license obtained by fraud or misrepresentation is invalid from the date of issuance.
- E. The Department shall either grant or deny a special license within the applicable overall time-frame established for that special license under R12-4-106Ch.
- F. In addition to the criteria prescribed under the applicable governing Section, the Department shall deny a special license when:
 1. The applicant's live wildlife privileges are revoked or suspended in this state, any other state, or by the United States;
 2. The applicant was convicted of illegally holding or possessing live wildlife within five years preceding the date of application for the special license; or
 3. The applicant knowingly provides false information on an application.
 4. The Department shall deny a license to a person who fails to meet the requirements established under the applicable governing Section or this Section. The Department shall provide a written notice to the applicant stating the reason for the denial. The person may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.
- G. A special license holder may only engage in activities using federally-protected wildlife when the license holder possesses a valid license, permit, or other form of documentation issued by the United States authorizing the license holder to use that wildlife in a manner consistent with the special license. A special license issued by the Department does not:
 1. Exempt the license holder from any municipal, county, state or federal code, ordinance, statute, regulation, or rule; or
 2. Authorize the license holder to engage in any activity using wildlife that is protected by federal regulation.
- H. The Department may place additional stipulations on a special license at the time of initial application or renewal when necessary to:
 1. Conserve wildlife populations,

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2. Prevent the introduction and proliferation of wildlife diseases,
 3. Prevent wildlife from escaping, or
 4. Protect public health or safety.
- I.** A special license holder shall keep live wildlife in a facility according to the captivity standards prescribed under R12-4-428 or as otherwise required under this Article.
- J.** The Department may inspect a facility to verify compliance with all applicable requirements established under this Article.
- K.** A special license holder shall keep records in compliance with the requirements established under the governing Section and shall make the records available for inspection to the Department upon request.
- L.** The Department may conduct an inspection of an applicant's or license holder's facility at any time before or during the license period to determine compliance with the requirements of this Article. The Department shall comply with A.R.S. § 41-1009 when conducting inspections at a license holder's facility.
- M.** Upon determining a disease or other emergency condition exists that poses an immediate threat to the public or the welfare of any wildlife, the Department may immediately order a cessation of operations under the special license and, if necessary, order the humane disposition or quarantine of any contaminated or affected wildlife.
1. When directed by the Department, a special license holder shall:
 - a. Perform disease testing,
 - b. Submit biological samples to the Department or its designee,
 - c. Surrender the wildlife to the Department;
 - d. Quarantine the wildlife, or
 - e. Humanely euthanize the wildlife.
 2. The license holder shall:
 - a. Ensure any disease or other emergency condition under this subsection is diagnosed by a person professionally certified to make the diagnosis.
 - b. Be responsible for all costs associated with the testing and treatment of the contaminated and affected wildlife.
- N.** If a condition exists, including disease or any violation of this Article, that poses a threat to the public or the welfare of any wildlife, but the threat does not constitute an emergency, the Department may issue a written notice of the condition to the special license holder specifying a reasonable period of time for the license holder to remedy the noticed condition. The notice of condition shall be delivered to the special license holder by certified mail or personal service.
1. Failure of the license holder to remedy the noticed condition within the time specified by the Department is a violation under subsection (O).
 2. If a licensee receives three notices under this subsection for the same condition within a two-year period, the Department shall treat the third notice as a failure to remedy.
- O.** A special license holder shall not:
1. Violate any provision of the governing Section or this Section;
 2. Violate any provision of the special license that the person possesses, including any stipulations specified on the special license;
 3. Violate A.R.S. § 13-2908, relating to criminal nuisance;
 4. Violate A.R.S. § 13-2910, relating to cruelty to animals; or
 5. Refuse to allow the inspection of facilities, wildlife, or required records.
- P.** The Department may take one or more of the following actions when a special license holder is convicted of a criminal offense involving cruelty to animals, violates subsection (N), or fails to comply with any requirement established under the governing Section or this Section:
1. File criminal charges,
 2. Suspend or revoke a special license,
 3. Humanely dispose of the wildlife,
 4. Seize or seize in place any wildlife held under a special license.
 5. A person may appeal to the Commission any Department action listed under this subsection as prescribed under A.R.S. Title 41, Chapter 6, Article 10, except the filing of criminal charges.
- Q.** A special license holder who wishes to continue conducting activities authorized under the special license shall submit a renewal application to the Department on or before the special license expiration date.
1. The current license will remain valid until the Department grants or denies the new special license.
 2. If the Department denies the renewal application and the license holder appeals the denial to the Commission as prescribed under subsection (F)(4), the license holder may continue to hold the wildlife until:
 - a. The date on which the Commission makes its final decision on the appeal, or
 - b. The final date on which a person may request judicial review of the decision.
 3. A special license holder who fails to submit a renewal application to the Department before the date the license expires, cannot lawfully possess any live wildlife currently possessed under the license.
- R.** If required by the governing Section, a special license holder shall submit an annual report to the Department before January 31 of each year for the previous calendar year. The report form is furnished by the Department.
1. A report is required regardless of whether or not activities were performed during the previous year.
 2. The special license becomes invalid if the special license holder fails to submit the annual report by January 31 of each year.
 3. The Department will not process the special license holder's renewal application until the annual report is received by the Department.
 4. When the license holder is acting as a representative of an institution, organization, or agency for the purposes of the special license, the license holder shall submit the report required under subsection this Section:
 - a. By January 31 of each year the license holder is affiliated with the institution, organization, or agency; or
 - b. Within 30 days of the date of termination of the license holder's affiliation with the institution, organization, or agency.

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 7 A.A.R. 2732, effective July 1, 2001 (Supp. 01-2). Amended by final rulemaking at 9 A.A.R. 3186, effective August 30, 2003 (Supp. 03-3). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp.

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15-4).

R12-4-410. Aquatic Wildlife Stocking License

- A.** An aquatic wildlife stocking license allows a person to import, possess, purchase, stock, and transport any restricted species designated on the license at the location specified on the license.
- B.** The aquatic wildlife stocking license is valid for no more than 20 consecutive days.
- C.** In addition to the requirements established under this Section, an aquatic wildlife stocking license holder shall comply with the special license requirements established under R12-4-409.
- D.** The license holder shall be responsible for compliance with all applicable regulatory requirements. The aquatic wildlife stocking license does not:
1. Exempt the license holder from any municipal, county, state, or federal codes, ordinances, statutes, rules, or regulations; or
 2. Authorize the license holder to engage in authorized activities using federally-protected wildlife, unless the license holder possesses a valid license, permit, or other form of documentation issued by the United States authorizing the license holder to use that wildlife in a manner consistent with the special license.
- E.** The Department shall deny an aquatic wildlife stocking license to a person who fails to meet the requirements established under R12-4-409 or this Section. The Department shall provide the written notice established under R12-4-409(F)(4) to the applicant stating the reason for the denial. The person may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10. In addition to the requirements and criteria established under R12-4-409(F)(1) through (4), the Department shall deny an aquatic wildlife stocking license when:
1. The Department determines that issuance of the license will result in a negative impact to native wildlife; or
 2. The applicant proposes to use aquatic wildlife that is not compatible with, or poses a threat to, any wildlife within the river drainage or the area where the stocking is to occur.
- F.** A person applying for an aquatic wildlife stocking license shall submit an application to the Department. A separate application is required for each location where the applicant proposes to use wildlife. The application is furnished by the Department and is available at any Department office and online at www.azgfd.gov. An applicant shall provide the following on the application:
1. The applicant's information:
 - a. Name;
 - b. Mailing address; and
 - c. Department ID number, when applicable;
 2. When the applicant proposes to use the aquatic wildlife for a commercial purpose the applicant's business:
 - a. Name;
 - b. Federal Tax Identification Number;
 - c. Mailing address; and
 - d. Telephone number;
 3. Aquatic wildlife species information:
 - a. Common name of the aquatic wildlife species;
 - b. Number of animals for each species; and
 - c. Approximate size of the aquatic wildlife that will be used under the license;
 4. The purpose for introducing the aquatic wildlife species;
 5. For each location where the aquatic wildlife will be stocked, the owner's:
 - a. Name;
 - b. Mailing address;
 - c. Telephone number; and
 - d. Physical location of the stocking site, to include river drainage and the Global Positioning System location or Universal Transverse Mercator coordinates;
- 6.** A detailed description or diagram of the facilities where the applicant will stock the aquatic wildlife, which includes:
- a. Size of waterbody proposed for stocking aquatic wildlife;
 - b. Nearest river, stream, or other freshwater system;
 - c. Points where water enters each waterbody, when applicable;
 - d. Points where water leaves each waterbody, when applicable; and
 - e. Location of fish containment barriers;
- 7.** For each supplier from whom the applicant will obtain aquatic wildlife, the supplier's:
- a. Name;
 - b. Federal Tax Identification Number;
 - c. Mailing address;
 - d. Telephone number;
- 8.** The dates on which the person will stock aquatic wildlife;
- 9.** Any other information required by the Department; and
- 10.** The certification required under R12-4-409(C).
- G.** In addition to the requirements listed under subsection (F), when an applicant wishes to stock an aquatic species in an area where that species has not yet been introduced, is not currently established, or there is potential for conflict with Department efforts to conserve wildlife, the applicant shall also submit a written proposal to the Department at the time of application. The written proposal shall contain all of the following information:
1. Anticipated benefits resulting from the introduction of the aquatic live wildlife species;
 2. Potential adverse economic impacts;
 3. Potential dangers the introduced aquatic species may possibly create for native aquatic species and game fish, to include all of the following:
 - a. Determination of whether or not the introduced aquatic species is compatible with native aquatic species or game fish;
 - b. Potential ecological problems created by the introduced aquatic species;
 - c. Anticipated hybridization concerns with introducing the aquatic species; and,
 - d. Future plans designed to evaluate the status and impact of the species after it is introduced.
 4. Assessment of probable impacts to sensitive species in the area using the list generated by the Department's On-Line Environmental Review Tool, which is available at www.azgfd.gov. The proposal must address each species listed.
- H.** An applicant for an aquatic wildlife stocking license shall pay all applicable fees established under R12-4-412.
- I.** An aquatic wildlife stocking license holder shall:
1. Comply with all additional stipulations placed on the license by the Department, as authorized under R12-4-409(H).
 2. Obtain all aquatic wildlife, live eggs, fertilized eggs, and milt from a licensed fish farm operator or a private non-commercial fish pond certified to be free of diseases and causative agents through the following actions:
 - a. An inspection shall be performed by a qualified fish health inspector or fish pathologist at the fish farm or pond where the aquatic wildlife or biological

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material is held before it is shipped to the license holder.

- b. The inspection shall be conducted no more than 12 months prior to the date on which the aquatic wildlife or biological material is shipped to the license holder. The Department may require additional inspections at any time prior to stocking.
 - c. The applicant shall submit a copy of the certification to the Department prior to conducting any stocking activities.
3. Allow the Department to conduct inspections of an applicant's or license holder's facility and records at any time before or during the license period to determine compliance with the requirements of this Article.
 4. Possess the license or legible copy of the license while conducting any activities authorized under the aquatic stocking license and presents it for inspection upon the request of any Department employee or agent.
 5. Dispose of wildlife only as authorized under this Section or as directed in writing by the Department.
- J.** An aquatic wildlife stocking license holder shall comply with the requirements established under R12-4-409 and R12-4-428.

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

R12-4-411. Live Bait Dealer's License

- A.** A live bait dealer's license allows a person to perform any of the following activities using the aquatic live wildlife listed under subsection (B): exhibit for sale, export, import, kill, offer for sale, possess, purchase, sell, trade, or transport.
- B.** A live bait dealer's license allows a person to perform any of the activities listed under subsection (A) with any or all of the following aquatic live wildlife:
1. Fathead minnow, *Pimephales promelas*;
 2. Golden shiner, *Notemigonus crysoleucas*;
 3. Goldfish, *Carassius auratus*;
 4. Mosquito fish, *Gambusia affinis*;
 5. Threadfin shad, *Dorosoma petenense*; and
 6. Waterdogs, *Ambystoma tigrinum*, except in that portion of Santa Cruz County lying east and south of State Highway 82, or that portion of Cochise County lying west of the San Pedro River and south of State Highway 82.
- C.** A live bait dealer's license expires on December 31 of each year.
- D.** In addition to the requirements established under this Section, a live bait dealer license holder shall comply with the special license requirements established under R12-4-409.
- E.** The license holder shall be responsible for compliance with all applicable regulatory requirements. The live bait dealer's license does not:
1. Exempt the license holder from any municipal, county, state, or federal codes, ordinances, statutes, rules, or regulations; or
 2. Authorize the license holder to engage in authorized activities using federally-protected wildlife, unless the license holder possesses a valid license, permit, or other form of documentation issued by the United States authorizing the license holder to use that wildlife in a manner consistent with the special license.
- F.** The Department shall deny a live bait dealer's license to a person who fails to meet the requirements established under R12-4-409 or this Section. The Department shall provide the written notice established under R12-4-409(F)(4) to the applicant stating the reason for the denial. The person may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.
- G.** A person applying for a live bait dealer's license shall submit an application to the Department. A separate application is required for each location where the applicant proposes to use wildlife. The application is available from any Department office and online at www.azgfd.gov. An applicant shall provide the following information on the application:
1. The applicant's information:
 - a. Name;
 - b. Mailing address;
 - c. Telephone number; and
 - d. Department ID number, when applicable;
 2. The applicant's business:
 - a. Name;
 - b. Federal Tax Identification Number;
 - c. Mailing address; and
 - d. Telephone number of the applicant's business;
 3. Wildlife species information:
 - a. Common name of all wildlife species; and
 - b. The number of animals for each species that will be sold under the license.
 4. For each location where the wildlife will be used, the owner's:
 - a. Name;
 - b. Mailing address;
 - c. Telephone number; and
 5. A detailed description or diagram of the facilities where the applicant will hold the wildlife;
 6. For each supplier from whom the applicant will obtain wildlife, the supplier's:
 - a. Name;
 - b. Federal Tax Identification Number;
 - c. Mailing address;
 - d. Telephone number;
 7. Any other information required by the Department; and
 8. The certification required under R12-4-409(C).
- H.** An applicant for a live bait dealer's license shall pay all applicable fees established under R12-4-412.
- I.** A live bait dealer's license holder shall:
1. Comply with all additional stipulations placed on the license by the Department, as authorized under R12-4-409(H).
 2. Obtain live baitfish from a facility certified free of the diseases and causative agents through the following actions:
 - a. An inspection shall be performed by a qualified fish health inspector or fish pathologist at the facility where the wildlife is held before it is shipped to the license holder.
 - b. The inspection shall be conducted no more than 12 months prior to the date on which the aquatic wildlife or biological material is shipped to the license holder. The Department may require additional inspections at any time prior to shipping.
 - c. The applicant shall submit a copy of the certification to the Department prior to conducting any activities authorized under the license.
 - d. The live bait dealer's license holder shall include a copy of the certification in each shipment.
 3. Allow the Department to conduct inspections of an applicant's or license holder's facility and records at any time

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before or during the license period to determine compliance with the requirements of this Article.

- 4. Possess the license or legible copy of the license while conducting activities authorized under the live bait dealers license and presents it for inspection upon the request of any Department employee or agent.
- 5. Dispose of aquatic wildlife only as authorized under this Section or as directed by the Department.
- J. A live bait dealer's license holder shall comply with the requirements established under R12-4-428.

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended by final rulemaking at 7 A.A.R. 2220, effective May 25, 2001 (Supp. 01-2). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

R12-4-412. Special License Fees

- A. A person who applies for a special license authorized under this Article shall pay all applicable fees at the time of application.
- B. A new application fee is required upon initial application or when an applicant fails to renew a special license before the license expires.
- C. A renewal application fee is required when an applicant submits an application to renew the special license before the license expires.

Special License Fees	New Application	Renewal Application
Aquatic Wildlife Stocking License	no fee	no fee
Game Bird		
Field Trial License	\$6	\$6
Hobby License	\$5	\$5
Shooting Preserve License	\$115	\$115
Live Bait Dealer's License	\$35	\$35
Private Game Farm License	\$57.50	\$57.50
Scientific Collecting License		
Commercial	no fee	no fee
Noncommercial	no fee	no fee
Sport Falconry License, not available to a nonresident under R12-4-422(J).	\$87.50	\$87.50
White Amur Stocking and Holding License		
Commercial	\$250	\$250
Noncommercial	\$250	no fee
Wildlife Holding License	no fee	no fee
Wildlife Rehabilitation License	no fee	no fee
Wildlife Service License	no fee	no fee
Zoo License	\$115	\$115

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Repealed effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). New Section adopted effective November 10, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 211, effective December 14, 1999 (Supp. 99-4). Section repealed by final rulemaking at 9 A.A.R. 3186, effective August 30, 2003 (Supp. 03-3). New Section made by final rulemak-

ing at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

R12-4-413. Private Game Farm License

- A. A private game farm license authorizes a person to commercially farm and sell wildlife, as specified on the license at the location designated on the license.
 - 1. A private game farm license allows the license holder to:
 - a. Display for sale, give away, import, offer for sale, possess, purchase, rent or lease, sell, trade, or transport wildlife, wildlife carcasses, or parts of wildlife; and
 - b. Propagate and rear wildlife.
 - 2. The Private Game Farm License expires on December 31 of each year.
- B. Private game farm wildlife may be killed or slaughtered, but a person shall not kill or allow the wildlife to be killed by hunting or in a manner that could be perceived as hunting or recreational sport harvest.
- C. Private game farm wildlife shall not be killed by a person who pays a fee to the owner of the private game farm for killing the wildlife, nor shall the game farm owner accept a fee for killing the wildlife, except as authorized under R12-4-414.
- D. A private game farm licenses authorizes the use of only the following species:
 - 1. Captive-reared game birds:
 - a. *Alectoris chukar*, Chukar;
 - b. *Callipepla californica*, California or valley quail;
 - c. *Callipepla gambelii*, Gambel's quail;
 - d. *Callipepla squamata*, Scaled quail;
 - e. *Colinus virginianus*, Northern bobwhite;
 - f. *Cyrtonyx montezumae*, Montezuma or Mearns' quail;
 - g. *Dendragapus obscurus*, Dusky grouse; and
 - h. *Phasianus colchicus*, Ringneck and whitewing pheasant;
 - 2. Mammals listed as restricted live wildlife under R12-4-406, provided:
 - a. The same species does not exist in the wild in this state;
 - b. The applicant submits proof of a valid license issued by the United States Department of Agriculture under 9 CFR 25.30 at the time of application;
 - c. The applicant submits a written proposal at the time of application, which includes all of the following information:
 - i. Species to be possessed,
 - ii. Purpose of possession,
 - iii. Purpose of propagation, when applicable,
 - iv. Methods designed to prevent wildlife from escaping,
 - v. Methods designed to prevent threat to native wildlife,
 - vi. Methods designed to ensure public safety; and
 - vii. Methods for disposal of the wildlife, which may include export from this state, or transfer to an eligible game farm licensed under this Section, a zoo licensed under R12-4-420, or a medical or scientific research facility exempted under R12-4-407.
- E. The Department shall deny an application for:
 - 1. A new private game farm license for cervids. The Department may accept a renewal application for a private game farm license holder currently permitted to possess cervids, provided the license holder is in compliance with all

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- applicable requirements under R12-4-409, R12-4-430, and this Section.
2. A private game farm license for Northern bobwhite, *Colinus virginianus*, in game management units 34A, 36A, 36B, and 36C, as prescribed under R12-4-108.
- F.** In addition to the requirements established under this Section, a private game farm holder shall comply with the special license requirements established under R12-4-409.
- G.** The license holder shall be responsible for compliance with all applicable regulatory requirements. The private game farm license does not:
1. Exempt the license holder from any municipal, county, state, or federal codes, ordinances, statutes, rules, or regulations; or
 2. Authorize the license holder to engage in authorized activities using federally-protected wildlife, unless the license holder possesses a valid license, permit, or other form of documentation issued by the United States authorizing the license holder to use that wildlife in a manner consistent with the special license.
- H.** The Department shall deny a private game farm license to a person who fails to meet the requirements established under R12-4-409 or this Section. The Department shall provide the written notice established under R12-4-409(F)(4) to the applicant stating the reason for the denial. The person may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.
- I.** A person applying for a private game farm license shall submit an application to the Department. A separate application is required for each location where the applicant proposes to use wildlife. The application is furnished by the Department and is available at any Department office and online at www.azgfd.gov. An applicant shall provide the following information on the application:
1. The applicant's information:
 - a. Name;
 - b. Mailing address;
 - c. Telephone number; and
 - d. Department ID number, when applicable;
 2. The applicant's business:
 - a. Name;
 - b. Federal Tax Identification Number;
 - c. Mailing address; and
 - d. Telephone number;
 3. For wildlife to be used under the license:
 - a. Common name of the wildlife species;
 - b. Number of animals for each species; and
 - c. When the applicant is renewing the private game farm license, the species and number of animals for each species currently held in captivity under the license;
 4. For each location where the wildlife will be used, the land owner's:
 - a. Name;
 - b. Mailing address;
 - d. Telephone number; and
 - e. Physical location description to include the Global Positioning System location or Universal Transverse Mercator coordinates;
 5. A detailed description or diagram of the facilities where the applicant will hold the wildlife, and a description of how the facilities comply with the requirements established under R12-4-428 and any other captivity standards established under this Section;
 6. For each wildlife supplier from whom the special license applicant will obtain wildlife, the supplier's:
 - a. Name;
 - b. Federal Tax Identification Number;
 - c. Mailing address;
 - d. Telephone number;
 7. Any other information required by the Department; and
 8. The certification required under R12-4-409(C).
- J.** An applicant for a private game farm license shall pay all applicable fees established under R12-4-412.
- K.** A private game farm license holder shall:
1. Comply with all additional stipulations placed on the license by the Department, as authorized under R12-4-409(H).
 2. Ensure each shipment of live wildlife imported into the state is accompanied by a health certificate.
 - a. The certificate shall be issued no more than 30 days prior to the date on which the wildlife shipped.
 - b. A copy of the certificate shall be submitted to the Department prior to importation.
 3. Ensure the following documentation accompanies each shipment of wildlife made by the game farm:
 - a. Name of the private game farm license holder,
 - b. Private game farm license number,
 - c. Date wildlife was shipped,
 - d. Number of wildlife, by species, included in the shipment,
 - e. Name of the person or common carrier transporting the shipment, and
 - f. Name of the person receiving the shipment.
 4. Provide each person who transports a wildlife carcass from the site of the game farm with a receipt that includes all of the following:
 - a. Date the wildlife was purchased, traded, or given as a gift;
 - b. Name of the game farm; and
 - c. Number of wildlife carcasses, by species, being transported.
 5. Ensure each facility is inspected by the attending veterinarian at least once every year.
 6. Allow the Department to conduct inspections of an applicant's or license holder's facility and records at any time before or during the license period to determine compliance with the requirements of this Article.
 7. Maintain records of all wildlife possessed under the license for a period of three years. In addition to the information required under subsections (M)(4)(a) through (M)(4)(e), the records shall also include:
 - a. The private game farm license holder's:
 - i. Name;
 - ii. Mailing address;
 - iii. Telephone number; and
 - iv. Special license number;
 - b. Copies of all federal, state, and local licenses, permits, and authorizations required for the lawful operation of the private game farm;
 - c. Copies of the annual report required under subsection (M);
 - d. Number of all restricted live wildlife, by species and the date it was obtained;
 - e. Source of all restricted live wildlife and the date it was obtained;
 - f. Number of offspring propagated by all restricted live wildlife; and
 - g. For all restricted live wildlife disposed of by the license holder:
 - i. Number, species, and date of disposition; and

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- ii. Manner of disposition to include the names and addresses of persons to whom the wildlife was bartered, given, or sold, when authorized.
- L. A private game farm license holder shall not:
 1. Propagate hybrid wildlife or domestic animals with wildlife; or
 2. Possess domestic species under the special license.
- M. A private game farm license holder shall submit an annual report to the Department before January 31 of each year for activities performed under the license for the previous calendar year. The report form is furnished by the Department.
 1. A report is required regardless of whether or not activities were performed during the previous year.
 2. The private game farm license becomes invalid if the annual report is not submitted to the Department by January 31 of each year.
 3. The Department will not process the special license holder's renewal application until the annual report is received by the Department.
 4. The annual report shall include all of the following information, as applicable:
 - a. Number of wildlife, by species;
 - b. Source of all wildlife that the license holder obtained or propagated;
 - c. Date on which the wildlife was obtained or propagated;
 - d. Date on which the wildlife was disposed of and the manner of disposition; and
 - e. Name of person who received wildlife disposed of by barter, given as a gift, or sale.
- N. Except for cervids which shall be disposed of only as established under R12-4-430, a private game farm license holder who no longer uses the wildlife for a commercial purpose shall dispose of the wildlife as follows:
 1. Export,
 2. Transfer to another private game farm licensed under this Section,
 3. Transfer to a zoo licensed under R12-4-420,
 4. Transfer to a medical or scientific research facility exempt under R12-4-407,
 5. As directed by the Department, or
 6. As otherwise authorized under this Section.
- O. A private game farm license holder shall comply with the requirements established under R12-4-428 and R12-4-430.

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 7 A.A.R. 2732, effective July 1, 2001 (Supp. 01-2). Amended by final rulemaking at 9 A.A.R. 3186, effective August 30, 2003 (Supp. 03-3). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

R12-4-414. Game Bird License

- A. A game bird license authorizes a person to conduct certain activities with the captive pen-reared game birds specified on the license and only at the location or locations specified on the license, as described below:
 1. Game Bird Hobby:
 - a. Authorizes a license holder to:
 - i. Possess no more than 50 captive pen-reared game birds at any one time; and
 - ii. Export, gift, import, kill, possess, propagate, purchase, and transport the captive pen-reared game birds specified on the license for personal, noncommercial purposes only.
 - b. The following captive pen-reared game bird species may be possessed by a Game Bird Hobby license holder:
 - i. *Alectoris chukar*, Chukar;
 - ii. *Callipepla californica*, California or valley quail;
 - iii. *Callipepla gambelii*, Gambel's quail;
 - iv. *Callipepla squamata*, Scaled quail;
 - v. *Colinus virginianus*, Northern bobwhite, subject to the restriction specified under subsection (D);
 - vi. *Cyrtonyx montezumae*, Montezuma or Mearn's quail; and
 - vii. *Dendragapus obscurus*, Dusky grouse.
 - c. The Game Bird Hobby license expires on December 31 each year.
- 2. Game Bird Shooting Preserve:
 - a. Authorizes a license holder to:
 - i. Release captive pen-reared game birds for the purpose of hunting or shooting.
 - ii. Export, display, gift, import, kill, offer for sale, possess, propagate, purchase, trade, and transport the captive pen-reared game birds specified on the license.
 - b. The following captive pen-reared game bird species may be possessed by a Game Bird Shooting Preserve license holder:
 - i. *Alectoris chukar*, Chukar;
 - ii. *Anas platyrhynchos*, Mallard duck;
 - iii. *Colinus virginianus*, Northern bobwhite, subject to the restriction specified under subsection (D); and
 - iv. *Phasianus colchicus*, Ringneck and White-wing pheasant.
 - c. The license holder shall restrict the release and take of the live captive pen-reared game birds on private lands to an area not more than 1,000 acres.
 - d. The license holder may charge a fee to allow persons to take captive pen-reared game birds on the shooting preserve.
 - e. A person is not required to possess a hunting license when taking a captive pen-reared game bird released under the provisions of this Section.
 - f. A captive pen-reared game bird released under a Game Bird Shooting Preserve license may be taken with any method designated under R12-4-304.
 - g. The Game Bird Shooting Preserve license expires on December 31 each year.
- 3. Game Bird Field Trial:
 - a. Authorizes a license holder to:
 - i. Release and take captive pen-reared game birds for the purpose of conducting a competition to test the performance of hunting dogs in one field trial event;
 - ii. Import, kill, possess, purchase within the State, and transport the captive pen-reared game birds specified on the license for one field trial event; and
 - iii. Export, gift, kill, or transport any captive pen-reared game bird held after the field trial event.

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- b. The following captive pen-reared game bird species may be possessed by a Game Bird Field Trial license holder:
- i. *Alectoris chukar*, Chukar;
 - ii. *Anas platyrhynchos*, Mallard duck;
 - iii. *Colinus virginianus*, Northern bobwhite, subject to the restriction specified under subsection (D); and
 - iv. *Phasianus colchicus*, Ringneck and White-wing pheasant.
- c. A person is not required to possess a hunting license in order to participate in a field trial event held under the provisions of this Section.
- d. A captive pen-reared game bird released under a Game Bird Field Trial license may be taken with any method designated under R12-4-304.
- e. The Game Bird Field Trial license is valid for no more than ten consecutive days.
4. Game Bird Field Training:
- a. Authorizes a license holder to:
 - i. Release and take released live captive pen-reared game birds specified on the license for the purpose of training a dog or raptor to hunt game birds; and
 - ii. Import, possess, purchase within the State, and transport the captive pen-reared game birds specified on the license; and
 - iii. Export, gift, kill, or transport any captive pen-reared game bird possessed under the license.
 - b. The following captive pen-reared game bird species may be possessed by a Game Bird Field Training license holder:
 - i. *Alectoris chukar*, Chukar;
 - ii. *Anas platyrhynchos*, Mallard duck;
 - iii. *Colinus virginianus*, Northern bobwhite, subject to the restriction specified under subsection (D)(2)(b);
 - iv. *Phasianus colchicus*, Ringneck and White-wing pheasant.
 - c. A person is not required to possess a hunting license when taking a captive pen-reared game bird released under the provisions of this Section.
 - d. A captive pen-reared game bird released under a Game Bird Field Training license may be taken with any method designated under R12-4-304.
 - e. The Game Bird Field Training license expires on December 31 each year.
- B.** In addition to the requirements established under this Section, a game bird license holder shall comply with the special license requirements established under R12-4-409.
- C.** The license holder shall be responsible for compliance with all applicable regulatory requirements. The game bird license does not:
1. Exempt the license holder from any municipal, county, state, or federal codes, ordinances, statutes, rules, or regulations; or
 2. Authorize the license holder to engage in authorized activities using federally-protected wildlife, unless the license holder possesses a valid license, permit, or other form of documentation issued by the United States authorizing the license holder to use that wildlife in a manner consistent with the special license.
- D.** The Department shall deny a game bird license to a person who fails to meet the requirements under R12-4-409 or this Section. The Department shall provide the written notice established under R12-4-409(F)(4) to the applicant stating the reason for the denial. The person may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10. In addition to the requirements and criteria established under R12-4-409(F)(1) through (4), the Department may deny a game bird license when:
1. The applicant proposes to release captive pen-reared game birds:
 - a. At a location where an established wild population of the same species exists.
 - b. During nesting periods of upland game birds or waterfowl that nest in the area.
 2. The applicant requests a license:
 - a. For the sole purpose described under subsection (A)(1) and proposes to possess more than 50 captive pen-reared game birds at any one time.
 - b. To possess Northern bobwhites, *Colinus virginianus*, in any one of the following game management units, as described under R12-4-108: 34A, 36A, 36B, and 36C.
 3. The Department determines the:
 - a. Authorized activity listed under this Section may pose a threat to native wildlife, wildlife habitat, or public health or safety.
 - b. Escape of any species listed on the application may pose a threat to native wildlife or public health or safety.
 - c. Release of captive pen-reared game birds may interfere with a wildlife or habitat restoration program.
- E.** A person applying for a game bird license shall submit an application to the Department. A person applying for multiple Game Bird Field Trial licenses shall submit a separate application for each date and location where a competition will occur. The application is furnished by the Department and is available at any Department office and on the Department's website. An applicant shall provide the following information on the application:
1. The applicant's information:
 - a. Name;
 - b. Mailing address, when applicable;
 - c. Physical address;
 - d. Telephone number; and
 - e. Department ID number, when applicable;
 2. For captive pen-reared game birds to be used under the license:
 - a. Common name of game bird species;
 - b. Number of animals for each species; and
 - c. When the applicant is renewing a Game Bird Hobby or Shooting Preserve license, the species and number of animals for each species currently held in captivity under the license;
 3. The type of game bird license:
 - a. Game Bird Hobby;
 - b. Game Bird Shooting Preserve;
 - c. Game Bird Field Trial; or
 - d. Game Bird Field Training;
 4. For each location where captive pen-reared game birds will be held, the owner's:
 - a. Name;
 - b. Mailing address, when applicable;
 - c. Telephone number; and
 - d. Physical address or general location description and Global Positioning System location, when available;
 5. For each location where captive pen-reared game birds will be released, the land owner's or agency's:
 - a. Name;
 - b. Mailing address, when applicable;

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- c. Telephone number; and
 - d. Physical address or general location description and Global Positioning System location, when available; and
6. For each captive pen-reared game bird supplier from whom the applicant will obtain game birds, the supplier's:
 - a. Name;
 - b. Mailing address; and
 - c. Telephone number;
 7. An applicant who is applying for a Game Bird Shooting Preserve or Field Trial license and intends to use the captive pen-reared game birds for a commercial purpose shall also provide the applicant's business:
 - a. Name;
 - b. Mailing address; and
 - c. Telephone number;
 8. An applicant who intends to use the captive pen-reared game birds for an activity affiliated with a sponsoring organization shall also provide the organization's:
 - a. Name;
 - b. Mailing address; and
 - c. Telephone number of the organization chair or local chapter;
 9. An applicant who is applying for a Game Bird Field Trial license shall also specify the range of dates within which the field trial event will take place, not to exceed a 10-day period;
 10. An applicant who is applying for a Game Bird Hobby or Game Bird Shooting Preserve license shall also provide a detailed description or diagram of the facilities where the applicant will hold captive pen-reared game birds and a description of how the facilities comply with the requirements established under R12-4-428 and any other captivity standards established under this Section;
 11. Any other information required by the Department; and
 12. The certification required under R12-4-409(B).
- F.** An applicant for a game bird license shall pay all applicable fees established under R12-4-412.
- G.** A game bird license holder shall:
1. Comply with all additional stipulations placed on the license by the Department, as authorized under R12-4-409(H).
 2. Allow the Department to conduct inspections of an applicant's or license holder's facility and records at any time before or during the license period to determine compliance with the requirements of this Article.
 3. Possess the license or legible copy of the license while conducting any activity authorized under the game bird license and present it for inspection upon the request of any Department employee or agent.
 4. Ensure each shipment of captive pen-reared game birds imported into the state is accompanied by a health certificate.
 - a. The certificate shall be issued no more than 30 days prior to the date on which the game birds are shipped.
 - b. A copy of the certificate shall be submitted to the Department prior to importation.
 5. Provide each person who transports captive pen-reared game birds taken under the game bird license with documentation that includes all of the following:
 - a. Name of the game bird license holder;
 - b. Game bird license number;
 - c. Date the captive pen-reared game bird was obtained;
 - d. Number of captive pen-reared game birds, by species; and
 - e. When the captive pen-reared game birds are being shipped:
 - i. Name of the person or common carrier transporting the shipment, and
 - ii. Name of the person receiving the shipment.
6. Maintain records of all captive pen-reared game birds possessed under the license for a period of three years. In addition to the information required under subsections (G)(5)(a) through (G)(5)(b), the records shall also include:
- a. The game bird license holder's:
 - i. Name;
 - ii. Mailing address;
 - iii. Telephone number; and
 - iv. Special license number;
 - b. Copies of the annual report required under subsection (H);
7. Dispose of captive pen-reared game birds only as authorized under this Section or as directed by the Department.
8. Conduct license activities solely at the locations and within the time-frames approved by the Department. A Game Bird License holder may request permission to amend the license to conduct activities authorized under the license at an additional location by submitting the application required under subsection (E) to the Department.
- H.** A game bird license holder shall submit an annual report to the Department before January 31 of each year for the previous calendar year. The report form is furnished by the Department.
1. A report is required regardless of whether or not activities were performed during the previous year.
 2. The game bird license becomes invalid if the annual report is not submitted to the Department by January 31 of each year.
 3. The Department shall not process the special license holder's renewal application until the annual report is received by the Department.
 4. The annual report shall include all of the following information, as applicable:
 - a. Number of all captive pen-reared game birds, by species and the date obtained;
 - b. Source of all captive pen-reared game birds and the date obtained;
 - c. Number of offspring propagated by all captive pen-reared game birds; and
 - d. For all captive pen-reared game birds disposed of by the license holder:
 - i. Number, species, and date of disposition; and
 - ii. Manner of disposition to include the names and addresses of persons to whom the wildlife was bartered, given, or sold, when authorized.
- I.** A game bird license holder shall comply with the requirements established under R12-4-428.
- J.** A game bird released under a game bird license and found outside of the location specified on the license shall become property of the State and is subject to the requirements prescribed under A.R.S. Title 17 and 12 A.A.C. 4, Article 3.

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 23 A.A.R. 2557, effective

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tive September 6, 2017 (Supp. 17-3).

R12-4-415. Repealed**Historical Note**

Adopted effective April 28, 1989 (Supp. 89-2). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Repealed by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

R12-4-416. Repealed**Historical Note**

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Repealed by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

R12-4-417. Wildlife Holding License

- A.** A wildlife holding license authorizes a person to display for educational purposes, euthanize, export, give away, import, photograph for commercial purposes, possess, propagate, purchase, or transport, restricted and nonrestricted live wildlife lawfully:
1. Held under a valid hunting or fishing license for a purpose listed under subsection (C),
 2. Collected under a valid scientific collecting license issued under R12-4-418,
 3. Obtained under a valid wildlife rehabilitation license issued under R12-4-423,
 4. Or as otherwise authorized by the Department.
- B.** A wildlife holding license expires on December 31 of the year issued, or, if the license holder is a representative of an institution, organization, or agency described under subsection (C)(4), upon termination of affiliation with that entity, whichever comes first.
- C.** A wildlife holding license is valid for the following purposes, only:
1. Advancement of science;
 2. Lawfully possess restricted live wildlife when it is:
 - a. Necessary to give humane treatment to restricted live wildlife that has been abandoned or permanently disabled, and is therefore unable to meet its own needs in the wild; or
 - b. Previously possessed under another special license and the primary purpose for that special license no longer exists;
 3. Promotion of public health or welfare;
 4. Provide education under the following conditions:
 - a. The applicant is an educator affiliated or partnered with an educational organization; and
 - b. The educational organization permits the use of live wildlife.
 5. Photograph for a commercial purpose live wildlife provided:
 - a. The wildlife will be photographed without posing a threat to other wildlife or the public, and
 - b. The photography will not adversely impact other affected wildlife in this state, or
 6. Wildlife management.
- D.** The Department shall deny an application for a wildlife holding license for the possession of cervids.
- E.** In addition to the requirements established under this Section, a wildlife holding license holder shall comply with the special license requirements established under R12-4-409.
- F.** The license holder shall be responsible for compliance with all applicable regulatory requirements. The wildlife holding license does not:
1. Exempt the license holder from any municipal, county, state, or federal codes, ordinances, statutes, rules, or regulations; or
 2. Authorize the license holder to engage in authorized activities using federally-protected wildlife, unless the license holder possesses a valid license, permit, or other form of documentation issued by the United States authorizing the license holder to use that wildlife in a manner consistent with the special license.
- G.** The Department shall deny a wildlife holding license to a person who fails to meet the requirements established under R12-4-409 or this Section, or when the person's wildlife holding privileges are suspended or revoked in any state. The Department shall provide the written notice established under R12-4-409(F)(4) to the applicant stating the reason for the denial. The person may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10. In addition to the requirements and criteria established under R12-4-409(F)(1) through (4), the Department shall deny a wildlife holding when:
1. It is in the best interest of the wildlife; or
 2. The issuance of the license will adversely impact other wildlife or their habitat in the state.
- H.** A person applying for a wildlife holding license shall submit an application to the Department. A separate application is required for each location where the applicant proposes to use wildlife. The application is furnished by the Department and is available at any Department office and online at www.azgfd.gov. The applicant shall provide the following information:
1. The applicant's information:
 - a. Name;
 - b. Mailing address;
 - c. Telephone number; and
 - d. Department ID number, when applicable;
 2. If the applicant will use the wildlife for a commercial purpose, the applicant's business:
 - a. Name;
 - b. Federal Tax Identification Number;
 - c. Mailing address; and
 - d. Telephone number;
 3. If the applicant will use wildlife for activities authorized by an educational or scientific institution that employs, contracts, or is similarly affiliated with the applicant, the institution's:
 - a. Name;
 - b. Mailing address; and
 - c. Telephone number;
 4. For wildlife to be used under the license:
 - a. Common name of the wildlife species;
 - b. Number of animals for each species;
 - c. When the application is for the use of multiple species, the applicant shall list each species and the number of animals for each species; and
 - d. When the applicant is renewing the wildlife holding license, the species and number of animals for each species currently held in captivity under the license;
 5. For wildlife to be used for educational purposes:
 - a. The affiliated educational institution's:
 - i. Name;
 - ii. Federal Tax Identification Number;
 - iii. Mailing address; and

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- iv. Telephone number of the educational institution;
 - b. A copy of the established curriculum utilizing sound educational objectives; and
 - c. A plan for how the applicant will address any safety concerns associated with the use of live wildlife in a public setting.
6. For each location where the applicant proposes to hold the wildlife, the owner's:
 - a. Name;
 - b. Mailing address;
 - c. Telephone number; and
 - d. Physical location description to include the Global Positioning System location or Universal Transverse Mercator coordinates;
 7. A detailed description and diagram, or photographs, of the facilities where the applicant will hold the wildlife and a description of how the facilities comply with the requirements established under R12-4-428, and any other captivity standards that may be established under this Section;
 8. The dates that the applicant will begin and end holding wildlife;
 9. A clear description of how the applicant intends to dispose of the wildlife once the proposed activity for which the license was issued ends;
 10. Any other information required by the Department; and
 11. The certification required under R12-4-409(C).
 12. For subsection (H)(7), the Department may, at its discretion, accept documented current certification or approval by the applicant's institutional animal care and use committee or similar committee in lieu of the description, diagram, and photographs of the facilities.
- I.** In addition to the requirements listed under subsection (H), at the time of application, an applicant for a wildlife holding license shall also submit:
1. Evidence of lawful possession, as defined under R12-4-401;
 2. A statement of the applicant's experience in handling and providing care for the wildlife to be held or experience relevant to handling or providing care for wildlife;
 3. A written proposal that contains all of the following information:
 - a. A description of the activity the applicant intends to perform under the license;
 - b. Purpose for the proposed activity;
 - c. The contribution the proposed activity will make to one or more of the primary purposes listed under subsection (C).
 - d. For an applicant who wishes to possess restricted live wildlife for the purpose of providing humane treatment, a written explanation stating why the wildlife is unable to meet its own needs in the wild and the following information for the licensed veterinarian who will provide care for the wildlife:
 - i. Name;
 - ii. Mailing address; and
 - iii. Telephone number;
- J.** An applicant for a wildlife holding license shall pay all applicable fees required under R12-4-412.
- K.** A wildlife holding license holder shall:
1. Comply with all additional stipulations placed on the license by the Department, as authorized under R12-4-409(H).
 2. Allow the Department to conduct inspections of an applicant's or license holder's facility and records at any time before or during the license period to determine compliance with the requirements of this Article.
3. Possess the license or legible copy of the license while conducting any activity authorized under the wildlife holding license and presents it for inspection upon the request of any Department employee or agent.
 4. Permanently mark any restricted live wildlife used for lawful activities under the authority of the license, when required by the Department.
 5. Ensure that a copy of the license accompanies any transportation or shipment of wildlife made under the authority of the license.
 6. Surrender wildlife held under the license to the Department upon request.
- L.** A wildlife holding license holder shall submit an annual report to the Department before January 31 of each year for the previous calendar year or as indicated under subsection (O). The report form is furnished by the Department.
1. A report is required regardless of whether or not activities were performed during the previous year.
 2. The wildlife holding license becomes invalid if the annual report is not submitted to the Department by January 31 of each year.
 3. The Department will not process the special license holder's renewal application until the annual report is received by the Department.
 4. The annual report shall include all of the following information, as applicable:
 - a. A list of animals held during the year, the list shall be by species and include the source and date on which the wildlife was acquired.
 - b. The permanent mark or identifier of the wildlife, such as name, number, or another identifier for each animal held during the year, when required by the Department. This designation or identifier shall be provided with other relevant reported details for the holding or disposition of the individual animal;
 - c. Whether the wildlife is alive or dead.
 - d. The current location of the wildlife.
 - e. A list of all educational displays where the wildlife was utilized to include the date, location, organization or audience, approximate attendance, and wildlife used.
- M.** A wildlife holding license holder may authorize an agent to assist the license holder in conducting activities authorized under the wildlife holding license, provided the agent's wildlife privileges are not suspended or revoked in any state.
1. The license holder shall obtain written authorization from the Department before allowing a person to act as an agent.
 2. The license holder shall notify the Department in writing within 10 calendar days of terminating any agent.
 3. The Department may suspend or revoke the license holder's license if an agent violates any requirement of this Section or Article or any stipulations placed upon the license.
 4. An agent may possess wildlife for the purposes outlined under subsection (C), under the following conditions:
 - a. The agent shall possess evidence of lawful possession, as defined under R12-4-401, for all wildlife possessed by the agent;
 - b. The agent shall return the wildlife to the primary license holder's facility within two days of receiving the wildlife.
- N.** A wildlife holding license holder shall not barter, give as a gift, loan for commercial activities, offer for sale, sell, trade, or

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dispose of any restricted live wildlife, offspring of restricted live wildlife, or their parts except as stipulated on the wildlife holding license or as directed in writing by the Department.

- O. A wildlife holding license is no longer valid once the primary purpose for which the license was issued, as prescribed in subsection (C), no longer exists. When this occurs, the wildlife holding license holder shall immediately submit the annual report required under (L) to the Department.
- P. A wildlife license holder shall comply with the requirements established under R12-4-409, R12-4-428, and R12-4-430.

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 211, effective January 1, 2000 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 3186, effective August 30, 2003 (Supp. 03-3). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

R12-4-418. Scientific Collecting License

- A. A scientific collecting license allows a person to conduct any of the following activities with live wildlife when specified on the license:
 1. Display,
 2. Photograph for noncommercial purposes,
 3. Possess,
 4. Propagate,
 5. Take,
 6. Transport, and
 7. Use for educational purposes.
- B. The Department issues three types of scientific collecting licenses:
 1. Personal,
 2. Consultant, and
 3. Government, which includes educational and research institutions.
- C. A person may apply for a scientific collecting license only when the license is requested for:
 1. The purpose of wildlife management, gathering information valuable to the maintenance of wild populations, education, the advancement of science, or promotion of the public health or welfare;
 2. A purpose that is in the best interest of the wildlife or the species, will not adversely impact other affected wildlife in this state, and may be authorized without posing a threat to wildlife or public safety; and
 3. A purpose that does not unnecessarily duplicate previously documented projects.
- D. A scientific collecting license expires on December 31 each year.
- E. For the protection of wildlife or public safety, the Department has the authority to take any one or more of the following actions:
 1. Rescind or modify any method of take authorized by the license;
 2. Restrict the number of animals for each species or other taxa the license holder may take under the license;
 3. Restrict the age, condition, or location of wildlife the license holder may take under the license; or
 4. Deny or substitute the number of specimens and taxa requested on an application.
- F. The license holder shall be responsible for compliance with all applicable regulatory requirements. The scientific collecting license does not:
 1. Exempt the license holder from any municipal, county, state, or federal codes, ordinances, statutes, rules, or regulations; or
 2. Authorize the license holder to engage in authorized activities using federally-protected wildlife, unless the license holder possesses a valid license, permit, or other form of documentation issued by the United States authorizing the license holder to use that wildlife in a manner consistent with the special license.
- G. The Department may deny a scientific collecting license to a person who fails to meet the requirements established under R12-4-409 or this Section, or when the person's scientific collecting privileges are suspended or revoked in any state. The Department shall provide the written notice established under R12-4-409(F)(4) to the applicant stating the reason for the denial. The person may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10. In addition to the requirements and criteria established under R12-4-409(F)(1) through (4), the Department shall deny a scientific collecting license when it is in the best interest of the wildlife or public safety.
- H. A person applying for a scientific collecting license shall submit an application to the Department. A separate application is required for each location where the applicant proposes to use wildlife. The application is furnished by the Department and is available from any Department office, and online at www.azgfd.gov. A person applying for a scientific collecting license shall provide the following information on the application:
 1. The applicant's information:
 - a. Name;
 - b. Mailing address;
 - c. Telephone number; and
 - d. Department ID number; when applicable;
 2. If the applicant will use wildlife for activities authorized by a scientific, educational, or government institution, organization, or agency that employs, contracts, or is similarly affiliated with the applicant, the applicant shall provide the institution's:
 - a. Name;
 - b. Federal Tax Identification Number;
 - c. Mailing address;
 - d. Telephone number of the institution; and
 - e. The applicant's title or a description of the nature of affiliation with the institution or organization;
 3. When the applicant is renewing the scientific collecting license, the species and number of animals for each species currently held in captivity;
 4. For each the location where the wildlife will be held, the land owner's:
 - a. Name;
 - b. Mailing address;
 - c. Telephone number; and
 - d. Physical location description to include the Global Positioning System location or Universal Transverse Mercator coordinates;
 5. A detailed description and diagram, or photographs, of the facilities where the applicant will hold the wildlife and a description of how the facilities comply with the requirements established under R12-4-428, and any other captivity standards that may be established under this Section;
 6. Any other information required by the Department; and
 7. The certification required under R12-4-409(C).
 8. For subsection (H)(5), the Department may, at its discretion, accept documented current certification or approval

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- by the applicant's institutional animal care and use committee or similar committee in lieu of the description, diagram, and photographs of the facilities.
- I.** In addition to the requirements listed under subsection (H), at the time of application, an applicant for a scientific collecting license shall also submit a written proposal. The written proposal shall contain all of the following information:
1. List of activities the applicant intends to perform under the license;
 2. Purpose for the use of wildlife as established under subsection (C);
 3. When the applicant intends to use wildlife for educational purposes, the proposal shall also include the:
 - a. Minimum number of presentations the applicant anticipates to provide under the license
 - b. Name, title, address, and telephone number of persons whom the applicant has contacted to offer educational presentations; and
 - c. Number of specimens the applicant already possesses for any species requested on the application;
 4. Applicant's relevant qualifications and experience in handling and, when applicable, providing care for the wildlife to be held under the license;
 5. Methods of take that the applicant will use, to include:
 - a. Justification for using the method, and
 - b. Proposed method of disposing wildlife taken under the license and any subsequent offspring, when applicable;
 6. Number of animals for each species that will be used under the license;
 7. Locations where collection will take place;
 8. Names and addresses of any agents who will assist the applicant in carrying out the activities described in the proposal.
 9. Project completion date; and
 10. Whether the applicant intends to publish the project or its findings.
- J.** An applicant for a scientific collecting license shall pay all applicable fees required under R12-4-412.
- K.** A scientific collecting license holder shall:
1. Comply with all additional stipulations placed on the license by the Department, as authorized under R12-4-409(H).
 2. Possess the license or legible copy of the license while conducting any activity authorized under the scientific collecting license and presents it for inspection upon the request of any Department employee or agent.
 3. Notify the Department in writing within 10 calendar days of terminating any agent.
 4. Use the most humane and practical method possible prescribed under R12-4-304, R12-4-313, or as directed by the Department in writing.
 5. Conduct activities authorized under the scientific collecting license only at the locations and time periods specified on the scientific collecting license.
 6. Dispose of wildlife, wildlife parts, or offspring, only as directed by the Department.
- L.** A scientific collecting license holder shall not exhibit any wildlife held under the license, unless the person also possesses a zoo license authorized under R12-4-420.
- M.** A scientific collecting license holder may request authorization to allow an agent to assist the license holder in carrying out activities authorized under the scientific collecting license by submitting a written request to the Department.
1. An applicant may request the ability to allow a person to act as an agent on the applicant's behalf, provided:
 - a. An employment or supervisory relationship exists between the applicant and the agent, and
 - b. The agent's privilege to take or possess live wildlife is not suspended or revoked in any state.
 2. The license holder shall obtain approval from the Department prior to allowing the agent assist in any activities.
 3. The license holder is liable for all acts the agent performs under the authority of this Section.
 4. The Department, acting on behalf of the Commission, may suspend or revoke a license for violation of this Section by an agent.
 5. The license holder shall ensure the agent possesses a legible copy of the license while conducting any activity authorized under the scientific collecting license and presents it for inspection upon the request of any Department employee or agent.
- N.** A scientific collecting license holder may submit to the Department a written request to amend the license to add or delete an agent, location, project, or other component documented on the license at any time during the license period.
- O.** A scientific collecting license holder shall submit an annual report to the Department before January 31 of each year. The report form is furnished by the Department.
1. A report is required regardless of whether or not activities were performed during the previous year.
 2. The scientific collecting license becomes invalid if the annual report is not submitted to the Department by January 31 of each year.
 3. The Department will not process the special license holder's renewal application until the annual report is received by the Department.
 4. The Department may stipulate submission of additional interim reports upon license application or renewal.
- P.** A scientific collecting license holder who wishes to permanently hold wildlife species collected under the license in Arizona that will no longer be used for activities authorized under the license shall apply for and obtain a wildlife holding license in compliance with R12-4-417 or another appropriate special license.

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 7 A.A.R. 2732, effective July 1, 2001 (Supp. 01-2). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

R12-4-419. Repealed**Historical Note**

Adopted effective April 28, 1989 (Supp. 89-2). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Repealed by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

R12-4-420. Zoo License

- A.** With the exception of all live cervids, which shall not be imported, transported, or possessed except as allowed under R12-4-430, a zoo license allows an individual to perform all of the following: exhibit, display for educational purposes, import, purchase, export, possess, propagate, euthanize, transport, give away, offer for sale, sell, or trade restricted live wildlife and other Arizona wildlife legally possessed, subject to the following restrictions:

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1. A zoo license holder shall hold all wildlife possessed in the facilities specified on the license except when the wildlife is transported to or from a temporary exhibit. A temporary exhibit shall not exceed 60 consecutive days at any one location.
 2. A zoo license holder shall only dispose of restricted live wildlife in this state by selling, giving, or trading it to another zoo licensed under this Section, to an appropriate special license holder such as a game farm licensed under R12-4-413, to a medical or scientific research facility exempted under R12-4-407, by exporting it to a zoo that is certified by the American Zoo and Aquarium Association, or as directed by the Department.
 3. A zoo license holder shall not accept any wildlife that is donated, purchased, or otherwise obtained without accompanying evidence of lawful possession.
 4. A zoo license holder shall dispose of all wildlife obtained under a scientific collecting permit or wildlife that has been loaned to the zoo by the Department only as directed in writing by the Department.
 5. A zoo license holder shall hold wildlife in such a manner as to prevent it from escaping from the facilities specified on the license, and to prevent the entry of unauthorized individuals or other wildlife.
- B.** The Department shall issue a zoo license only for the following purposes:
1. The advancement of science, wildlife management, or promotion of public health or welfare;
 2. Education; or
 3. Conservation, or maintaining a population of wildlife threatened with extinction in the wild.
- C.** An applicant for a zoo license shall apply on a form provided by the Department and available from any Department office. The applicant shall provide the following information:
1. Name, address, telephone number, birthdate, physical description, and Department ID number (if applicable) of the applicant;
 2. If the applicant will use the wildlife for a commercial purpose, the name, address, and telephone number of the applicant's business. If the applicant will use wildlife for activities authorized by an educational or scientific institution that employs, contracts, or is similarly affiliated with the applicant, the applicant shall provide the name, address, and telephone number of the institution;
 3. The wildlife species and the number of animals per species that will be held under the license. The list shall include scientific and common names for all wildlife held;
 4. An applicant for a zoo license shall include a typewritten, computer or word processor printed, or legibly handwritten proposal that describes the following:
 - a. How the facility or operation meets the definition of a zoo, as stated in A.R.S. § 17-101; and
 - b. The purpose of the license. Acceptable purposes of a zoo license are listed in subsection (B);
 5. If the applicant is renewing the zoo license, the species and number of animals per species that are currently in captivity, and evidence of lawful possession as defined in A.R.S. § 17-101;
 6. Proof of current licensing by the United States Department of Agriculture under 9 CFR Subchapter A, Animal Welfare;
 7. The name, address, and telephone number of the zoo where the wildlife will be held. If the applicant applies to hold wildlife in more than one location, the applicant shall submit a separate application for each location;
 8. A detailed description or diagram of the facilities where the applicant will hold the wildlife, and a description of how the facilities comply with R12-4-428, and any other captivity standards that may be prescribed by this Section. The Department shall not approve a license application until the wildlife holding facility satisfies a Department inspection; and
 9. The applicant's signature and the date of signing. By signing the application, the applicant attests that the information they have provided is true and correct to their knowledge and that the applicant's live wildlife privileges are not revoked in this state, any other state, or by the United States.
- D.** The Department shall issue a zoo license in compliance with R12-4-106. If the Department denies the application for a zoo license, the Department shall proceed as prescribed by R12-4-409(D). The Department shall issue a license for the purposes stated in subsection (B) if:
1. It is in the best interest of the wildlife, and
 2. Issuance of the license will not adversely impact other wildlife in the state.
- E.** A zoo license holder shall clearly display an entrance sign that states the days of the week and hours when the facility is open for viewing by the general public.
- F.** A zoo license holder shall maintain a record of each animal obtained under subsection (A)(4) for three years following the date of disposition. The record shall include the species, source of the wildlife, date received, any Department approval authorizing acquisition, and the date and method of disposition.
- G.** Before January 31 of each year, a zoo license holder shall file a written report on activities performed under the license for the previous calendar year. A zoo license holder shall submit an annual report to the Department in compliance with R12-4-409(O). The report shall summarize the current species inventory, and acquisition and disposition of all wildlife held under the license.
- H.** A zoo license holder may not add restricted live wildlife as specified in R12-4-406 to the license without making a written request to and receiving approval from the Department.
- I.** A zoo license holder is subject to R12-4-409, R12-4-428, and R12-4-430.
- J.** A zoo license holder shall:
1. Comply with all additional stipulations placed on the license by the Department, as authorized under R12-4-409(H).
 2. Allow the Department to conduct inspections of an applicant's or license holder's facility and records at any time before or during the license period to determine compliance with the requirements of this Article.
 3. Ensure each facility is inspected by the attending veterinarian at least once every year.
 4. Hold all wildlife in such a manner designed to prevent wildlife from escaping from the facility specified on the license.
 5. Hold all wildlife in a manner designed to prevent the entry of unauthorized persons or other wildlife.
 6. Hold all wildlife lawfully possessed under the zoo license in the facility specified on the license, except when transporting the wildlife:
 - a. To or from a temporary exhibit;
 - b. For medical treatment; or
 - c. Other activities approved by the Department in writing.

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7. Ensure a temporary exhibit shall not exceed 60 consecutive days at any one location, unless approved by the Department in writing.
 8. Clearly display a sign at the facility's main entrance that states the days of the week and hours when the facility is open for viewing by the general public.
 9. Ensure all wildlife held under the license that has the potential to come into contact with the public is tested for zoonotic diseases appropriate to the species no more than 12 months prior to importation or display. Any wildlife that tests positive for a zoonotic disease shall not be imported into this state without review and approval by the Department in writing.
 10. Dispose of the following wildlife only as directed by the Department:
 - a. Wildlife obtained under a scientific collecting permit; or
 - b. Wildlife loaned to the zoo by the Department.
 11. Maintain records of all wildlife possessed under the license for a period of three years following the date of disposition. In addition to the information required under subsections (H)(1) through (H)(3), the records shall also include:
 - a. Number of all restricted live wildlife, by species and the date it was obtained;
 - b. Source of all restricted live wildlife and the date it was obtained;
 - c. Number of offspring propagated by all restricted live wildlife; and
 - d. For all restricted live wildlife disposed of by the license holder:
 - i. Number, species, and date of disposition; and
 - ii. Method of disposition.
- K.** A zoo license holder shall not:
1. Accept any wildlife that is donated, purchased, or otherwise obtained without accompanying evidence of lawful possession.
 2. Import into this state any wildlife that may come into contact with the public and tests positive for zoonotic disease, as established under subsection (J)(9).
- L.** A zoo license holder shall dispose of restricted live wildlife in this state by:
1. Giving, selling, or trading the wildlife to:
 - a. Another zoo licensed under this Section;
 - b. An appropriate special license holder or appropriately licensed or permitted facility in another state or country authorized to possess the wildlife being disposed;
 2. Giving selling, or donating the wildlife to a medical or scientific research facility exempt from special license requirements under R12-4-407;
 3. Exporting the wildlife to a zoo certified by the Association of Zoos and Aquariums or Zoological Association of America; or
 4. As otherwise directed by the Department.
- M.** A zoo license holder shall submit an annual report to the Department before January 31 of each year for the previous calendar year. The report form is furnished by the Department.
1. A report is required regardless of whether or not activities were performed during the previous year.
 2. The zoo license becomes invalid if the annual report is not submitted to the Department by January 31 of each year.
 3. The Department will not process the special license holder's renewal application until the annual report is received by the Department.
4. The report shall summarize the current species inventory, and acquisition and disposition of all wildlife held under the license.
- N.** A zoo license holder shall request the authority to possess a new species of restricted live wildlife by submitting a written request to the Department prior to acquisition, unless the wildlife was:
1. Held under the previous year's zoo license and included in the previous annual report, or
 2. Authorized in advance by the Department in writing.
- O.** A zoo license holder shall comply with the requirements established under R12-4-409, R12-4-426, R12-4-428, and R12-4-430, as applicable.

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 7 A.A.R. 2732, effective July 1, 2001 (Supp. 01-2). Amended by final rulemaking at 9 A.A.R. 3186, effective August 30, 2003 (Supp. 03-3). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4). Subsections (J) through (O) omitted in supplement 15-4; error corrected at the request of the Commission at R18-91 (Supp. 18-1).

R12-4-421. Wildlife Service License

- A.** A wildlife service license authorizes a person to provide, advertise, or offer assistance in removing the live wildlife listed below to the general public. For the purposes of this Section, the following wildlife, as defined under A.R.S. § 17-101(B), are designated live wildlife:
1. Furbearing animals;
 2. Javelina (*Pecari tajacu*);
 3. Nongame animals;
 4. Predatory animals; and
 5. Small game.
- B.** A wildlife service license is not required when conducting pest control removal services authorized under A.R.S. § Title 32, Chapter 22 for the following wildlife not protected under federal regulation:
1. Rodents, except those in the family Sciuridae;
 2. European starlings;
 3. Peach-faced love birds;
 4. House sparrows;
 5. Eurasian collared-doves; and
 6. Any other non-native wildlife species.
- C.** A wildlife service license allows a person to conduct activities that facilitate the removal and relocation of live wildlife listed under subsection (A) when the wildlife causes a nuisance, property damage, poses a threat to public health or safety, or if the health or well-being of the wildlife is threatened by its immediate environment. Authorized activities include, but are not limited to, capture, removal, transportation, and relocation.
- D.** The wildlife service license expires on December 31 each year.
- E.** An employee of a governmental public safety agency is not required to possess a wildlife service license when the employee is acting within the scope of the employee's official duties.
- F.** In addition to the requirements established under this Section, a wildlife service license holder shall comply with the special license requirements established under R12-4-409.

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- G.** The license holder shall be responsible for compliance with all applicable regulatory requirements; the wildlife service license does not:
1. Exempt the license holder from any municipal, county, state, or federal codes, ordinances, statutes, rules, or regulations; or
 2. Authorize the license holder to engage in authorized activities using federally-protected wildlife, unless the license holder possesses a valid license, permit, or other form of documentation issued by the United States authorizing the license holder to use that wildlife in a manner consistent with the special license.
- H.** The Department shall deny a wildlife service license to a person who fails to meet the requirements established under R12-4-409 or this Section or when the person's wildlife service privileges are suspended or revoked in any state. The Department shall provide the written notice established under R12-4-409(F)(4) to the applicant stating the reason for the denial. The person may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.
- I.** A person applying for a wildlife service license shall submit an application to the Department. The application is furnished by the Department and is available from any Department office and online at www.azgfd.gov. An applicant shall provide the following information on the application:
1. The applicant's information:
 - a. Name;
 - b. Mailing address;
 - c. Telephone number;
 - d. Physical description, to include the applicant's eye color, hair color, height, and weight; and;
 - e. Department ID number, when applicable;
 2. If the applicant will perform license activities for a commercial purpose, the applicant's business:
 - a. Name;
 - b. Federal Tax Identification Number;
 - c. Mailing address;
 - d. Telephone number; and
 - e. Hours and days of the week the applicant will be available for service;
 3. The designated wildlife species or groups of species listed under subsection (A) that will be used under the license;
 4. The methods that the wildlife license holder will use to perform authorized activities;
 5. The general geographic area where services will be performed;
 6. Any other information required by the Department; and
 7. The certification required under R12-4-409(C).
- J.** In addition to the requirements listed under subsection (I), at the time of application, an applicant for a wildlife service license shall also submit:
1. Proof the applicant has a minimum of six months full-time employment or volunteer experience handling wildlife of the species or groups designated on the application; and
 2. A written proposal that contains all of the following information:
 - a. Applicant's experience in the capture, handling, and removal of wildlife;
 - b. Specific species the applicant has experience capturing, handling, or removing;
 - c. General location and dates when the activities were performed;
 - d. Methods used to carry out the activities; and
 - e. The methods used to dispose of the wildlife.
- K.** When renewing a license without change to the species or species groups authorized under the current license, the wildlife service license holder may reference supporting materials previously submitted in compliance with subsection (J).
- L.** An applicant for a wildlife service license shall pay all applicable fees established under R12-4-412.
- M.** A wildlife service license holder shall:
1. Comply with all additional stipulations placed on the license by the Department, as authorized under R12-4-409(H).
 2. Facilitate the removal and relocation of designated wildlife in a manner that:
 - a. Is least likely to cause injury to the wildlife; and
 - b. Will prevent the wildlife from coming into contact with the general public.
 3. Obtain special authorization from the Department regional office that has jurisdiction over the area where the activities will be conducted when performing any activities involving javelina.
 4. Release captured designated wildlife only as follows:
 - a. Without immediate threat to the animal or potentially injurious contact with humans;
 - b. During an ecologically appropriate time of year;
 - c. Into a suitable habitat;
 - d. In the same geographic area as the animal was originally captured, except that birds may be released at any location statewide within the normal range of that species in an ecological suitable habitat; and
 - e. In an area designated by the Department regional office that has jurisdiction over the area where it was captured.
 5. Euthanize the wildlife using the safest, quickest, and most humane method available.
 6. Dispose of all wildlife that is euthanized or that otherwise dies while possessed under the license by burial or incineration within 30 days of death, unless otherwise directed by the Department.
 7. Possess the license or legible copy of the license while conducting any wildlife service activity and presents it for inspection upon the request of any Department employee or agent.
 8. Inform the Department in writing within five working days of any change in telephone number, area of service, or business hours or days.
- N.** A wildlife service license holder may submit to the Department a written request to amend the license to add or delete authority to control and release designated species of wildlife, provided the request meets the requirements of this Section.
- O.** A wildlife service license holder shall not:
1. Exhibit wildlife or parts of wildlife possessed under the license.
 2. Possess designated wildlife beyond the period necessary to transport and relocate or euthanize the wildlife.
 3. Retain any parts of wildlife.
- P.** A wildlife service license holder may:
1. Euthanize designated wildlife only when authorized by the Department.
 2. Give injured or orphaned wildlife to a wildlife rehabilitation license holder.
- Q.** A wildlife service license holder shall submit an annual report to the Department before January 31 of each year on activities performed under the license for the previous calendar year. The report form is furnished by the Department.
1. A report is required regardless of whether or not activities were performed during the previous year.

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2. The wildlife service license becomes invalid if the annual report is not submitted to the Department by January 31 of each year.
 3. The Department will not process the special license holder's renewal application until the annual report is received by the Department.
 4. The annual report shall provide a list of all services performed under the license to include:
 - a. The date and location of service;
 - b. The number and species of wildlife removed, and
 - c. The method of disposition for each animal removed, including the location and date of release.
- R. A wildlife service license holder shall comply with the requirements established under R12-4-409 and R12-4-428.

Historical Note

Adopted effective January 1, 1993; filed December 18, 1992 (Supp. 92-4). Amended by final rulemaking at 7 A.A.R. 2732, effective July 1, 2001 (Supp. 01-2). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

R12-4-422. Sport Falconry License

- A. In addition to the definitions provided under A.R.S. § 17-101, R12-4-101, and R12-4-401, and for the purposes of this Section, the following definitions apply:

"Abatement services" means the use of raptors possessed under a falconry permit for the control of nuisance species.

"Captive-bred raptor" means a raptor hatched in captivity.

"Hack" means the temporary release of a raptor into the wild to condition the raptor for use in falconry.

"Hybrid" has the same meaning as prescribed under 50 C.F.R. 21.3, revised October 1, 2013. This incorporation by reference contains no future editions or amendments. The incorporated material is available at any Department office, online at www.gpoaccess.gov, or may be ordered from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000.

"Imping" means using a molted feather to replace or repair a damaged or broken feather.

"Retrices" means a raptor's tail feathers.

"Sponsor" means a licensed General or Master falconer with a valid Arizona Sport Falconry license who has committed to mentoring an Apprentice falconer.

"Suitable perch" means a perch that is of the appropriate size and texture for the species of raptor using the perch.

"Wild raptor" means a raptor taken from the wild, regardless of how long the raptor is held in captivity or whether the raptor is transferred to another licensed falconer or other permit type.

- B. An Arizona Sport Falconry license permits a person to capture, possess, train, and transport a raptor for the purpose of sport falconry in compliance with the Migratory Bird Treaty Act and the Endangered Species Act of 1973.
1. The sport falconry license validates the appropriate license for hunting or taking quarry with a trained raptor. When taking quarry using a raptor, a person must possess a valid:
 - a. Sport falconry license, and
 - b. Appropriate hunting license.

2. The sport falconry license is valid until the third December from the date of issuance.
 3. A licensed falconer may capture, possess, train, or transport wild, captive-bred, or hybrid raptors, subject to the limitations established under subsections (H)(1), (H)(2), and (H)(3), as applicable.
- C. The Department shall comply with the licensing time-frame established under R12-4-106.
- D. A resident who possesses or intends to possess a raptor for the purpose of sport falconry shall hold an Arizona Sport Falconry license, unless the person is exempt under A.R.S. § 17-236(C) or possesses only raptors not listed under 50 C.F.R. Part 10.13, revised October 1, 2014, and no later amendments or editions. The incorporated material is available from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000, and is on file with the Department.
- E. In addition to the requirements established under this Section, a licensed falconer shall also comply with special license requirements established under R12-4-409.
- F. The license holder shall be responsible for compliance with all applicable regulatory requirements; the sport falconry license does not:
 1. Exempt the license holder from any municipal, county, state, or federal codes, ordinances, statutes, rules, or regulations;
 2. Authorize the license holder to engage in authorized activities using federally-protected wildlife, unless the license holder possesses a valid license, permit, or other form of documentation issued by the United States authorizing the license holder to use that wildlife in a manner consistent with the special license; or
 3. Authorize a licensed falconer to capture or release a raptor or practice falconry on public lands where prohibited or on private property without permission from the land owner or land management agency.
- G. The Department shall deny a sport falconry license to a person who fails to meet the requirements established under R12-4-409, R12-4-428, or this Section. The Department shall provide a written notice to an applicant stating the reason for the denial. The person may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.
- H. The Department may issue a Sport Falconry license for the following levels to an eligible person:
 1. Apprentice level license:
 - a. An Apprentice falconer shall:
 - i. Be at least 12 years of age; and
 - ii. Have a sponsor while practicing falconry as an apprentice. When a sponsorship is terminated, the apprentice is prohibited from practicing falconry until a new sponsor is acquired. After acquiring a new sponsor, an apprentice shall submit a written statement from the new sponsor to the Department within 30 days. The written statement shall meet the requirements established under subsection (K)(3)(a)(vi).
 - b. An Apprentice falconer may possess only one raptor at a time for use in falconry.
 - c. An Apprentice falconer is prohibited from possessing any:
 - i. Species listed under 50 C.F.R. 17.11, revised October 1, 2014, and subspecies,
 - ii. Raptor taken from the wild as a nestling,
 - iii. Raptor that has imprinted on humans,

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- iv. Bald eagle (*Haliaeetus leucocephalus*),
 - v. White-tailed eagle (*Haliaeetus albicilla*),
 - vi. Steller's sea-eagle (*Haliaeetus pelagicus*), or
 - vii. Golden eagle (*Aquila chrysaetos*).
 - viii. For the purposes of subsection (H)(1)(c)(i), this incorporation by reference contains no future editions or amendments. The incorporated material is available at any Department office, online at www.gpoaccess.gov, or may be ordered from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000.
2. General level license:
 - a. A General falconer shall:
 - i. Be at least 16 years of age; and
 - ii. Have practiced falconry as an apprentice falconer for at least two years, including maintaining, training, flying, and hunting with a raptor for at least four months in each year. An applicant cannot substitute any falconry school or educational program to shorten the two-year Apprentice period.
 - b. A General falconer may possess up to three raptors at a time for use in falconry.
 - c. A General falconer is prohibited from possessing a:
 - i. Bald eagle,
 - ii. White-tailed eagle,
 - iii. Steller's sea-eagle, or
 - iv. Golden eagle.
 3. Master level license:
 - a. A Master falconer shall have practiced falconry as a General falconer for at least five years using raptors possessed by that falconer.
 - b. A Master falconer may possess:
 - i. Any species of wild, captive-bred, or hybrid raptor.
 - ii. Any number of captive-bred raptors provided they are trained and used in the pursuit of wild game; and
 - iii. Up to three of the following species, provided the requirements established under subsection (H)(3)(d) are met: Golden eagle, White-tailed eagle, or Steller's Sea eagle.
 - c. A Master falconer is prohibited from possessing:
 - i. More than three eagles
 - ii. A bald eagle, or
 - iii. More than five wild caught raptors.
 - d. A Master falconer who wishes to possess an eagle shall apply for and receive approval from the Department before possessing an eagle for use in falconry. The licensed falconer shall submit the following documentation to the Department before a request may be considered:
 - i. Proof the licensed falconer has experience in handling large raptors such as, but not limited to, ferruginous hawks (*Buteo regalis*) and goshawks (*Accipter gentilis*);
 - ii. Information regarding the raptor species, to include the type and duration of the activity in which the experience was gained; and
 - iii. Written statements of reference from two persons who have experience handling or flying large raptors such as, but not limited to, eagles, ferruginous hawks, and goshawks. Each written statement shall contain a concise history of the author's experience with large raptors, and an assessment of the applicant's ability to care for and fly an eagle.
- I. A sponsor shall:
 1. Be at least 18 years of age;
 2. Have practiced falconry as a General falconer for at least two years;
 3. Sponsor no more than three apprentices during the same period of time;
 4. Notify the Department within 30 consecutive days after a sponsorship is terminated;
 5. Determine the appropriate species of raptor for possession by an apprentice; and
 6. Provide instruction pertaining to the:
 - a. Husbandry, training, and trapping of raptors held for falconry;
 - b. Hunting with a raptor; and
 - c. Relevant wildlife laws and regulations.
 - J. A falconer licensed in another state or country is exempt from obtaining an Arizona Sport Falconry license under R12-4-407(B)(9), unless remaining in Arizona for more than 180 consecutive days. A falconer licensed in another state or country and who remains in this state for more than the 180-day period shall apply for an Arizona Sport Falconry license in order to continue practicing sport falconry in this state. The falconer licensed in another state or country shall present a copy of the out-of-state or out-of-country falconry license, or its equivalent, to the Department upon request.
 1. A falconer licensed in another state shall:
 - a. Comply with all applicable state and federal falconry regulations,
 - b. Possess only those raptors authorized under the out-of-state sport falconry license, and
 - c. Provide a health certificate for each raptor possessed under the out-of-state sport falconry license when the raptor is present in this state for more than 30 consecutive days. The health certificate may be issued after the date of the interstate importation, but shall have been issued no more than 30 consecutive days prior to the interstate importation.
 2. A falconer licensed in another country may possess, train, and use for falconry only those raptors authorized under the out-of-country sport falconry license, provided the import of that species into the United States is not prohibited. This subsection does not prohibit the falconer from flying or training a raptor lawfully possessed by any other licensed falconer.
 3. A falconer licensed in another country is prohibited from leaving an imported raptor in this state, unless authorized under federal permit. The falconer shall report the death or escape of a raptor possessed by that falconer to the Department as established under subsection (O)(1) or prior to leaving the state, whichever occurs first.
 4. A falconer licensed in another country shall:
 - a. Comply with all applicable state and federal falconry regulations;
 - b. Comply with falconry licensing requirements prescribed by the country of licensure not in conflict with federal or state law;
 - c. Notify the Department no less than 30 consecutive days prior to importing a raptor into this state;
 - d. Provide a health certificate, issued no earlier than 30 consecutive days prior to the date of importation, for each raptor imported into this state; and
 - e. Attach two functioning radio transmitters to any raptor imported into this country by the falconer while flown free in this state by any falconer.

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- K.** A person applying for a Sport Falconry license shall submit an application to the Department. The application is furnished by the Department and is available at any Department office and online at www.azgfd.gov.
1. An applicant shall provide the following information on the application:
 - a. Falconry level desired;
 - b. Name;
 - c. Date of birth;
 - d. Mailing address;
 - e. Telephone number, when available;
 - f. Department I.D. number;
 - g. Applicant's physical description, to include the applicant's eye color, hair color, height, and weight;
 - h. Arizona Hunting license number, when available;
 - i. Number of years of experience as a falconer;
 - j. Current Falconry license level;
 - k. Physical address of a facility when the raptor is kept at another location, when applicable;
 - l. Information documenting all raptors possessed by the applicant at the time of application, to include:
 - i. Species;
 - ii. Subspecies, when applicable;
 - iii. Age;
 - iv. Sex;
 - v. Band or microchip number, as applicable;
 - vi. Date and source of acquisition; and
 - m. The certification required under R12-4-409(C);
 - n. Parent or legal guardian's signature, when the applicant is under the age of 18;
 - o. Date of application; and
 - p. Any other information required by the Department.
 2. An applicant shall certify that the applicant has read and is familiar with applicable state laws and rules and the regulations under 50 C.F.R. Part 13 and the other applicable parts in 50 C.F.R. Chapter I, Subchapter B and that the information submitted is complete and accurate to the best of their knowledge and belief.
 3. In addition to the information required under subsection (K)(1), a person applying for:
 - a. An Apprentice level license shall also provide the sponsor's:
 - i. Name,
 - ii. Date of birth,
 - iii. Mailing address,
 - iv. Department I.D. number,
 - v. Telephone number, and
 - vi. A written statement from the sponsor stating that the falconer agrees to sponsor the applicant.
 - b. A General level license shall also provide:
 - i. Information documenting the applicant's experience in maintaining falconry raptors, to include the species and period of time each raptor was possessed while licensed as an Apprentice falconer; and
 - ii. A written statement from the sponsor certifying that the applicant has practiced falconry at the Apprentice falconer level for at least two years, and maintained, trained, flown, and hunted with a raptor for at least four months in each year.
 - c. A Master level license shall certify that the falconer has practiced falconry as a General falconer for at least five years.
- L.** An applicant for any level Sport Falconry license shall pay all applicable fees established under R12-4-412.
- M.** The Department may inspect the applicant's raptor facilities, materials, and equipment to verify compliance with requirements established under R12-4-409(I), R12-4-428, and this Section before issuing a Sport Falconry license. The applicant or licensed falconer shall ensure all raptors currently possessed by the falconer and kept in the facility are present at the time of inspection.
1. Department may inspect a facility:
 - a. After a change of location, when the Department cannot verify the facility is the same facility as the one approved by a previous inspection, or
 - b. Prior to the acquisition of a new species or addition of another raptor when the previous inspection does not indicate the facilities can accommodate a new species or additional raptor.
 2. A licensed falconer shall notify the Department no more than five business days after changing the location of a facility.
 3. When a facility is located on property not owned by the licensed falconer, the falconer shall provide a written statement signed and dated by the property owner at the time of inspection. The written statement shall specify that the licensed falconer has permission to keep a raptor on the property and the property owner permits the Department to inspect the falconry facility at any reasonable time of day and in the presence of the licensed falconer.
 4. A licensed falconer shall ensure the facility:
 - a. Provides a healthy and safe environment,
 - b. Is designed to keep predators out,
 - c. Is designed to avoid injury to the raptor,
 - d. Is easy to access,
 - e. Is easy to clean, and
 - f. Provides access to fresh water and sunlight.
 5. In addition to the requirements established under R12-4-409(I) and R12-4-428:
 - a. A licensed falconer shall ensure facilities where raptors are held have:
 - i. A suitable perch that is protected from extreme temperatures, wind, and excessive disturbance for each raptor;
 - ii. At least one opening for sunlight; and
 - iii. Walls that are solid, constructed of vertical bars spaced narrower than the width of the body of the smallest raptor housed therein, or any other suitable materials approved by the Department.
 - b. A licensed falconer shall possess all of the following equipment:
 - i. At least one flexible, weather-resistant leash;
 - ii. One swivel appropriate to the raptor being flown;
 - iii. At least one water container, available to each raptor kept in the facility, that is at least two inches deep and wider than the length of the largest raptor using the container;
 - iv. A reliable scale or balance suitable for weighing raptors, graduated in increments of not more than 15 grams;
 - v. Suitable equipment that protects the raptor from extreme temperatures, wind, and excessive disturbance while transporting or housing a raptor when away from the permanent facility where the raptor is kept, and

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- vi. At least one pair of jesses constructed of suitable material or Alymeri jesses consisting of an anklet, grommet, and removable strap that attaches the anklet and grommet to a swivel. The falconer may use a one-piece jess only when the raptor is not being flown.
- 6. A licensed falconer may keep a falconry raptor inside the falconer's residence provided a suitable perch is supplied. The falconer shall ensure all flighted raptors kept inside a residence are tethered or otherwise restrained at all times, unless the falconer is moving the raptor into or out of the residence. This subsection does not apply to unflighted eyas, which do not need to be tethered or otherwise restrained.
- 7. A licensed falconer may keep multiple raptors together in one enclosure untethered only when the raptors are compatible with each other.
- 8. A licensed falconer may keep a raptor temporarily outdoors in the open provided the raptor is continually under observation by the falconer or an individual designated by the falconer.
- 9. A licensed falconer may keep a raptor in a temporary facility that the Department has inspected and approved for no more than 120 consecutive days.
- 10. A licensed falconer may keep a raptor in a temporary facility that the Department has not inspected or approved for no more than 30 consecutive days. The falconer shall notify the Department of the temporary facility prior to the end of the 30-day period. The Department may inspect a temporary facility as established under R12-4-409(I).
- N. Prior to the issuance of a Sport Falconry license, an applicant shall:
 - 1. Present proof of a previously held state-issued sport falconry license, or
 - 2. Correctly answer at least 80% of the questions on the Department administered written examination.
 - a. A person whose Sport Falconry license is expired more than five years shall take the examination. The Department shall issue to an eligible applicant a license for the sport falconry license type previously held by the applicant after the applicant correctly answers at least 80% of the questions on the written examination and presents proof of the previous Sport Falconry license.
 - b. A person who holds a falconry license issued in another country shall correctly answer at least 80% of the questions on the written examination. The Department shall determine the level of license issued based upon the applicant's documentation.
- O. A licensed falconer shall submit electronically a 3-186A form to report:
 - 1. Any of the following raptor possession changes to the Department no more than 10 business days after the occurrence:
 - a. Acquisition,
 - b. Banding,
 - c. Escape into the wild without recovery after 30 consecutive days have passed,
 - d. Death,
 - e. Microchipping,
 - f. Rebanding,
 - g. Release,
 - h. Take, or
 - i. Transfer.
 - 2. Upon discovering the theft of a raptor, a licensed falconer shall immediately report the theft of a raptor to the Department and USFWS by:
 - a. Contacting the Department's regional office within 48 hours; and
 - b. Submitting the electronic 3-186A form within 10 days.
- P. A licensed falconer shall print and maintain copies of all required electronic database submissions for each falconry raptor possessed by the falconer. The falconer shall retain copies of all submissions for a period of five years from the date on which the raptor left the falconer's possession.
- Q. A licensed falconer or a person with a valid falconry license, or its equivalent, issued by any state meeting federal falconry standards may capture a raptor for the purpose of falconry only when authorized by Commission Order.
 - 1. A falconer attempting to capture a raptor shall possess:
 - a. A valid Arizona Sport Falconry license or valid falconry license, or its equivalent, issued by another state, and
 - b. Any required Arizona hunt permit-tag issued to the licensed falconer for take of the authorized raptor, and
 - c. A valid Arizona hunting or combination license. A short-term combination hunting and fishing license is not valid for capturing a raptor under this subsection.
 - 2. An Apprentice falconer may take from the wild:
 - a. Any raptor not prohibited under subsection (H)(1)(c) that is less than one year of age, except nestlings or
 - b. An adult raptor.
 - 3. A General or Master falconer may take from the wild:
 - a. A raptor of any age, including nestlings, provided at least one nestling remains in the nest; or
 - b. An adult raptor.
 - 4. A licensed falconer shall take no more than two raptors from the wild for use in falconry each calendar year. For the purpose of take limits, a raptor is counted towards the licensed falconer's take limit by the falconer who originally captured the raptor.
 - 5. A falconer attempting to capture a raptor shall:
 - a. Not use stupefying substances;
 - b. Use a trap or bird net that is not likely to cause injury to the raptor;
 - c. Ensure that each trap or net the falconer is using is continually attended; and
 - d. Ensure that each trap used for the purpose of capturing a raptor is marked with the falconer's name, address, and license number.
 - 6. A licensed falconer shall report the injury of any raptor injured due to capture techniques to the Department. The falconer shall transport the injured raptor to a veterinarian or licensed rehabilitator and pay for the cost of the injured raptor's care and rehabilitation. After the initial medical treatment is completed, the licensed falconer shall either:
 - a. Keep the raptor and the raptor shall count towards the falconer's take and possession limit, or
 - b. Transfer the raptor to a permitted wildlife rehabilitator and the raptor shall not count against the falconer's take or possession limit.
 - 7. When a licensed falconer takes a raptor from the wild and transfers the raptor to another falconer who is present at a capture site, the falconer receiving the raptor is responsible for reporting the take of the raptor.
 - 8. A General or Master falconer may capture a raptor that will be transferred to another licensed falconer who is not

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- present at the capture site. The falconer who captured the raptor shall report the take of the raptor and the capture shall count towards the General or Master falconer's take limit. The General or Master falconer may then transfer the raptor to another falconer.
9. A General or Master falconer may capture a raptor for another licensed falconer who cannot attend the capture due to a long-term or permanent physical impairment. The licensed falconer with the physical impairment is responsible for reporting the take of the raptor and the raptor shall count against their take and possession limits.
 10. A licensed falconer may capture any raptor displaying a seamless metal band, or any other item identifying it as a falconry raptor, regardless of whether the falconer is prohibited from possessing the raptor. The falconer shall return the recaptured raptor to the falconer of record. The raptor shall not count towards the falconer's take or possession limits, provided the falconer reports the temporary possession of the raptor to the Department no more than five consecutive days after capturing the raptor.
 - a. When the falconer of record cannot or does not wish to possess the raptor, the falconer who captured the raptor may keep the raptor, provided the falconer is eligible to possess the species and may do so without violating any requirement established under this Section.
 - b. When the falconer of record cannot be located, the Department shall determine the disposition of the recaptured raptor.
 11. A licensed falconer may capture and shall report the capture of any raptor wearing a transmitter to the Department no more than five business days after the capture. The falconer shall attempt to contact the researcher or licensed falconer who applied the transmitter and facilitate the replacement or retrieval of the transmitter and raptor. The falconer may possess the raptor for no more than 30 consecutive days while waiting for the researcher or falconer to retrieve the transmitter and raptor. The raptor shall not count towards the falconer's take or possession limits, provided the falconer reports the temporary possession of the raptor to the Department no more than five consecutive days after capturing the raptor. The Department shall determine the disposition of a raptor when the researcher or falconer does not replace the transmitter or retrieve the raptor within the initial 30-day period.
 12. A licensed falconer may capture any raptor displaying a federal Bird Banding Laboratory (BBL) aluminum research band or tag, except a peregrine falcon (*Falco peregrinus*). A licensed falconer who captures a raptor wearing a research band or tag shall report the following information to BBL and the Department:
 - a. Species,
 - b. Band or tag number,
 - c. Location of the capture, and
 - d. Date of capture.
 - e. A person can report the capture of a raptor wearing a research band or tag to BBL by calling 1(800) 327-2263.
 13. A licensed falconer may recapture a falconer's lost or any escaped falconry raptor at any time. The Department does not consider the recapture of a wild falconry raptor as taking a raptor from the wild.
 14. When attempting to trap a raptor in Cochise, Graham, Pima, Pinal, or Santa Cruz counties, a licensed falconer shall:
 - a. Not begin trapping while a northern aplomado falcon (*Falco femoralis septentrionalis*) is observed in the vicinity of the trapping location.
 - b. Suspend trapping when a northern aplomado falcon arrives in the vicinity of the trapping location.
 15. In addition to the requirements in subsection (Q)(14), an apprentice falconer shall be accompanied by a General or Master falconer when attempting to capture a raptor in Cochise, Graham, Pima, Pinal, or Santa Cruz counties.
 16. A licensed Master falconer may take up to two golden eagles from the wild only as authorized under 50 C.F.R. part 22. The Master falconer may:
 - a. Capture an immature or sub-adult golden eagle, or
 - b. Take a nestling from its nest or a nesting adult golden eagle in a livestock depredation area if a biologist representing the agency responsible for declaring the depredation area determines the adult eagle is preying on livestock or wildlife and that any nestling of the adult will be taken by a falconer authorized to possess it.
 - c. The falconer shall inform the Department of the capture plans in person, in writing, or by telephone at least three business days before trapping is initiated. The falconer may send written notification to the Arizona Game and Fish Department's Law Enforcement Programs Coordinator at 5000 West Carefree Highway, Phoenix, Arizona 85086.
 17. A licensed falconer shall ensure any falconry activities the falconer is conducting do not cause unlawful take under the Endangered Species Act of 1973, 16 U.S.C. § 1531 et seq., or the Bald and Golden Eagle Protection Act, 16 U.S.C. §§ 668 through 668d. The Department or USFWS may provide information regarding where take is likely to occur. The falconer shall report the take of any federally listed threatened or endangered species or bald or golden eagle to the USFWS Arizona Ecological Services Field Office.
- R.** A licensed falconer shall comply with all of the following banding requirements:
1. A licensed falconer shall ensure the following raptors are banded after capture:
 - a. Northern Goshawk,
 - b. Harris's hawk (*Parabuteo unicinctus*), and
 - c. Peregrine falcon.
 2. The falconer shall request a band no more than five consecutive days after the capture of a raptor by contacting the Department. A Department representative or a General or Master licensed falconer may attach the USFWS leg band to the raptor.
 3. A licensed falconer shall not use a counterfeit, altered, or defaced band.
 4. A falconer holding a federal propagation permit shall ensure a raptor bred in captivity wears a seamless metal band furnished by USFWS, as prescribed under 50 C.F.R. 21.30.
 5. A licensed falconer may remove the rear tab on a band and smooth any imperfections on the surface, provided doing so does not affect the band's integrity or numbering.
 6. A licensed falconer shall report the loss of a band to the Department no more than five business days after discovering the loss. The falconer shall reband the raptor with a new USFWS leg band furnished by the Department.
- S.** A licensed falconer may request Department authorization to implant an ISO-compliant [134.2 kHz] microchip in lieu of a

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- band into a captive-bred raptor or raptor listed under subsection (R)(1).
1. The falconer shall submit a written request to the Department.
 2. The falconer shall retain a copy of the Department's written authorization and any associated documentation for a period of five years from the date the raptor permanently leaves the falconer's possession.
 3. The falconer is responsible for the cost of implanting the microchip and any associated veterinary fees.
- T.** A licensed falconer may allow a falconry raptor to feed on any species of wildlife incidentally killed by the raptor for which there is no open season or for which the season is closed, but shall not take such wildlife into possession.
- U.** A General or Master falconer may hack a falconry raptor. Any raptor the falconer is hacking shall count towards the falconer's possession limit during hacking.
1. A falconer is prohibited from hacking a raptor near the nesting area of a federally threatened or endangered species or in any other location where the raptor is likely to disturb or harm a federally listed threatened or endangered species. The Department may provide information regarding where this is likely to occur.
 2. A licensed falconer shall ensure any hybrid raptor flown free or hacked by the falconer is equipped with at least two functioning radio transmitters.
- V.** A licensed falconer may release:
1. A wild-caught raptor permanently into the wild under the following circumstances:
 - a. The raptor is native to Arizona,
 - b. The falconer removes the raptor's falconry band and any other falconry equipment prior to release, and
 - c. The falconer releases the raptor in a suitable habitat and under suitable seasonal conditions.
 2. A captive-bred raptor permanently into the wild only when the raptor is native to Arizona and the Department approves the release of the raptor. The falconer shall request permission to release the captive-bred raptor by contacting the Department. When permitted by the Department and before releasing the captive-bred raptor, the General or Master falconer shall hack the captive-bred raptor in a suitable habitat and the appropriate season.
 3. A licensed falconer is prohibited from intentionally releasing any hybrid or non-native raptor permanently into the wild.
- W.** A Master falconer may conduct and receive payment for any abatement services conducted with a falconry raptor. The falconer shall apply for and obtain all required federal permits prior to conducting any abatement activities. A General falconer may conduct abatement services only when authorized under the federal permit held by the Master falconer.
- X.** A person other than a licensed falconer may temporarily care for a falconry raptor for no more than 45 consecutive days, unless approved by the Department. The raptor under temporary care shall remain in the falconer's facility. The raptor shall continue to count towards the falconer's possession limit. An unlicensed caretaker shall not fly the raptor. The falconer may request an extension from the Department to the temporary possession period if extenuating circumstances occur. The Department shall evaluate extension requests on a case-by-case basis.
- Y.** A licensed falconer may serve as a caretaker for another licensed falconer's raptor for no more than 120 consecutive days, unless approved by the Department. The falconer shall provide the temporary caretaker with a signed and dated statement authorizing the temporary possession of each raptor. The statement shall also include the temporary possession period and activities the caretaker may conduct with the raptor. The raptor under temporary care shall not count toward the caretakers possession limit. The temporary caretaker may fly or train the raptor when permitted by the falconer in writing. The falconer may request an extension from the Department to the temporary possession period if extenuating circumstances occur. The Department shall evaluate extension requests on a case-by-case basis.
- Z.** A licensed falconer may assist a wildlife rehabilitator in conditioning a raptor in preparation for the raptor's release to the wild. The falconer may temporarily remove the raptor from the rehabilitation facilities while conditioning the raptor. The raptor shall remain under the rehabilitator's license and shall not count towards the falconer's possession limit. The rehabilitator shall provide the licensed falconer with a written statement authorizing the falconer to assist the rehabilitator. The written statement shall also identify the raptor by species, type of injury, and band number, when available. The licensed falconer shall return the raptor to the rehabilitator within the 180-day period established under R12-4-423(T), unless the raptor is:
1. Released into the wild in coordination with the rehabilitator and as authorized under this subsection,
 2. Allowed to remain with the rehabilitator for a longer period of time as authorized under R12-4-423(U), or
 3. Transferred permanently to the falconer, provided the falconer may legally possess the raptor and the Department approves the transfer. The raptor shall count towards the falconer's possession limit.
- AA.** A licensed falconer may use a raptor possessed for falconry in captive propagation, when permitted by USFWS. A licensed falconer is not required to transfer a raptor from a Sport Falconry license to another license when the raptor is used for captive propagation less than eight months in a year.
- BB.** A General or Master licensed falconer may use a lawfully possessed raptor in a conservation education program presented in a public venue. An Apprentice falconer, under the direct supervision of a General or Master falconer, may use a lawfully possessed raptor in a conservation education program presented in a public venue. The primary use for a raptor is falconry; a licensed falconer shall not possess a raptor solely for the purpose of providing a conservation education program. The falconer shall ensure the focus of the conservation education program is to provide information about the biology, ecological roles, and conservation needs of raptors and other migratory birds. The falconer may charge a fee for presenting a conservation education program; however, the fee shall not exceed the amount required to recoup the falconer's costs for providing the program. As a condition of the Sport Falconry License, the licensed falconer agrees to indemnify the Department, its officers, and employees. The falconer is liable for any damages associated with the conservation education activities.
- CC.** A licensed falconer may allow the photography, filming, or similar uses of a falconry raptor possessed by the licensed falconer, provided:
1. The falconer is not compensated for these activities; and
 2. The final product from these activities:
 - a. Promotes the practice of falconry;
 - b. Provides information about the biology, ecological roles, and conservation needs of raptors and other migratory birds;
 - c. Endorses a nonprofit falconry organization or association, products, or other endeavors related to falconry; or

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- d. Is used in scientific research or science publications.
- DD.** A licensed falconer may use or dispose of lawfully possessed falconry raptor feathers. A falconer shall not buy, sell, or barter falconry raptor feathers. A falconer may possess feathers for imping from each species of raptor that the falconer currently possesses or has possessed.
1. The licensed falconer may transfer or receive feathers for imping from:
 - a. Another licensed falconer,
 - b. A licensed wildlife rehabilitator, or
 - c. Any licensed propagator located in the United States.
 2. A licensed falconer may donate falconry raptor feathers, except bald and golden eagle feathers, to:
 - a. Any person or institution permitted to possess falconry raptor feathers,
 - b. Any person or institution exempt from the permit requirement under 50 C.F.R. 21.12, or
 - c. A non-eagle feather repository. The Department may provide information regarding the submittal of falconry raptor feathers to a non-eagle feather repository.
 3. A licensed falconer shall gather primary and secondary flight feathers or retrices that are molted or otherwise lost from a golden eagle and either retain the feathers for imping purposes or submit the feathers to the U.S. Fish and Wildlife Service, National Eagle Repository, Rocky Mountain Arsenal, Building 128, Commerce City, Colorado 80022.
 4. A falconer whose license is either revoked or expired shall dispose of all falconry raptor feathers in the falconer's possession.
- EE.** Arizona licensed falconers importing raptors into Arizona shall have a health certificate issued no more than 30 consecutive days:
1. Prior to the international importation, or
 2. Prior to or after the inter-state importation.
- FF.** A licensed falconer may conduct any of the following activities with any captive-bred raptor provided the raptor is wearing a seamless band and the person receiving the raptor possesses an appropriate special license:
1. Barter,
 2. Offer for barter,
 3. Gift,
 4. Purchase,
 5. Sell,
 6. Offer for sale, or
 7. Transfer.
- GG.** A licensed falconer is prohibited from conducting any of the following activities with any wild-caught raptor protected under the Migratory Bird Treaty Act:
1. Barter,
 2. Offer for barter,
 3. Purchase,
 4. Sell, or
 5. Offer for sale.
- HH.** A licensed falconer may transfer:
1. Any wild-caught falconry raptor lawfully captured in Arizona with or without a permit tag to another Arizona Sport Falconry License holder at any time.
 - a. The raptor shall count towards the take limit for that calendar year for the falconer taking the raptor from the wild.
 - b. The raptor shall not count against the take limit of the falconer receiving the raptor.
 2. Any wild-caught falconry raptor to another license or permit type under this Article or federal law, provided the raptor has been used in the sport of falconry for at least two years preceding the transfer.
3. A wild-caught falconry sharp-shinned hawk (*Accipiter striatus*), Cooper's hawk (*Accipiter cooperii*), merlin (*Falco columbarius*), or American kestrel (*Falco sparverius*) to another license or permit type under this Article or federal law, provided the raptor has been used in the sport of falconry for at least one-year preceding the transfer.
 4. Any hybrid or captive-bred raptor to another licensed falconer or permit type under this Article or federal law at any time.
 5. Any falconry raptor that is no longer capable of being flown, as determined by a veterinarian or licensed rehabilitator, to another permit type at any time. The licensed falconer shall provide a copy of the documentation from the veterinarian or rehabilitator stating that the raptor is not useable in falconry to the Federal Migratory Bird Permits office that administers the other permit type.
- II.** A licensed falconer shall not transfer a wild-caught raptor species to a licensed falconer in another state for at least one year from the date of capture if either resident or nonresident take is managed through Commission Order by way of a permit-tag, nonpermit-tag, or annual harvest quota system. However, a licensed falconer may transfer a wild-caught raptor that is not managed through Commission Order by way of a permit-tag, nonpermit-tag, or annual harvest quota system to a licensed falconer in another state at any time.
- JJ.** A surviving spouse, executor, administrator, or other legal representative of a deceased or incapacitated licensed falconer shall transfer any raptor held by the licensed falconer to another licensed falconer no more than 90 consecutive days after the death of the falconer. The Department shall determine the disposition of any raptor not transferred prior to the end of the 90-day period.
- KK.** A licensed falconer shall conduct the following activities, as applicable, no more than 10 business days after either the death of a falconry raptor or the final examination of a deceased raptor by a veterinarian:
1. For a bald or golden eagle, send the entire body, including all feathers, talons, and other parts, to the National Eagle Repository;
 2. For any euthanized non-eagle raptor, to prevent secondary poisoning of other wildlife, the falconer shall either submit the carcass to a non-eagle repository or burn, bury, or otherwise destroy the carcass;
 3. For all other species:
 - a. Submit the carcass to a non-eagle repository;
 - b. Submit the carcass to the Department for submission to a non-eagle repository;
 - c. Donate the body or feathers to any person or institution exempt under 50 C.F.R. 21.12 or authorized by USFWS to acquire and possess such parts or feathers;
 - d. Retain the carcass or feathers for imping purposes as established under subsection (DD);
 - e. Burn, bury, or otherwise destroy the carcass; or
 - f. Mount the raptor carcass. The falconer shall ensure any microchip implanted in the raptor is not removed and any band attached to the raptor remains on the mount. The falconer may use the mount for a conservation education program. The falconer shall ensure copies of the license and all relevant 3-186A forms are retained with the mount. The mount shall not count towards the falconer's possession limit.

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Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended effective April 4, 1997 (Supp. 97-2). Amended by final rulemaking at 6 A.A.R. 211, effective December 14, 1999 (Supp. 99-4). Amended by final rulemaking at 18 A.A.R. 958, effective January 1, 2013 (Supp. 12-2). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

R12-4-423. Wildlife Rehabilitation License

- A.** For the purposes of this Section, “volunteer” means a person who:
Is not designated as an agent, as defined under R12-4-401,
Assists a wildlife rehabilitation license holder without compensation, and
Is under the direct supervision of the license holder at the location specified on the wildlife rehabilitation license.
- B.** A wildlife rehabilitation license is issued for the sole purpose of restoring and returning wildlife to the wild through rehabilitative services. The license allows a person 18 years of age or older to conduct any of the following activities with live injured, disabled, orphaned or otherwise debilitated wildlife specified on the rehabilitation license:
1. Capture;
 2. Euthanize;
 3. Export to a licensed zoo, when authorized by the Department;
 4. Rehabilitate;
 5. Release;
 6. Temporarily possess;
 7. Transport; or
 8. Transfer to one of the following:
 - a. Licensed veterinarian for treatment or euthanasia;
 - b. Another appropriately licensed special license holder;
 - c. Licensed zoo, when authorized by the Department; or
 9. As otherwise directed in writing by the Department.
- C.** A wildlife rehabilitation license authorizes the possession of the following taxa or species:
1. Amphibians;
 2. Reptiles;
 3. Birds:
 - a. Non-passerines, birds in any order other than those named in subsections (b) through (e);
 - b. Birds in the orders *Falconiformes* or *Strigiformes*, raptors;
 - c. Birds in the order, *Galliformes* quails and turkeys;
 - d. Birds in the order *Columbiformes*, doves;
 - e. Birds in the order *Trochiliformes*, hummingbirds; and
 - f. Birds in the order *Passeriformes*, passerines;
 4. Mammals:
 - a. Nongame mammals;
 - b. Bats;
 - c. Big game mammals other than cervids: bighorn sheep, bison, black bear, javelina, mountain lion, pronghorn;
 - d. Carnivores: bobcat, coati, coyote, foxes, raccoons, ringtail, skunks, and weasels; and
 - e. Small game mammals.
- D.** A wildlife rehabilitation license authorizes the possession of the following taxa or species only when specifically requested at the time of application:
1. Eagles;
 2. Species listed under 50 C.F.R. 17.11, revised October 1, 2013; and
 3. The Department’s Tier 1 Species of Greatest Conservation Need, as defined under R12-4-401.
 4. For the purposes of subsection (D)(2), this incorporation by reference contains no future editions or amendments. The incorporated material is available at any Department office, online at www.gpoaccess.gov, or may be ordered from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000.
- E.** All wildlife held under the license is the property of the state and shall be surrendered to the Department upon request.
- F.** The wildlife rehabilitation license expires on the last day of the third December from the date of issuance.
- G.** In addition to the requirements established under this Section, a wildlife rehabilitation license holder shall comply with the special license requirements established under R12-4-409.
- H.** The Department shall deny a wildlife rehabilitation license to a person who fails to meet the requirements and criteria established under R12-4-409, R12-4-428, or this Section or when the person’s wildlife rehabilitation license is suspended or revoked in any state. The Department shall provide the written notice established under R12-4-409 to the applicant stating the reason for the denial. The person may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.
- I.** The license holder shall be responsible for compliance with all applicable regulatory requirements; the wildlife rehabilitation license does not:
1. Exempt the license holder from any municipal, county, state, or federal codes, ordinances, statutes, rules, or regulations; or
 2. Authorize the license holder to engage in authorized activities using federally-protected wildlife, unless the license holder possesses a valid license, permit, or other form of documentation issued by the United States authorizing the license holder to use that wildlife in a manner consistent with the special license.
- J.** Before applying for a wildlife rehabilitation license, a person shall successfully complete an examination conducted by the Department. The Department shall consider only those parts of the examination that are applicable to the taxa of wildlife for which the license is sought in establishing the qualifications of the applicant.
1. Examinations are provided by appointment, only.
 2. An applicant may request a verbal or written examination.
 3. The examination shall include questions regarding:
 - a. Wildlife rehabilitation;
 - b. Safe handling of wildlife;
 - c. Transporting wildlife;
 - d. Humane treatment;
 - e. Nutritional requirements;
 - f. Behavioral requirements;
 - g. Developmental requirements;
 - h. Ecological requirements;
 - i. Habitat requirements;
 - j. Captivity standards established under R12-4-428;
 - k. Human and wildlife safety considerations;
 - l. State statutes, rules, and regulations regarding wildlife rehabilitation; and
 - m. National Wildlife Rehabilitation Association minimum standards for wildlife rehabilitation.

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4. The applicant must successfully complete the examination within three years prior to the date on which the initial application for the license is submitted to the Department.
- K.** A person applying for a wildlife rehabilitation license shall submit an application to the Department. A separate application is required for each location where the applicant proposes to use wildlife. The application is furnished by the Department and is available at any Department office and online at www.azgfd.gov. The applicant shall provide the following information on the application:
1. The applicant's information:
 - a. Name;
 - b. Date of birth;
 - c. Mailing address;
 - d. Telephone number;
 - e. Facility address, if different from mailing address;
 - f. Physical location description to include the Global Positioning System location or Universal Transverse Mercator coordinates; and
 - g. Department ID number, when applicable;
 2. The wildlife taxa or species listed under subsection (C) that will be possessed under the license;
 3. For each location where the wildlife will be used, the land owner's:
 - a. Name;
 - b. Mailing address;
 - c. Telephone number; and
 - d. Physical location description to include the Global Positioning System location or Universal Transverse Mercator coordinates;
 4. A detailed description, diagram, and photographs of the facility where the applicant will hold the wildlife, and a description of how the facility complies with R12-4-428 and any other captivity standards established under this Section;
 5. Any other information required by the Department; and
 6. The certification required under R12-4-409(C).
- L.** In addition to the requirements listed under subsection (K), at the time of application, an applicant for a wildlife rehabilitation license shall also submit:
1. Any one or more of the following:
 - a. A valid, current license issued by a state veterinary medical examination authority that authorizes the applicant to practice as a veterinarian;
 - b. Proof of at least six months of experience performing wildlife rehabilitative work with an average of at least eight hours each week for the taxa or species of animal listed on the application; or
 - c. A current and valid license, permit, or other form of authorization issued by another state or the federal government that allows the applicant to perform wildlife rehabilitation;
 2. Proof the applicant successfully completed the examination required under subsection (J) no more than three years prior to submitting the application;
 3. An affidavit signed by the applicant affirming either of the following:
 - a. The applicant is a licensed veterinarian; or
 - b. A licensed veterinarian is reasonably available to provide veterinary services as necessary to facilitate rehabilitation of wildlife.
 4. A written statement describing:
 - a. The applicant's preferred method of disposing of non-releasable live wildlife as listed under subsection (B); and
 - b. A statement of the applicant's training and experience in handling, capturing, rehabilitating, and caring for the taxa or species when the applicant is applying for a license to perform authorized activities with taxa or species of wildlife listed under subsection (C).
- M.** A wildlife rehabilitation license holder who wishes to continue activities authorized under the license shall renew the license before it expires.
1. When renewing a license without change to the species, location, or design of the facility where wildlife is held as authorized under the current license, the license holder may reference supporting materials previously submitted in compliance with subsection (K).
 2. A license holder applying for a renewal of the license shall successfully complete the examination at the time of renewal when the annual report submitted under subsection (Z) indicates the license holder did not perform any rehabilitative activities under the license.
 3. A license holder applying for a renewal of the license shall submit proof the license holder has completed the continuing education requirement established under subsection (N).
- N.** During the license period a wildlife rehabilitation license holder shall complete eight or more hours of continuing education sessions on wildlife rehabilitation or veterinary medicine. Acceptable continuing education sessions may be obtained from:
1. An accredited university or college;
 2. The National Wildlife Rehabilitators Association, 2625 Clearwater Rd. Suite 110, St. Cloud, MN 56301;
 3. The International Wildlife Rehabilitation Council, PO Box 3197, Eugene, OR 97403; or
 4. Other applicable training opportunities approved by the Department in writing. A license holder who wishes to use other applicable training to meet the eight hour continuing education requirement shall request approval of the other applicable training prior to participating in the education session.
- O.** A wildlife rehabilitation license holder may request authorization to allow an agent to assist the license holder in carrying out activities authorized under the wildlife rehabilitation license by submitting a written request to the Department.
1. An applicant may request the ability to allow a person to act as an agent on the applicant's behalf, provided:
 - a. An employment or supervisory relationship exists between the applicant and the agent, and
 - b. The agent's privilege to take or possess live wildlife is not suspended or revoked in any state
 2. The license holder shall obtain approval from the Department prior to allowing the agent assist in any activities.
 3. The license holder is liable for all acts the agent performs under the authority of this Section.
 4. The Department, acting on behalf of the Commission, may suspend or revoke a license for violation of this Section by an agent.
 5. The license holder shall ensure the agent possesses a legible copy of the license while conducting any activity authorized under the wildlife rehabilitation license and presents it for inspection upon the request of any Department employee or agent.
- P.** At any time during the license period, a wildlife rehabilitation license holder may request permission to amend the license to add or delete an agent or a location where wildlife is held; or to obtain authority to rehabilitate additional taxa of wildlife. To

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request an amendment, the license holder shall submit the following information to the Department, as applicable:

1. To add or delete an agent, the information stated in subsections (K)(1) through (K)(4) and (L)(2), as applicable to the agent;
 2. To add or delete a location, the information stated in subsection (K)(1) through (K)(5); and
 3. To obtain authority to rehabilitate additional taxa or wildlife, the information stated in subsection (K)(1) through (K)(5) and (L)(1) through (L)(4).
- Q.** A wildlife rehabilitation license holder authorized to rehabilitate wildlife species listed under subsection (C)(3)(c), (C)(4)(c) and (C)(4)(d) or (D) shall contact the Department within 24 hours of receiving the individual animal to obtain instructions in handling or transferring that animal. While awaiting instructions, the license holder shall ensure that emergency veterinary care is provided as necessary.
- R.** A wildlife rehabilitation license holder shall:
1. Comply with all additional stipulations placed on the license by the Department, as authorized under R12-4-409(H).
 2. Allow the Department to conduct inspections of an applicant's or license holder's facility and records at any time before or during the license period to determine compliance with the requirements of this Article.
 3. Ensure each facility is inspected by the attending veterinarian at least once every year.
 4. Capture, remove, transport, and release wildlife held under the requirements of this Section in a manner that is least likely to cause injury to the affected wildlife.
 5. Conduct rehabilitation only at the location listed on the license
 6. Be responsible for all expenses incurred, including veterinary expenses, and all actions taken under the license, including all actions or omissions of all agents and volunteers when performing activities under the license.
 7. Immediately surrender wildlife held under the license to the Department upon request.
 8. Dispose of all wildlife that is euthanized or that otherwise dies within 30 days of death either by burial, incineration, or transfer to a scientific research institution, except that the license holder shall transfer all carcasses of endangered or threatened species, species listed under the Department's Tier 1 Species of Greatest Conservation Need, or eagles as directed by the Department.
 9. Maintain a current log that records the information specified under subsection (Z).
 10. Possess the license or legible copy of the license at each authorized location and while conducting any rehabilitation activities and presents it for inspection upon the request of any Department employee or agent.
 11. Ensure a copy of the wildlife rehabilitation license accompanies each transfer or shipment of wildlife.
- S.** A wildlife rehabilitation license holder shall not:
1. Display for educational purposes any wildlife held under the license.
 2. Exhibit any wildlife held under the license.
 3. Permanently possess any wildlife held under the license.
- T.** A wildlife rehabilitation license holder may possess:
1. All wildlife for no more than 90 days; or
 2. A bird for no more than 180 days, unless the Department has authorized possession for a longer period of time.
- U.** A license holder may request permission to possess wildlife for a longer period of time than specified in subsection (T) by submitting a written request to the Department.
1. The Department shall approve or deny the request within ten days of receiving the request.
 2. For requests made due to a medical necessity, the Department may require the license holder to provide a written statement listing the medical reasons for the extension, signed by a licensed veterinarian.
 3. The license holder may continue to hold the specified wildlife while the Department considers the request.
 4. If the request is denied, the Department shall send a written notice to the license holder which shall include specific, time-dated directions for the surrender or disposition of the animal.
- V.** A wildlife rehabilitation license holder may allow a licensed falconer to assist in conditioning a raptor in preparation for the raptor's release to the wild.
1. The license holder may allow the licensed falconer to temporarily remove the raptor from the license holder's facility while conditioning the raptor.
 2. The license holder shall provide the licensed falconer with a written statement authorizing the falconer to assist the license holder.
 3. The written statement shall identify the raptor by species, type of injury, and band number, when available.
 4. The license holder shall ensure the licensed falconer returns the raptor to the license holder within the 180-day period established under subsection (T).
- W.** A wildlife rehabilitation license holder may hold wildlife under the license after the wildlife reaches a state of restored health only for the amount of time reasonably necessary to prepare the wildlife for release. Rehabilitated wildlife shall be released:
1. In an area without immediate threat to the wildlife or contact with humans;
 2. During an ecologically appropriate time of year and time of day; and
 3. Into a suitable habitat in the same geographic area where the animal was originally obtained; or
 4. In an area designated by the Department.
- X.** Wildlife that is not releasable after the time-frames specified in subsection (T) shall be transferred, disposed of, or euthanized as determined by the Department.
- Y.** To permanently hold rehabilitated wildlife that is unsuitable for release, a wildlife rehabilitation license holder shall apply for and obtain a wildlife holding license in compliance with under R12-4-417.
- Z.** A wildlife rehabilitation license holder shall submit an annual report to the Department before January 31 of each year for the previous calendar year. The report form is furnished by the Department.
1. A report is required regardless of whether or not activities were performed during the previous year.
 2. The wildlife rehabilitation license becomes invalid if the annual report is not submitted to the Department by January 31 of each year.
 3. The Department will not process the special license holder's renewal application until the annual report is received by the Department.
 4. The annual report shall contain the following information:
 - a. The license holder's:
 - i. Name;
 - ii. Mailing address; and
 - iii. Telephone number;
 - b. Each agent's:
 - i. Name;
 - ii. Mailing address; and

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- iii. Telephone number;
 - c. The permit or license number of any federal permits or licenses that relate to any rehabilitative function performed by the license holder; and
 - d. An itemized list of each animal held under the license during the calendar year for which activity is being reported. For each animal held by the license holder or agent, the itemization shall include:
 - i. Species;
 - ii. Condition that required rehabilitation;
 - iii. Date of acquisition;
 - iv. Source of acquisition;
 - v. Location of acquisition;
 - vi. Age class at acquisition, when reasonably determinable;
 - vii. Status at disposition or end-of-year in relation to the condition requiring rehabilitation;
 - viii. Method of disposition;
 - ix. Location of disposition; and
 - x. Date of disposition.
 - e. For activities related to federally-protected wildlife, a copy of the rehabilitator's federal permit report of activities related to federally-protected wildlife satisfies the reporting requirement established under subsection (Z)(4)(c) for federally protected wildlife.
- AA.** A wildlife rehabilitation license holder shall comply with the requirements established under R12-4-409, R12-4-428, and R12-4-430, as applicable.
- Historical Note**
- Adopted effective January 4, 1990 (Supp. 90-1).
Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4).
Amended by final rulemaking at 7 A.A.R. 2732, effective July 1, 2001 (Supp. 01-2). Amended by final rulemaking at 9 A.A.R. 3186, effective August 30, 2003 (Supp. 03-3).
Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).
- R12-4-424. White Amur Stocking and Holding License**
- A.** For the purposes of this Section:
"Closed aquatic system" means any body of water, water system, canal system, or series of lakes, canals, or ponds where triploid white amur are prevented from entering or exiting the system by any natural or man-made barrier, as determined by the Department.
"Triploid" means a species having 1.5 chromosome sets that renders them sterile.
- B.** A white amur stocking and holding license allows a person to import, possess, stock in a closed aquatic system, and transport triploid white amur (*Ctenopharyngodon idella*).
- C.** The white amur stocking and holding license is valid for no more than 20 consecutive days.
- D.** In addition to the requirements established under this Section, a white amur stocking and holding license holder shall comply with the special license requirements established under R12-4-409.
- E.** The license holder shall be responsible for compliance with all applicable regulatory requirements; the white amur stocking and holding license does not:
1. Exempt the license holder from any municipal, county, state, or federal codes, ordinances, statutes, rules, or regulations; or
 2. Authorize the license holder to engage in authorized activities using federally-protected wildlife, unless the license holder possesses a valid license, permit, or other form of documentation issued by the United States authorizing the license holder to use that wildlife in a manner consistent with the special license.
- F.** The Department shall deny a white amur stocking and holding license to a person who fails to meet the requirements established under R12-4-409 or this Section. The Department shall provide the written notice established under R12-4-409(F)(4) to the applicant stating the reason for the denial. The person may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10. In addition to the requirements and criteria established under R12-4-409(F)(1) through (4), the Department shall deny a white amur stocking license when it determines the issuance of the license may result in a negative impact on native wildlife.
- G.** A person applying for a white amur stocking and holding license shall submit an application to the Department. A separate application is required for each location where the applicant proposes to stock white amur. The application is furnished by the Department and is available from any Department office and online at www.azgfd.gov. The applicant shall provide the following information on the application:
1. The applicant's information:
 - a. Name;
 - b. Mailing address;
 - c. Telephone number; and
 - d. Department ID number, when applicable;
 2. If the applicant will use the wildlife for a commercial purpose, the applicant's business:
 - a. Name;
 - b. Federal Tax Identification Number;
 - c. Mailing address; and
 - d. Telephone number;
 3. For each location where the white amur will be held, stocked, or restocked, the land owner's:
 - a. Name;
 - b. Mailing address;
 - c. Telephone number; and
 - d. Physical location description to include the Global Positioning System location or Universal Transverse Mercator coordinates;
 - e. For the purposes of this subsection, the following systems may qualify as separate locations, as determined by the Department:
 - i. Each closed aquatic system;
 - ii. Each separately managed portion of a closed aquatic system; or
 - iii. Multiple separate closed aquatic systems owned, controlled, or legally held by the same applicant where stocking is to occur;
 4. A detailed description and diagram of each enclosed aquatic system where the applicant will stock and hold the white amur, as prescribed under A.R.S. § 17-317, which shall include the following information, as applicable:
 - a. A description of how the system meets the definition of a "closed aquatic system" in subsection (A);
 - b. Size of waterbody proposed for stocking;
 - c. Nearest river, stream, or other freshwater system;
 - d. Points where water enters into each water body;
 - e. Points where water leaves each water body; and
 - f. Location of fish containment barriers;
 5. For each wildlife supplier from whom the applicant will obtain white amur, the supplier's:
 - a. Name;
 - b. Federal Tax Identification Number;

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- c. Mailing address; and
 - d. Telephone number;
 - 6. The number and average length of white amur to be stocked;
 - 7. The dates white amur will be stocked, or restocked;
 - 8. Any other information required by the Department; and
 - 9. The certification required under R12-4-409(C).
- H.** When the Department determines an applicant proposes to stock and hold white amur in a watershed in a manner that conflicts with the Department's efforts to conserve wildlife, in addition to the requirements listed under subsection (G), the applicant shall also submit a written proposal to the Department at the time of application. The written proposal shall contain all of the following:
- 1. Anticipated benefits from introducing white amur;
 - 2. Potential risks introducing white amur may create for wildlife, including:
 - a. Whether white amur are compatible with native aquatic species or game fish; and
 - b. Method for evaluating the potential impact introducing white amur will have on wildlife;
 - 3. Assessment of probable impacts to sensitive species in the area using the list generated by the Department's On-Line Environmental Review Tool, which is available at www.azgfd.gov. The proposal must address each species listed.
- I.** A white amur stocking license holder who applies to renew the license shall pay fees as prescribed under R12-4-412.
- J.** A white amur stocking and holding license holder shall comply with the requirements established under R12-4-409.
- 1. Comply with all additional stipulations placed on the license by the Department, as authorized under R12-4-409(H).
 - 2. Obtain all aquatic wildlife, live eggs, fertilized eggs, and milt from a licensed fish farm operator or a private non-commercial fish pond certified free of the diseases and causative agents through the following actions:
 - a. An inspection shall be performed by a qualified fish health inspector or fish pathologist at the fish farm or pond where the aquatic wildlife or biological material is held before it is shipped to the license holder.
 - b. The inspection shall be conducted no more than 12 months prior to the date on which the aquatic wildlife or biological material is shipped to the license holder. The Department may require additional inspections at any time prior to stocking.
 - c. The applicant shall submit a copy of the certification to the Department prior to conducting any stocking activities.
 - 3. Allow the Department to conduct inspections of an applicant's or license holder's facility, records, and any waters proposed for stocking at any time before or during the license period to determine compliance with the requirements of this Article and to determine the appropriate number of white amur to be stocked.
 - 4. Ensure all shipments of white amur are accompanied by a USFWS, or similar agent, certificate confirming the white amur are triploid.
 - 5. Possess the license or legible copy of the license while conducting any activities authorized under the white amur stocking and holding license and presents it for inspection upon the request of any Department employee or agent.
- K.** A white amur stocking and holding license holder shall comply with the requirements established under R12-4-409 and R12-4-428.

Historical Note

Adopted as an emergency effective July 5, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-3).

Correction, Historical Note, Supp. 88-3, should read, "Adopted as an emergency effective July 15, 1988..."; readopted and amended as an emergency effective October 13, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted as an emergency effective January 24, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Former Section R12-4-219 amended and adopted as a permanent rule and renumbered as Section R12-4-424 effective April 28, 1989 (Supp. 89-2). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 7 A.A.R. 2732, effective July 1, 2001 (Supp. 01-2). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

R12-4-425. Restricted Live Wildlife Lawfully Possessed without License or Permit Before the Effective Date of Article 4 or Any Subsequent Amendments

- A.** A person who lawfully possessed restricted live wildlife without a license or permit from the Department before the effective date of this Section or any subsequent amendments to R12-4-406, this Section, or this Article may continue to possess the wildlife and to use it for any purpose that was lawful, except propagation, before the effective date of R12-4-406, this Section, or this Article or any subsequent amendments, provided the person complies with the requirements established under subsections (A)(1) or (A)(2).
- 1. The person submits written notification to the Department's regional office in which the restricted live wildlife is held. The person shall submit the written notification to the regional office within 30 calendar days of the effective date of any subsequent amendments to this Section, R12-4-406, or this Article. The written notification shall include all of the following information:
 - a. The number of individuals of each species,
 - b. The purpose for which it is possessed, and
 - c. The unique identifier for each individual wildlife possessed by the person, as established under subsection (F); or
 - 2. The person maintains documentation of the restricted live wildlife held. The documentation shall include:
 - a. The number of individuals of each species,
 - b. Proof the individuals were legally acquired before the effective date of the amendment causing the wildlife to be restricted,
 - c. The purpose for which it is used, and
 - d. The unique identifier for each wildlife possessed by the person, as established under subsection (F).
 - 3. The person shall report the birth or hatching of any progeny conceived before and born after the effective date of this Section, R12-4-406, or this Article to the Department and comply with the requirements established under subsection (F).
- B.** The person shall ensure the written notification described under subsection (A)(1) and (A)(2) includes the person's

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name, address, and the location where the wildlife is held. A person who maintains their own documentation under subsection (A)(2) shall make it available to the Department upon request.

- C. A person who possesses wildlife under this Section shall dispose of it using any one of the following methods:
 1. Exportation;
 2. Euthanasia;
 3. Transfer to an Arizona special license holder, provided the special license authorizes possession of the species involved; or
 4. As otherwise directed by the Department in writing.
- D. If a person transfers restricted live wildlife possessed under this Section to a special license holder:
 1. The exemption for that wildlife under this Section expires, and
 2. The special license holder shall use, possess, and report the wildlife in compliance with this Article and any stipulations applicable to that special license.
- E. A person who exports wildlife held under this Section shall not import the wildlife back into this state unless the person obtains a special license prior to importing the wildlife back into this state.
- F. A person who possesses wildlife under this Section shall permanently and uniquely mark the wildlife with a unique identifier as follows:
 1. Within 30 calendar days of the effective date of this Section, R12-4-406, or this Article if the person has notified the Department as provided under subsection (A)(1); or
 2. Within 30 calendar days of receiving written notice from the Department directing the person to permanently mark the wildlife.
- G. A person possessing a desert tortoise (*Gopherus agassizii*) is not subject to the requirements of this Section and shall comply with requirements established under R12-4-404 and R12-4-407.

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

R12-4-426. Possession of Nonhuman Primates

- A. A person is prohibited from possessing a nonhuman primate, unless authorized under a special license or lawful exemption.
- B. A person shall not import a nonhuman primate into this state unless:
 1. A person lawfully possessing a nonhuman primate shall ensure the primate is tested and reported to be free of any zoonotic disease that poses a serious health risk as determined by the Department. Zoonotic diseases that pose a serious health risk include, but are not limited to:
 - a. Tuberculosis;
 - b. Simian Herpes B virus;
 - c. Simian Immunodeficiency Virus;
 - d. Simian T Lymphotropic Virus; and
 - e. Gastrointestinal pathogens such as, but not limited to, Shigella, Salmonella, E. coli, and Giardia.
 2. A qualified person, as determined by the Department, performs the test and provides the test results; and
 3. The tests required under subsection (B)(1) are:
 - a. Conducted no more than 30 days before the person imports the nonhuman primate; and
 - b. The person submits the results to the Department prior to importation.

- C. A person lawfully possessing the nonhuman primate shall contain the primate within the confines of the person's private property or licensed facility.
- D. A person possessing a nonhuman primate may only transport the primate by way of a secure cage, crate, or carrier. A person possessing a primate shall only transport the primate to the following locations:
 1. To or from a licensed veterinarian;
 2. Into or out of the state for lawful purposes.
- E. A person lawfully possessing a nonhuman primate that bit, scratched, or otherwise exposed a human to pathogenic organisms, as determined by the Department, shall ensure the primate is examined and laboratory tested for the presence of pathogens as follows:
 1. The Department shall prescribe examinations and laboratory testing for the presence of pathogens.
 2. The person shall have the nonhuman primate examined by a state licensed veterinarian who shall perform any examinations or laboratory tests as directed by the Department.
 - a. The licensed veterinarian shall provide the laboratory results to the Department within 24 hours of receiving the results.
 - b. The Department shall notify the exposed person and the Department of Health Services, Vector Borne and Zoonotic Disease Section within 10 days of receiving notice of the test results.
 3. The person possessing the nonhuman primate shall pay all costs associated with the examination, laboratory testing, and maintenance of the primate.
- F. A person lawfully possessing a nonhuman primate shall ensure a primate that tests positive for a zoonotic disease that poses a serious health risk to humans, or is involved in more than one incident of biting, scratching, or otherwise exposing a human to pathogenic organisms, is maintained in captivity or disposed of as directed in writing by the Department.
- G. A zoo license holder or a person using nonhuman primates at a research facility, as defined under R12-4-401, possessing a primate that bit, scratched, or otherwise exposed a human to pathogenic organisms shall quarantine and test the primate in accordance with procedures approved by the Department.
- H. A person lawfully possessing a nonhuman primate is subject to the requirements established under R12-4-428.

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Rule expired December 31, 1989; text rescinded (Supp. 93-2). New Section adopted by final rulemaking at 6 A.A.R. 211, effective December 14, 1999 (Supp. 99-4). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Section R12-4-426(C) corrected to include subsection (C)(1), under A.R.S. § 41-1011 and A.A.C. R1-1-108, Office File No. M11-77, filed March 4, 2011 (Supp. 10-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

R12-4-427. Exemptions from Requirements to Possess a Wildlife Rehabilitation License

- A. A person may possess, provide rehabilitative care to, and release to the wild any live wildlife listed below that is injured, orphaned, or otherwise debilitated:
 1. The order *Passeriformes*: passerine birds;
 2. The order *Columbiformes*: doves;
 3. The family *Phasianidae*: quail, pheasant, and chukars;
 4. The order *Rodentia*: rodents; and
 5. The order *Lagomorpha*: hares and rabbits.

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- B.** This Section does not:
1. Exempt the person from any municipal, county, state, or federal codes, ordinances, statutes, rules, or regulations; or
 2. Authorize the person to engage in authorized activities using federally-protected wildlife, unless the person possesses a valid license, permit, or other form of documentation issued by the United States that authorizes the license holder to use that wildlife in a manner consistent with the special license.
- C.** This Section does not authorize the possession of any of the following:
1. Eggs of wildlife;
 2. Wildlife listed as Species of Greatest Conservation Need, as defined under R12-4-401; or
 3. More than 25 animals at the same time.
- D.** A person taking and caring for wildlife listed under this Section is not required to possess a hunting license.
- E.** A person shall only take wildlife listed under subsection (A) by hand or by a hand-held implement.
- F.** A person shall not possess wildlife lawfully held under this Section for more than 60 days.
- G.** The exemptions granted under this Section shall not apply to any person who, by their own action, has unlawfully injured, orphaned, or otherwise debilitated the wildlife.
- H.** If the wildlife is rehabilitated and suitable for release, the person who possesses the wildlife shall release it within the 60-day period established under subsection (C):
1. Into a habitat that is suitable to sustain the wildlife, or
 2. As close as possible to the same geographic area from where it was taken.
- I.** If the wildlife is not rehabilitated within the 60-day period or the wildlife requires care normally provided by a veterinarian, the person who possesses it shall:
1. Transfer it to a wildlife rehabilitation license holder or veterinarian;
 2. Euthanize it; or
 3. Obtain a wildlife holding permit as established under R12-4-417.

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

R12-4-428. Captivity Standards

- A.** For the purposes of this Section, "animal" means any wildlife possessed under a special license, unless otherwise indicated.
- B.** A person possessing wildlife under a special license authorized under this Article shall comply with the minimum standards for the humane treatment of animals established under this Section.
- C.** A person possessing wildlife under an authority granted under this Article shall ensure all facilities meet the following minimum standards:
1. The facility shall be:
 - a. Constructed of material of sufficient strength to resist any force the animal may be capable of exerting against it.
 - b. Constructed in a manner designed to reasonably prevent the animal's escape or the entry of unauthorized persons, wildlife, or domestic animals.
 - c. Constructed and maintained in good repair to protect animals from injury, disease, or death and to enable the humane practices established under this Section.
 2. If required to comply with related requirements established under this Section, each facility shall be equipped with safe, reliable and adequate electric power.
 - a. All electric wiring shall be constructed and maintained in accordance with all applicable governmental building codes.
 - b. Electrical construction and maintenance shall be sufficient to ensure that no animal has direct contact with any electrical wiring or electrical apparatus and the animal is fully protected from any possibility of injury, shock, or electrocution.
 3. Each animal shall be supplied with sufficient potable water to meet its needs.
 - a. All water receptacles shall be kept in clean and sanitary condition.
 - b. Water shall be readily available and monitored at least once daily or more often when the needs of the animal dictate.
 - c. If potable water is not accessible to the animal at all times, it shall be provided as often as necessary for the health and comfort of the animal.
 4. Food shall be suitable, wholesome, palatable, free from contamination, and of sufficient appeal, quantity, and nutritive value to maintain the good health of each animal held in the facility.
 - a. Each animal's diet shall be prepared based upon the nutritional needs and preferences of the animal with consideration for the animal's age, species, condition, health, size, and all veterinary directions or recommendations in regard to diet.
 - b. Each animal shall be fed as often as its needs dictate, taking into consideration behavioral adaptations, veterinary treatment or recommendations, normal fasts, or other professionally accepted humane practices.
 - c. The quantity or level of available food for each animal shall be monitored at least once daily, except for those periods of time when professionally accepted humane practices dictate that the animal not consume any food during the entire day.
 - d. Food and food receptacles, when used, shall be sufficient in quantity and accessible to all animals in the facility and shall be placed to minimize potential contamination and conflict between animals using the receptacles.
 - e. Food receptacles shall be kept clean and sanitary at all times.
 - f. Any self-feeding food receptacles shall function properly and the food they provide shall be monitored at least once daily and shall not be subject to deterioration, contamination, molding, caking, or any other process that would render the food unsafe or unpalatable for the animal.
 - g. An appropriate means of refrigeration shall be provided for supplies of perishable animal foods.
 5. The facility shall be kept sanitary and regularly cleaned as the nature of the animal requires:
 - a. Adequate provision shall be made for the removal and disposal of animal waste, food waste, unusable bedding materials, trash, debris and dead animals not intended for food.

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- b. The facility shall be maintained to minimize the potential of vermin infestation, disease, and unseemly odors.
 - c. Excreta shall be removed from the primary enclosure facility as often as necessary to prevent contamination, minimize hazard of disease, and reduce unseemly odors.
 - d. The sanitary condition of the facility shall be monitored at least once daily.
 - e. When the facility is cleaned by hosing, flushing, or the introduction of any chemical substances, adequate measures shall be taken to ensure the animal has no direct contact with any chemical substance and is not directly sprayed with water, steam, or chemical substances or otherwise wetted involuntarily.
6. A sanitary and humane method shall be provided to rapidly eliminate excess water from the facility. If drains are utilized, they shall be:
 - a. Properly constructed.
 - b. Kept in good repair to avoid foul odors or vermin infestation.
 - c. Installed in a manner that prevents the backup or accumulation of debris or sewage.
 7. No animal shall be exposed to any human activity or environment that may have an inhumane or harmful effect upon the animal that is inconsistent with the purpose of the special license.
 8. Facilities shall not be constructed or maintained in proximity to any physical condition which may pose any health threat or unnecessary stress to the animal.
 9. Persons caring for the animals shall conduct themselves in a manner that prevents the spread of disease, minimizes stress, and does not threaten the health of the animal.
 10. All animals housed in the same facility or within the same enclosed area shall be compatible and shall not pose a substantial threat to the health, life or well-being of any other animal in the same facility or enclosure, whether or not the other animals are held under a special license. This subsection shall not apply to live animals utilized as food items in the enclosures.
 11. Facilities for the enclosure of animals shall be constructed and maintained to provide sufficient space to allow each animal adequate freedom of movement to make normal postural and social adjustments.
 - a. The facility area shall be large enough and constructed in a manner to allow the animal proper and adequate exercise as is characteristic to each animal's natural behavior and physical needs.
 - b. Facilities for digging or burrowing animals shall have secure safe floors below materials supplied for digging or burrowing activity.
 - c. Animals that naturally climb or perch shall be provided with safe and adequate climbing or perching apparatus.
 - d. Animals that naturally live in an aquatic environment shall be supplied with sufficient access to safe water so as to meet their aquatic behavioral needs.
 - e. The facility and holding environment shall be structured to reasonably promote the psychological well-being of any animal held in the facility.
 12. A special license holder shall ensure that a sufficient number of properly trained personnel are utilized to meet all the humane husbandry practices established under this Section. The license holder shall be responsible for the actions of all animal care personnel and all other persons that come in contact with the animals.
 13. The special license holder shall designate a veterinarian licensed to practice in this state as the primary treating veterinarian for each species of animal to be held.
 - a. The license holder shall ensure that all animals in their care receive proper, adequate, and humane veterinary care as the needs of each animal dictate.
 - b. Each animal held for more than one year shall be inspected by the attending veterinarian at least once every year.
 - c. Every animal shall promptly receive licensed veterinary care whenever it appears that the animal is injured, sick, wounded, diseased, infected by parasites, or behaving in a substantially abnormal manner, including but not limited to exhibiting loss of appetite or disinclination to normal physical activity.
 - d. All medications, treatments and other directions prescribed by the attending veterinarian shall be properly administered by the license holder, authorized agent, or volunteer. A license holder, authorized agent, or volunteer shall not administer prescription medicine, unless under the direction of a veterinarian.
 14. Any animal that is suspected of or diagnosed as harboring any infectious or transmissible disease, whether or not the animal is held under a special license, shall be isolated immediately upon suspicion or diagnosis.
 - a. The isolated animal shall continue to be kept in a humane manner as required under this Section.
 - b. When there is an animal with an infectious or transmissible disease in any animal facility, whether or not the animal is held under a special license, the facility shall be sanitized so as to reasonably eliminate the chance of other animals being exposed to infection. Sanitation procedures may include, but are not limited to:
 - i. Washing facilities or animal-related materials with appropriate antibacterial chemical agents, soaps or detergents;
 - ii. Appropriate application of hot water or steam under pressure; and
 - iii. Replacement of gravel, dirt, sand, water, or food. All residue of chemical agents utilized in the sanitation process shall be reasonably eliminated from the facility before any animal is returned to the facility.
 - c. Parasites and vermin shall be controlled and eliminated so as to ensure the continued health and well-being of all animals.
- D.** In addition the standards established under subsection (C), a person shall ensure all indoor facilities meet the following minimum standards:
1. Heating and cooling equipment shall be sufficient to regulate the temperature of the facility to protect the animals from temperature extremes as the nature of the wildlife requires to provide a healthy, comfortable, and humane living environment.
 2. Indoor facilities shall be adequately ventilated with fresh air to provide for the healthy, comfortable, and humane keeping of any animal and to minimize drafts, odors, and moisture condensation.
 3. Indoor facilities shall have lighting of a quality, distribution, and duration as is appropriate for the biological needs of the animals held and to facilitate the inspection and maintenance of the facility.

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- a. Artificial lighting, when used, shall be utilized in regular cycles as the animal's needs dictate.
 - b. Lighting shall be designed to protect the animals from excessive or otherwise harmful aspects of illumination.
- E.** In addition the standards established under subsection (C), a person shall ensure that all outdoor facilities meet the following minimum standards:
- 1. Sufficient shade to prevent the overheating or discomfort of any animal shall be provided.
 - 2. Sufficient shelter appropriate to protect animals from normal climatic conditions throughout the year. Each animal shall be acclimated to outdoor climatic conditions before they are housed in any outdoor facility or otherwise exposed to the extremes of climate.
- F.** A person who handles an animal shall ensure the animal is handled in an expeditious and careful manner to ensure no unnecessary discomfort, behavioral stress, or physical harm to the animal.
- a. An animal shall be transported in a secure, expeditious, careful, temperature appropriate, and humane manner. An animal shall not be transported in any manner that poses a substantial threat to the life, health, or behavioral well-being of the animal.
 - b. An animal placed on public exhibit or educational display shall be handled in a manner that minimizes the risk of harm to members of the public and to the animal, which includes but is not limited to providing and maintaining a sufficient distance between the animal and the viewing public.
 - c. Any restraint used on an animal shall not cause physical harm or unnecessary discomfort.
- G.** The Department may impose additional requirements on facilities that hold animals to meet the needs of the particular animal and ensure public health and safety. Any additional special license facility requirements shall be set forth in writing by the Department at the time the special license is issued.
- Historical Note**
- Adopted effective April 28, 1989 (Supp. 89-2). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).
- R12-4-429. Expired**
- Historical Note**
- New Section made by emergency rulemaking under A.R.S. § 41-1026 at 8 A.A.R. 3127, effective July 1, 2002 for a period of 180 days (Supp. 02-3). Emergency rulemaking renewed under A.R.S. § 41-1026(D) for an additional 180-day period at 9 A.A.R. 132, effective December 27, 2002 (Supp. 02-4). Section expired effective June 24, 2003 (Supp. 03-2).
- R12-4-430. Importation, Handling, and Possession of Cervids**
- A.** The Department shall not issue a new special license authorizing the possession of a live cervid, except as provided under R12-4-418 and R12-4-420.
- B.** A person shall not import a live cervid into Arizona, except a zoo license holder may import any live nonnative cervid for exhibit, educational display, or propagation provided the nonnative cervid is quarantined for 30 days upon arrival and is procured from a facility that meets all of the following requirements:
- 1. The exporting facility has a disease surveillance program and no history of chronic wasting disease or other wildlife disease that pose a serious health risk to wildlife or humans and there is accompanying documentation from the facility certifying there is no history of disease at the facility;
 - 2. The nonnative cervid is accompanied by a health certificate, issued no more than 30 days prior to importation by a licensed veterinarian in the jurisdiction of origin; and
 - 3. The nonnative cervid is accompanied by evidence of lawful possession, as defined under R12-4-401.
- C.** A person shall not transport a live cervid within Arizona, except to:
- 1. Export the live cervid from Arizona for a lawful purpose;
 - 2. Transport the live cervid to a facility for the purpose of slaughter, when the slaughter will take place within five days of the date of transport;
 - 3. Transport the live cervid to or from a licensed veterinarian for medical care;
 - 4. Transport the live cervid to a new holding facility owned by, or under the control of, the cervid owner, when all of the following apply:
 - a. The current holding facility has been sold or closed;
 - b. Ownership, possession, custody, or control of the cervid will not be transferred to another person; and
 - c. The owner of the cervid has prior written approval from the Department; or
 - 5. Transport the live nonnative cervid within Arizona for the purpose of procurement or propagation when all of the following apply:
 - a. The nonnative cervid is transported to or from a zoo licensed under R12-4-420;
 - b. The nonnative cervid is quarantined for 30 days upon arrival at its destination;
 - c. The nonnative cervid is procured from a facility that meets all of the requirements established under subsection (B)(1) through (B)(3).
- D.** A person who lawfully possesses a live cervid, except any cervid held under a private game farm or zoo license, shall comply with the requirements established under R12-4-425.
- E.** A person shall comply with the requirements established under R12-4-305 when transporting a cervid carcass, or its parts, from a licensed private game farm.
- F.** In addition to the recordkeeping requirements of R12-4-413 and R12-4-420, a person who possesses a live cervid under a private game farm or zoo license shall:
- 1. Permanently mark each live cervid with either an individually identifiable microchip or tattoo within 30 days of acquisition or birth of the cervid; and
 - 2. Include in the annual report submitted to the Department before January 31 of each year, the following for each native cervid in the license holder's possession:
 - a. Name of the license holder,
 - b. License holder's mailing address,
 - c. License holder's telephone number,
 - d. Number and species of live cervids held,
 - e. The microchip or tattoo number of each live native cervid held,
 - f. The disposition of all cervids that were moved or died during the current reporting period
 - h. Any other information required by the Department to ensure compliance with this Section.
- G.** The holder of a private game farm, scientific collecting, or zoo license shall ensure that the retropharyngeal lymph nodes or obex from the head of a cervid over one year of age that dies while held under the special licenses is collected by either a licensed veterinarian or the Department and submitted within 72 hours of the time of death to an Animal and Plant Health

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Inspection Service certified veterinary diagnostic laboratory for chronic wasting disease analysis. A list of approved laboratories is available at any Department office and online at www.azgfd.gov or www.aphis.usda.gov. The license holder shall:

1. Ensure the shipment of the deceased animal's tissues is made by a common, private, or contract carrier that utilizes a tracking number system to track the shipment.
 2. Include all of the following information with the shipment of the deceased animal's tissues, the license holder's:
 - a. Name,
 - b. Mailing address, and
 - c. Telephone number.
 3. Designate, on the sample submission form, test results shall be sent to the Department within 10 days of completing the analysis. The sample submission form is furnished by the diagnostic laboratory providing the test.
 4. Be responsible for all costs associated with the laboratory analysis.
- H.** A person who possesses a cervid shall comply with all procedures for:
1. Tuberculosis control and eradication for cervids as prescribed under the United States Department of Agriculture publication "Bovine Tuberculosis Eradication: Uniform Methods and Rules" USDA APHIS 91-45-011, revised January 1, 2005, which is incorporated by reference in this Section. available
 2. Prevention, control, and eradication of Brucellosis in cervids as prescribed under the United States Department of Agriculture publication "Brucellosis in Cervidae: Uniform Methods and Rules" U.S.D.A. A.P.H.I.S. 91-45-16, effective September 30, 2003.
 3. The incorporated material is available at any Department office, online at www.aphis.usda.gov, or may be ordered from the USDA APHIS Veterinary Services, Cattle Disease and Surveillance Staff, P. O. Box 96464, Washington D.C. 20090-6464.
 4. The material incorporated by reference in this Section does not include any later amendments or editions.
- I.** The Department has the authority to seize, euthanize, and dispose of any cervid possessed in violation of this Section, at the owner's expense.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 3186, effective August 30, 2003 (Supp. 03-3). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

ARTICLE 5. BOATING AND WATER SPORTS**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, unless in a designated mooring or anchorage area.

"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.

"Authorized third-party provider" means an entity that has been awarded a written agreement with the Department, pursuant to a competitive bid process, to perform limited or specific services on behalf of the Department.

"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, an inflatable device, or similar 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."

17-102. Wildlife as state property; exceptions

Wildlife, both resident and migratory, native or introduced, found in this state, except fish and bullfrogs impounded in private ponds or tanks or wildlife and birds reared or held in captivity under permit or license from the commission, are property of the state and may be taken at such times, in such places, in such manner and with such devices as provided by law or rule of the commission.

17-231. General powers and duties of the commission

A. The commission shall:

1. Adopt rules and establish services it deems necessary to carry out the provisions and purposes of this title.
2. Establish broad policies and long-range programs for the management, preservation and harvest of wildlife.
3. Establish hunting, trapping and fishing rules and prescribe the manner and methods that may be used in taking wildlife, but the commission shall not limit or restrict the magazine capacity of any authorized firearm.
4. Be responsible for the enforcement of laws for the protection of wildlife.
5. Provide for the assembling and distribution of information to the public relating to wildlife and activities of the department.
6. Prescribe rules for the expenditure, by or under the control of the director, of all funds arising from appropriation, licenses, gifts or other sources.
7. Exercise such powers and duties necessary to carry out fully the provisions of this title and in general exercise powers and duties that relate to adopting and carrying out policies of the department and control of its financial affairs.
8. Prescribe procedures for use of department personnel, facilities, equipment, supplies and other resources in assisting search or rescue operations on request of the director of the division of emergency management.
9. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

B. The commission may:

1. Conduct investigations, inquiries or hearings in the performance of its powers and duties.
2. Establish game management units or refuges for the preservation and management of wildlife.
3. Construct and operate game farms, fish hatcheries, fishing lakes or other facilities for or relating to the preservation or propagation of wildlife.
4. Expend funds to provide training in the safe handling and use of firearms and safe hunting practices.
5. Remove or permit to be removed from public or private waters fish which hinder or prevent propagation of game or food fish and dispose of such fish in such manner as it may designate.
6. Purchase, sell or barter wildlife for the purpose of stocking public or private lands and waters and take at any time in any manner wildlife for research, propagation and restocking purposes or for use at a game farm or fish hatchery and declare wildlife salable when in the public interest or the interest of conservation.
7. Enter into agreements with the federal government, with other states or political subdivisions of the state and with private organizations for the construction and operation of facilities and for management studies, measures or procedures for or relating to the preservation and propagation of wildlife and expend funds for carrying out such agreements.
8. Prescribe rules for the sale, trade, importation, exportation or possession of wildlife.

9. Expend monies for the purpose of producing publications relating to wildlife and activities of the department for sale to the public and establish the price to be paid for annual subscriptions and single copies of such publications. All monies received from the sale of such publications shall be deposited in the game and fish publications revolving fund.

10. Contract with any person or entity to design and produce artwork on terms that, in the commission's judgment, will produce an original and valuable work of art relating to wildlife or wildlife habitat.

11. Sell or distribute the artwork authorized under paragraph 10 of this subsection on such terms and for such price as it deems acceptable.

12. Consider the adverse and beneficial short-term and long-term economic impacts on resource dependent communities, small businesses and the state of Arizona, of policies and programs for the management, preservation and harvest of wildlife by holding a public hearing to receive and consider written comments and public testimony from interested persons.

13. Adopt rules relating to range operations at public shooting ranges operated by and under the jurisdiction of the commission, including the hours of operation, the fees for the use of the range, the regulation of groups and events, the operation of related range facilities, the type of firearms and ammunition that may be used at the range, the safe handling of firearms at the range, the required safety equipment for a person using the range, the sale of firearms, ammunition and shooting supplies at the range, and the authority of range officers to enforce these rules, to remove violators from the premises and to refuse entry for repeat violations.

14. Solicit and accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title.

C. The commission shall confer and coordinate with the director of water resources with respect to the commission's activities, plans and negotiations relating to water development and use, restoration projects under the restoration acts pursuant to chapter 4, article 1 of this title, where water development and use are involved, the abatement of pollution injurious to wildlife and in the formulation of fish and wildlife aspects of the director of water resources' plans to develop and utilize water resources of the state and shall have jurisdiction over fish and wildlife resources and fish and wildlife activities of projects constructed for the state under or pursuant to the jurisdiction of the director of water resources.

D. The commission may enter into one or more agreements with a multi-county water conservation district and other parties for participation in the lower Colorado river multispecies conservation program under section 48-3713.03, including the collection and payment of any monies authorized by law for the purposes of the lower Colorado river multispecies conservation program.

17-238. Special licenses for field trials, for shooting preserves and for collecting or holding wildlife in captivity.

- A. The commission may adopt rules and regulations and issue licenses for the conduct of field trials, shooting preserves, private wildlife farms and zoos, or for the personal use and possession of wildlife so as to safeguard the interests of the wildlife and people of the state.
- B. The commission, at its discretion and under such regulations as it deems necessary, may issue a permit to take wildlife for scientific purposes to any person or duly accredited representative of public educational or scientific institutions, or governmental departments of the United States engaged in the scientific study of wildlife.
- C. A person holding a permit issued pursuant to this section may, upon advance approval by the commission, buy, sell and transport wildlife legally possessed. Each person receiving a permit under this section shall file with the department within fifteen days after requested by the department a report of his activities under the permit. The commission may revoke such licenses or permits for noncompliance with regulations.

17-306. Importation, transportation, release or possession of live wildlife; violations; classification

- A. No person shall import or transport into this state or sell, trade or release within this state or have in the person's possession any live wildlife except as authorized by the commission or as defined in title 3, chapter 16.
- B. It is unlawful for a person to knowingly and without lawful authority under state or federal law import and transport into this state and release within this state a species of wildlife that is listed as a threatened, endangered or candidate species under the endangered species act of 1973 (P.L. 93-205; 87 Stat. 884; 16 United States Code sections 1531 through 1544).
- C. A person who violates subsection B of this section is guilty of a class 6 felony.
- D. A person who violates subsection B of this section with the intent to disrupt or interfere with the development or use of public natural resources to establish the presence of the species in an area not currently known to be occupied by that species is guilty of a class 4 felony.

GAME AND FISH COMMISSION (F19-0614)

Title 12, Chapter 4, Article 2, Licenses; Permits; Stamps; Tags



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 4, 2019

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

FROM: Council Staff

DATE: May 6, 2019

SUBJECT: ARIZONA GAME AND FISH DEPARTMENT
Title 12, Chapter 4, Article 2, Licenses; Permits; Stamps; Tags

This five year review report (5YRR) from the Arizona Game and Fish Department (Department) relates to all Sections of Title 12, Chapter 4, Article 2 related to licenses, permits, stamps, and tags.

In its prior 5YRR, approved by this Council on November 26, 2013, the Department stated it anticipated submitting final rules to the Council by February 2015. The Department completed the course of action by completing an exempt rulemaking in October 2013 and a regular rulemaking, which was approved by this Council in November 2014.

Proposed Action

The Department anticipates requesting an exception to the rulemaking moratorium by May 2019 and submitting the Notice of Final Rulemaking for actions proposed in the Department's report to the Council by April 2020 and/or February 2021.

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

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

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The most recent rulemaking for Article 2 was an exempt rulemaking, so there is no economic, small business, and consumer impact statement (EIS) available for review; however, the Commission included a brief consideration of the economic impacts in the most recent exempt rulemaking. The Commission notes that outdoor recreational activities are voluntary, so no individual is compelled to purchase a license.

The license fees fund the activities of the Department. The Department protects the value of outdoor recreational areas, which are a common resource. The Commission does not believe that the current fees are prohibitive to any individual's participation in licensed outdoor recreational activities.

The stakeholders include the Commission, the Department, outdoor recreation businesses, and the public.

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

The Commission has identified several ways to improve these rules. These improvements range from nonsubstantive changes to eliminating the community fishing license. The Commission notes that once these amendments are completed, the rules will impose the least burden and costs to those who are regulated.

4. Has the agency received any written criticisms of the rules over the last five years?

Yes. The Department has received numerous written criticisms of the rules over the last five years. These written criticisms are listed in more detail in the Department's report. The Department has adequately responded to these written criticisms.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?

The Department indicates that the rules are generally clear, concise, and understandable except that the Department proposes to amend the rules to remove the Department website URL and simply reference "Department website" to ensure the rule remains concise in the event the Department's URL should change. The Department also proposes amending R12-4-211 to clarify the privileges included with the lifetime license do not include permit-tags, non-permit-tags, or any stamp required to validate the lifetime license for the take of big game animals, migratory game birds, or other wildlife authorized by an applicable tag or stamp in response to customer comments received by the Department.

The Department indicates that the rules are consistent with other rules and statutes.

The Department indicates that the rules are effective.

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

The Department indicates that the rules are enforced as written.

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

To the extent federal law is applicable to these rules, the rules are not more stringent than federal law.

8. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

The rules require a general permit and are in compliance with the requirements prescribed under A.R.S. § 41-1037.

9. Conclusion

The rules are generally clear, concise, understandable, consistent, and effective. The Department's proposed changes will make the rules more clear, concise, understandable and consistent. The Department anticipates requesting an exception to the rulemaking moratorium by May 2019 and submitting the Notice of Final Rulemaking for actions proposed in the Department's report to the Council by April 2020 and/or February 2021. Council staff recommends approval of this report.



April 16, 2019

Nicole Sornsin, Madam Chair
The Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, AZ 85007

SUBJECT: Five-year-Review Report: 12 A.A.C. 4, Article 2. Licenses; Permits; Stamps; Tags

Dear Ms Sorinsin:

On April 12, 2019, the Arizona Game and Fish Commission adopted the enclosed five-year-review report for submission to the Council; 12 A.A.C. 4, Article 2, Licenses; Permits; Stamps; Tags. The report is prepared in accordance with A.R.S. § 41-1056 and the rules and guidelines of the Council. The established due date for the report is December 2018.

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,

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

Ty Gray
Director

Arizona Game and Fish Commission 2019 Five-Year-Review Report

**TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION
ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS**



A Report to the Governor's Regulatory Review Council

ARIZONA GAME AND FISH COMMISSION
12 A.A.C. 4, ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS
2017 FIVE-YEAR REVIEW REPORT
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REPORT: ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS

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 3, Taking and Handling Wildlife, are scheduled to be reviewed by April 2019.

The Arizona Game and Fish Department (Department) tasked a team of employees to review the rules contained within Article 2. 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 May 2019 and submitting the Notice of Final Rulemaking for actions proposed in this report to the Council by February 2021, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking.

With this report, the Department also certifies its compliance with the requirements of A.R.S. § 41-1091:

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;
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, AZ 85086.

R12-4-201. PIONEER LICENSE

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-332, 17-333, 17-336(A)(1), and 41-1005

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish application requirements and hunting and fishing privileges for the pioneer license. The rule was adopted to comply with the statutory mandate under A.R.S. § 17-336(A)(1). This license may be issued to a person who is seventy years of age or older and who has been a resident of this state for twenty-five or more consecutive years immediately preceding application for the license. The pioneer license is valid for the lifetime of the licensee and does not require renewal. The complimentary combination hunting and fishing license is valid state-wide for the take of small game, fur-bearing animals, predatory animals, nongame animals, and upland game and the take of all aquatic wildlife, allows simultaneous fishing, and includes community program fishing privileges

The pioneer license is free of charge to eligible applicants.

The Department issues an average of 4,415 complimentary pioneer licenses on an annual basis.

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. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

Like the lifetime licenses issued under R12-4-211 (lifetime license) and R12-4-212 (benefactor license), the

pioneer license is valid for the person's lifetime and continues to remain valid even when the person moves to another state. The Department proposes to amend the rule to establish a pioneer license holder who resides outside of this state must pay the nonresident fee when purchasing any required permit-tag, nonpermit-tag, or stamp to hunt and fish in Arizona; and the limits established under R12-4-114 (issuance of nonpermit-tags and hunt permit-tags) for nonresident permit holders do not apply to a pioneer license holder to increase consistency between rules within Article 2.

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 during routine patrols. Officers may issue a warning order or a citation.

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 remove the Department website Uniform Resource Location (url) and simply reference "Department's website" to ensure the rule remains concise in the event the Department's url should change.

7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.

The Department received the following written criticisms of the rule:

Written Comment: August 1, 2013. If I make it to 70 years of age, I will be too crippled to hunt. Why not change the age and residency requirements to something reasonable, like 60 years of age with at least 30 years of residency?

Written Comment: March 20, 2017. I was wondering why you have to be a resident of Arizona for 25 years to get a pioneer license. I have been here for 15 years and do not plan on moving anywhere till the day I die, then I will go in a hole in Cave Creek. I checked other states and theirs is as long as you have residence in the state. I will be 70 in December and thought I could get one until I was told different. I don't think that is right and it needs to be changed. **Follow-up Comment: April 11, 2017.** Thank you for your feedback. I misunderstood the rule; I thought the 25 years was for the city you live in, not the State. So, I will be okay.

Agency Response: The twenty five year requirement is based on statute; A.R.S. 17-336(A)(1) requires a person to be at least 70 years of age and a resident of Arizona for twenty-five or more consecutive years immediately preceding application for the license. The legislative amendment must occur before the Department may issue a Pioneer License to a person under the age of 70 or has been a resident of Arizona for less than 25 years.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The Commission amended the rule to clarify the pioneer license is a complimentary, no-fee, license and is valid for the license holder's lifetime provided the person continues to meet the statutory requirements; clarify that a duplicate paper pioneer license is also complimentary; reference age and residency requirements; and establish a person issued a pioneer license prior to January 1, 2014 is granted all of the privileges established by the last rulemaking. The Commission anticipated the amendments would result in a rule that is either less burdensome or would have no significant impact on persons regulated by the rule.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

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

The report was approved by G.R.R.C. at the November 26, 2013 Council Meeting; the report 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: 20 A.A.R. 1233, May 30, 2014
- Notice of Proposed Rulemaking: 20 A.A.R. 1191, May 30, 2014
- Notice of Public Information: 20 A.A.R. 1335, June 13, 2014
- G.R.R.C. approved the Notice of Final Rulemaking at the November 4, 2014 Council Meeting.
- Notice of Final Rulemaking: 20 A.A.R. 3045, November 21, 2014.

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory**

objective.

The rule establishes application requirements and hunting and fishing privileges for the pioneer license. The Department issues an average of 4,415 complimentary pioneer licenses on an annual basis. The public and the Department benefit from the proposed rulemaking through clarification of rule language governing licenses and permits issued by the Department. The public and Department benefit from a rule that is understandable. Currently, the rule requires an applicant to submit an original or certified copy of their proof of name and date of birth document (i.e., valid government-issued driver license, birth certificate, etc.) and have their signature either notarized or witnessed by a Department employee. The Department has determined these requirements do not benefit the Department and are considered burdensome to Pioneer License applicants. The Department proposes to amend the rule to remove these requirements. The Department believes that once the proposed amendments indicated in the report are made, 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 necessary to achieve the underlying regulatory objective.

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 requires a general permit and is in compliance with the requirements prescribed under A.R.S. § 41-1037.

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 R12-4-201 to:

- Establish a pioneer license holder who resides outside of this state must pay the nonresident fee when purchasing any required permit-tag, nonpermit-tag, or stamp to hunt and fish in Arizona to increase consistency between rules within Article 2.
- Establish the limits prescribed under R12-4-114 (issuance of nonpermit-tags and hunt permit-tags) for nonresident permit holders do not apply to a pioneer license holder to increase consistency between rules within Article 2.

- Remove the Department website Uniform Resource Location (url) and simply reference "Department's website" to ensure the rule remains concise in the event the Department's url should change.
- Remove the requirement that an applicant's signature be either notarized or witnessed by a Department employee to reduce burdens and costs to persons regulated by the rule.
- Allow an applicant to submit a copy of their valid U.S. passport, birth certificate, or valid government-issued driver's license or identification card to reduce burdens and costs to persons regulated by the rule.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by February 2021.

R12-4-202. DISABLED VETERAN'S LICENSE

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-332, 17-333, 17-336(A)(2), and 41-1005

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish application requirements and hunting and fishing privileges for the disabled veteran's license. This license may be issued to a disabled veteran who has been a resident for at least one year prior to application and who is receiving compensation from the United States Government for a service connected disability that is 100% disabling. Eligibility is determined by disability rating and not compensation received. The disabled veteran's license is valid for three years if the licensee's 100% permanent disability rating will be reevaluated within three years or for the lifetime of the licensee without requirement for renewal if the license's 100% disability rating will not be reevaluated. The complimentary combination hunting and fishing license is valid state-wide for the take of small game, fur-bearing animals, predatory animals, nongame animals, and upland game and the take of all aquatic wildlife, allows simultaneous fishing, and includes community program fishing privileges. The rule was adopted to comply with the statutory mandate under A.R.S. §17-231(A)(2).

The disabled veteran's license is free of charge to eligible applicants.

The Department issues an average of 400 complimentary disabled veteran's licenses on an annual basis.

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. Statutes and rules used in determining consistency include A.R.S. 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 during routine patrols. Officers may issue a warning order or a citation.

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 written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.

The Department received the following criticisms of the rule:

Oral Comment: March 7, 2018. I don't understand why Arizona requires a person to be a resident of the state in order to obtain a Disabled Veteran's License. Other states allow a nonresident to get a disabled veteran's license. A veteran serves the entire U.S., why do they have to be a resident of a state in order to qualify for a reduced license?

Agency Response: The requirement that a veteran of the armed forces of the United States be a resident of this state for one year preceding application for the complimentary disabled veteran's license is described in statute, A.R.S. 17-336(A)(2). No legislative intent clause or other explanation of this requirement could be located, and any attempt to explain the motivation for requiring residency would therefore be speculative.

Proposed Amendment: Consider issuing a three-year disabled veteran's license to a military member who is rated 100% unemployable (IU).

Agency Response: The recent passage of *Laws, 2018, Chapter 103* has codified the Game and Fish Commission's authority to offer complimentary and discounted licenses at its discretion. It is therefore appropriate for the Commission to consider this amendment as a potential new license discount or complimentary license, rather than an amendment to the existing rule.

- 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 Commission amended the rule in order to accept a benefits letter issued by the United States Department of Veteran's Affairs (DVA) or an eBenefits letter downloaded from the DVA website as proof of eligibility and allowing applicants to attest that application information is true and correct, instead of requiring a notarized signature. The Commission anticipated the amendments would benefit persons regulated by providing a financial benefit to applicants who would no longer incur costs associated travel and notary fees. There were no negative fiscal impacts to the Department, other state agencies, small business, or state revenues associated with this amendment.

- 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 report was approved by G.R.R.C. at the November 26, 2013 Council Meeting; the report 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: 20 A.A.R. 1233, May 30, 2014
- Notice of Proposed Rulemaking: 20 A.A.R. 1191, May 30, 2014
- Notice of Public Information: 20 A.A.R. 1335, June 13, 2014
- G.R.R.C. approved the Notice of Final Rulemaking at the November 4, 2014 Council Meeting.

- Notice of Final Rulemaking: 20 A.A.R. 3045, November 21, 2014.

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The rule establishes application requirements and hunting and fishing privileges for the disabled veteran's license. The Department issues an average of 400 complimentary disabled veteran's licenses on an annual basis. The public benefits from a rule that allows a veteran who has been a resident for at least one year prior to application and who is receiving compensation from the United States Government for a service connected disability that is 100% disabling to receive a complimentary combination hunting and fishing license. The Department benefits from a rule that is understandable. The Department has determined 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 necessary to achieve the underlying regulatory objective.

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 requires a general permit and is in compliance with the requirements prescribed under A.R.S. § 41-1037.

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 R12-4-202 to:

- Remove the Department website Uniform Resource Location (url) and simply reference "Department's website" to ensure the rule remains concise in the event the Department's url should change.

The Department anticipates submitting the Notice of Final Rulemaking to the Council by April 2020, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking.

**R12-4-203. NATIONAL HARVEST INFORMATION PROGRAM (HIP);
STATE WATERFOWL AND MIGRATORY BIRD STAMP**

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(2), 17-235, 17-332, 17-333, and 41-1005

- 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 application and use of both the waterfowl and state migratory bird stamps, which enable the Department to obtain hunter participation and harvest data for migratory game birds in compliance with the requirements of the federally mandated National Harvest Information Program; which is administered by the United States Fish and Wildlife Service (USFWS).

The fee for the State Waterfowl Migratory Bird stamp is \$5.

The Department issues an average of 53,030 State Waterfowl and Migratory Bird Stamps on an annual basis.

- 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. Statutes and rules used in determining consistency include A.R.S. 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 during routine patrols. Officers may issue a warning order or a citation.

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 written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.

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 Commission amended the rule to combine State Waterfowl and Migratory Bird stamp privileges and requirements to simplify the license structure. This resulted in requiring only one stamp for the taking of migratory birds and waterfowl. The Commission anticipated the amendments would benefit persons regulated by providing a financial benefit to applicants who previously had to purchase two different stamps for taking migratory birds and waterfowl. There were no negative fiscal impacts to the Department, other state agencies, small business, or state revenues associated with this amendment.

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 report was approved by G.R.R.C. at the November 26, 2013 Council Meeting; the report 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 Exempt Rulemaking: 190 A.A.R. 3225, October 18, 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 application and use of the state migratory bird stamp, which enable the Department to obtain hunter participation and harvest data for migratory game birds in compliance with the requirements of the federally mandated National Harvest Information Program. The Department issues an average of 53,030 State Waterfowl and Migratory Bird Stamps on an annual basis. The Department collects the participation and harvest data online. The Department has determined 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 necessary to achieve the underlying regulatory objective.

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, 50 C.F.R. Part 20, is applicable to the subject of the rule. The Department has determined the rule is not more stringent than 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 requires a general permit and is in compliance with the requirements prescribed under A.R.S. § 41-1037.

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.

R12-4-205. HONORARY SCOUT; REDUCED FEE YOUTH CLASS F LICENSE

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-332, 17-333, 17-336(B), and 41-1005

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish application requirements and hunting and fishing privileges for the reduced-fee honorary scout license. The combination hunting and fishing license is offered to a resident of this state who is a member of the Boy Scouts of America and who has attained the rank of Eagle Scout or a member of the Girl Scouts of the U.S.A. who has received the Gold Award. The rule was adopted to comply with amendments made to A.R.S. § 17-336(B), which honored the 100th anniversary of the Boy Scouts of America.

The fee for the honorary scout license is \$5.

The Department issues an average of 120 Honorary Scout reduced-fee youth class licenses on an annual basis.

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. Statutes and rules used in determining consistency include A.R.S. 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 during routine patrols. Officers may issue a warning order or a citation.

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 written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

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 Commission amended the rule to increase consistency between Commission rules. The Commission anticipated the amendments resulted in a rule that had no significant impact on persons regulated by the rule.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

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

The report was approved by G.R.R.C. at the November 26, 2013 Council Meeting; the report 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: 20 A.A.R. 1233, May 30, 2014
- Notice of Proposed Rulemaking: 20 A.A.R. 1191, May 30, 2014
- Notice of Public Information: 20 A.A.R. 1335, June 13, 2014
- G.R.R.C. approved the Notice of Final Rulemaking at the November 4, 2014 Council Meeting.
- Notice of Final Rulemaking: 20 A.A.R. 3045, November 21, 2014.

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory**

objective.

The objective of the rule is to establish application requirements for the reduced-fee honorary scout license. The combination hunting and fishing license is offered to a resident of this state who is a member of the Boy Scouts of America and who has attained the rank of Eagle Scout or a member of the Girl Scouts of the U.S.A. who has received the Gold Award. The Department issues an average of 120 Honorary Scout reduced-fee youth class licenses on an annual basis. The Department has determined 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 necessary to achieve the underlying regulatory objective.

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 requires a general permit and is in compliance with the requirements prescribed under A.R.S. § 41-1037.

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.

R12-4-206. GENERAL HUNTING LICENSE; EXEMPTION

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-332, 17-333, and 41-1005

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish application requirements and hunting privileges for the general hunting license. The rule was adopted to ensure compliance with statutory amendments resulting from the Fifty-first Legislature, 1st Regular Session, which amended statutes within Title 17 to authorize the Commission to establish license, permit, tag, and stamp fees by rule. The resident general hunting license is valid for the take of small game, fur-bearing animals, predatory animals, nongame animals, and upland game birds. The general hunting license is also valid for the take of migratory birds when the person possesses the applicable migratory bird stamp, and for big game when the person possesses the applicable big game tag. The license is valid for a one-year period as follows: when the license is purchased from a license dealer, as defined under R12-4-101, the license is valid for one-year from the date of purchase; the applicant may choose their start date, provided that date is in the future and is no more than 60 calendar days from the date of purchase. A person under 10 years of age may hunt wildlife other than big game without a license, when accompanied by a person, 18 years of age or older, who possesses a valid Arizona hunting license.

The fee for the resident hunting license is \$37.

The Department issues an average of 53,140 general hunting licenses on an annual basis.

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. Statutes and rules used in determining consistency include A.R.S. 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 during routine patrols. Officers may issue a warning order or a citation.

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 written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.

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 Commission anticipated establishing new license classifications and prescribing fees for those licenses, as authorized under A.R.S. § 17-333, would generate revenue sufficient to enable the Department to address rising operational expenses, carry out its duties effectively in managing the state's wildlife resources, and provide quality recreational wildlife opportunities and access for the persons regulated by the rule. The Commission's objectives for amending the license rules were to simplify the license structure and remove barriers for recruitment of new hunters and anglers. The Commission increased the cost of the general hunting license by \$5, which the Commission determined would affect persons regulated by the rule. The Department applied a common equation to almost all fees that were amended or adopted, based on factors such as value, principles of the North American Model, customer input, and Commission direction. In addition, fees were also rounded to the nearest dollar value to eliminate the possibility of rejecting an application because the applicant failed to include the odd cents with the application. It is important to note, hunting is a voluntary recreational activity and only those persons who choose to participate in the activity will pay the fee. The Commission did not anticipate the fee increase would significantly affect a person's ability to participate in the activity or have a significant impact on a person's income, revenue, or employment in this state related to that activity. The license fee increase was effective January 1, 2014, which was seven years after the last over-all fee increase.

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 January 1, 2014

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The objective of the rule is to establish application requirements and hunting privileges for the general hunting license. The Department issues an average of 53,140 general hunting licenses on an annual basis. Purchasing a general hunting license is voluntary and a person who chooses to purchase a license will incur those costs associated with the license. The public and Department benefit from a rule that is understandable. The Department has determined 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 necessary to achieve the underlying regulatory objective.**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 requires a general permit and is in compliance with the requirements prescribed under A.R.S. § 41-1037.

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 R12-4-206 to remove the Department website Uniform Resource Location (url) and simply reference "Department's website" to ensure the rule remains concise in the event the Department's url should change.

The Department anticipates submitting the Notice of Final Rulemaking to the Council by April 2020, provided

the current moratorium is not extended or the Commission is granted permission to pursue rulemaking.

R12-4-207. GENERAL FISHING LICENSE; EXEMPTION

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-332, 17-333, and 41-1005

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish application requirements and hunting privileges for the general fishing license. The rule was adopted to ensure compliance with statutory amendments resulting from the Fifty-first Legislature, 1st Regular Session, which amended statutes within Title 17 to authorize the Commission to establish license, permit, tag, and stamp fees by rule. The resident and nonresident general fishing license is valid for the take of aquatic wildlife, includes trout, community, and Colorado River fishing privileges and allows simultaneous fishing as defined under R12-4-301. The license is valid for a one-year period as follows: when the license is purchased from a license dealer, as defined under R12-4-101, the license is valid for one-year from the date of purchase; and when the applicant purchases the license online or at a Department office, the applicant may choose their start date, provided that date is in the future and is no more than 60 calendar days from the date of purchase. A person under 10 years of age may fish without a fishing license.

The fees for the general fishing license are as follows:

- Resident general fishing license is \$37, and
- Nonresident general fishing license is \$55.

On an annual basis, the Department issues:

- 149,700 resident fishing licenses, and
- 15,505 nonresident fishing licenses on an annual basis.

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. Statutes and rules used in determining consistency include A.R.S. 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 during routine patrols. Officers may issue a warning order or a citation.

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 written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.

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 Commission anticipated establishing new license classifications and prescribing fees for those licenses, as authorized under A.R.S. § 17-333, would generate revenue sufficient to enable the Department to address rising operational expenses, carry out its duties effectively in managing the state's wildlife resources, and provide quality recreational wildlife opportunities and access for the persons regulated by the rule. The Commission's objectives for amending the license rules were to simplify the license structure and remove barriers for recruitment of new hunters and anglers. Although the Commission increased the cost of the resident general fishing license by \$13.50, the Commission also increased the value of the license by including trout, simultaneous fishing, community fishing, and Colorado River fishing privileges. Previously, a resident had to

purchase all of these additional privileges separately for a combined total cost of \$69.75 (class A fishing license \$23.50, Urban fishing license \$18.50, trout stamp \$15.75, two-pole stamp \$6, and Arizona/California and Arizona/Nevada Colorado River stamps \$6). An internal analysis indicated nonresident fishing license sales were poor in comparison to resident fishing license sales, so the nonresident fishing license fee was reduced by \$15.25. The Department applied a common equation to almost all fees that were amended or adopted, based on factors such as value, principles of the North American Model, customer input, and Commission direction. In addition, fees were also rounded to the nearest dollar value to eliminate the possibility of rejecting an application because the applicant failed to include the odd cents with the application. It is important to note, fishing is a voluntary recreational activity and only those persons who choose to participate in the activity will pay the fee. The Commission did not anticipate the resident fee increase and nonresident fee reduction would significantly affect a person's ability to participate in the activity or have a significant impact on a person's income, revenue, or employment in this state related to that activity. The license fee increase was effective January 1, 2014, which was seven years after the last over-all fee increase.

- 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 January 1, 2014

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The objective of the rule is to establish application requirements and fishing privileges for the general fishing license. The Department issues an average of 149,700 resident fishing licenses and 15,505 nonresident fishing licenses on an annual basis. Purchasing a general hunting license is voluntary and a person who chooses to purchase a license will incur those costs associated with the license. The public and Department benefit from a rule that is understandable. The Department has determined 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 necessary to achieve the underlying regulatory objective.**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 requires a general permit and is in compliance with the requirements prescribed under A.R.S. § 41-1037.

- 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 R12-4-207 to remove the Department website Uniform Resource Location (url) and simply reference "Department's website" to ensure the rule remains concise in the event the Department's url should change.

The Department anticipates submitting the Notice of Final Rulemaking to the Council by April 2020, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking.

R12-4-208. GUIDE LICENSE

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-245, 17-362, and 41-1005

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish the application, reporting, and guiding requirements for those persons who provide commercial guiding services in Arizona. The rule was adopted to clarify what a guide may legally do while aiding or assisting a client in the taking of wildlife and ensure compliance with wildlife laws and rules.

The fees for the guide license are as follows:

- Resident guide license is \$300, and
- Nonresident guide license is \$300.

On an annual basis, the Department issues:

- 770 resident guide licenses, and
- 95 nonresident guide licenses on an annual basis.

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. Statutes and rules used in determining consistency include A.R.S. 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 during routine patrols. Officers may issue a warning order or a citation.

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 written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.

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 Commission amended the rule to increase consistency between A.R.S. Title 17 and rules within Article 2 by citing the definition of aquatic wildlife; clarify rule language; incorporate questions regarding off-highway vehicle laws and rules into the guide license examination; require a person to provide acceptable proof of identity prior to taking the examination; allow an applicant who failed the examination to retake the examination on the same day or as otherwise agreed upon by the applicant and the examination administrator; require an applicant who fails an examination twice on the same day to wait at least seven calendar days before retaking the examination; and extend the prohibition on providing false information to required annual reports. The Commission anticipated the rulemaking would benefit persons who provide guiding services by increasing consistency between Commission rules and clarifying guide license requirements.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

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

The report was approved by G.R.R.C. at the November 26, 2013 Council Meeting; the report 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: 20 A.A.R. 1233, May 30, 2014
- Notice of Proposed Rulemaking: 20 A.A.R. 1191, May 30, 2014
- Notice of Public Information: 20 A.A.R. 1335, June 13, 2014
- G.R.R.C. approved the Notice of Final Rulemaking at the November 4, 2014 Council Meeting.
- Notice of Final Rulemaking: 20 A.A.R. 3045, November 21, 2014.

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The objective of the rule is to establish the application, reporting, and guiding requirements for those persons who provide commercial guiding services in Arizona. The Department issues an average of 770 resident guide licenses and 95 nonresident guide licenses on an annual basis. The public and the Department benefit from a rule that is understandable. Although the Department has determined 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 necessary to achieve the underlying regulatory objective, the Department proposes to amend the rule to provide applicants the ability to apply for a guide license, take the guide examination, and submit reports to the Department electronically. These changes will make it easier for members of the public to apply for and obtain a guide license and will reduce both costs and administrative burden to applicants once implemented. 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 requires a general permit and is in compliance with the requirements prescribed under A.R.S. § 41-1037.

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 R12-4-208 as follows:

- Remove rule language relating to the manual examination to implement the online examination process.
- Require a person taking the online guide examination to provide personal information for security purposes when taking the examination to implement the online examination process.
- Remove the Department website Uniform Resource Location (url) and simply reference "Department's website" to ensure the rule remains concise in the event the Department's url should change.
- Allow an applicant to submit a copy of their valid U.S. passport, birth certificate, or valid government-issued driver's license or identification card to reduce burdens and costs to persons regulated by the rule.
- Remove date of receipt information applicable to the annual report to implement the online reporting process.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by February 2021.

R12-4-209. COMMUNITY FISHING LICENSE; EXEMPTION

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-332, 17-333, and 41-1005

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish the requirements and privileges for both the resident and nonresident community fishing licenses. The rule was adopted to ensure compliance with statutory amendments resulting from the Fifty-first Legislature, 1st Regular Session, which amended statutes within Title 17 to authorize the Commission to establish license, permit, tag, and stamp fees by rule. The rule was adopted to provide fishing opportunities for anglers in an urban environment for the purpose of encouraging angler recruitment and reengagement. The resident and nonresident community fishing license is valid for the take of aquatic wildlife from those Commission designated community waters specifically listed in the Department's fishing regulations and allows simultaneous fishing. The license is valid for a one-year period as follows: when the license is purchased from a license dealer, as defined under R12-4-101, the license is valid for one-year from the date of purchase; when the applicant purchases the license online or at a Department office, the applicant may choose their start date, provided that date is in the future and is no more than 60 calendar days from the date of purchase. A person under 10 years of age may fish in designated community waters without a fishing license.

The fees for the community fishing license is as follows:

- Resident community fishing license is \$24, and
- Nonresident community fishing license is \$24.

On an annual basis, the Department issues:

- 4,370 resident community licenses, and
- 650 nonresident community fishing licenses.

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. Statutes and rules used in determining consistency include A.R.S. 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 during routine patrols. Officers may issue a warning order or a citation.

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 written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.

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 Commission anticipated establishing new license classifications and prescribing fees for those licenses, as authorized under A.R.S. § 17-333, would generate revenue sufficient to enable the Department to address rising operational expenses, carry out its duties effectively in managing the state's wildlife resources, and provide quality recreational wildlife opportunities and access for the persons regulated by the rule. The Commission's objectives for amending the license rules were to simplify the license structure and remove barriers for

recruitment of new hunters and anglers. The Commission increased the cost of the resident and nonresident community fishing license by \$3.50. The Department applied a common equation to almost all fees that were amended or adopted, based on factors such as value, principles of the North American Model, customer input, and Commission direction. In addition, fees were also rounded to the nearest dollar value to eliminate the possibility of rejecting an application because the applicant failed to include the odd cents with the application. It is important to note, hunting and fishing are voluntary recreational activity and only those persons who choose to participate in the activity will pay the fee. The Commission did not anticipate the resident and nonresident fee reduction would significantly affect a person's ability to participate in the activity or have a significant impact on a person's income, revenue, or employment in this state related to that activity. The license fee increase was effective January 1, 2014, which was seven years after the last over-all fee increase.

- 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 January 1, 2014

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The objective of the rule is to establish the requirements and privileges for both the resident and nonresident community fishing licenses. The Department issues 4,370 resident community licenses and 650 nonresident community fishing licenses on an annual basis. In 2014, through the license simplification rulemaking, fishing privileges for Commission designated community waters were added to the general fishing license to increase its value. Prior to 2014, the Department issued approximately 29,180 community fishing licenses. Since the license simplification rulemaking, the number of community fishing licenses (both resident and nonresident) issued by the Department on an annual basis has dropped to 5,020 community licenses. Overall sales for community fishing licenses have trended downward, with the exception of nonresident license sales. If the Department were to eliminate the community fishing license there would likely be a slight loss in revenue, because most residents would most likely convert to a General Fishing license, but due to the price difference we could potentially lose the nonresident Community water angler. Through creel surveys community water

angler demographics mirror those of the community in which the water is established and information gathered through the sale of this license are not currently needed or used to gain angler user data. For these reasons, the Department proposes to repeal the rule and eliminate the community fishing license. 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 requires a general permit and is in compliance with the requirements prescribed under A.R.S. § 41-1037.

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 repeal R12-4-209. The privilege to fish Commission designated community waters is available through the purchase of a general fishing license and combination hunting and fishing license. Eliminating the community fishing license will simplify license choices available to the public at a minimal cost to the end user.

R12-4-210. COMBINATION HUNTING AND FISHING LICENSE

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-332, 17-333, and 41-1005

2. Objective of the rule, including the purpose for the existence of the rule.

The rule establishes the requirements and privileges of both the resident and nonresident hunting and fishing combination licenses. The rule was adopted to ensure compliance with statutory amendments resulting from the Fifty-first Legislature, 1st Regular Session, which amended statutes within Title 17 to authorize the Commission to establish license, permit, tag, and stamp fees by rule. The combination hunting and fishing license is valid state-wide for the take of small game, fur-bearing animals, predatory animals, nongame animals, and upland game and the take of all aquatic wildlife, allows simultaneous fishing, and includes community program fishing privileges. The Commission established three variations of the combination hunting and fishing license: resident and nonresident one-year combination hunting and fishing license available to persons 18 years of age and older, resident and nonresident one-year youth combination hunting and fishing license available to person's age 10 through 17, and resident and nonresident short-term combination hunting and fishing license available to persons age 18 and older. The short-term license is valid for one 24-hour period from midnight to midnight. The short-term combination hunting and fishing license is the only short term license offered by the Department and provides the same privileges as the one-year combination hunting and fishing license, except that it is not valid for the take of big game animals. The Commission does not limit the number of short-term licenses a person may purchase in any given year or require a person to purchase consecutive short-term licenses, however, the Department will offer an annual license when the cost of short-term licenses being purchased meets or exceeds the price of the applicable combination hunting and fishing license. A person under 10 years of age may hunt wildlife other than big game without a license, when accompanied by a person, 18 years of age or older, who possesses a valid Arizona hunting license. The only hunting license the Commission offers a nonresident is the combination hunting and fishing license.

The fees for the combination hunting and fishing licenses are as follows:

- Resident combination hunting and fishing license is \$57,
- Nonresident combination hunting and fishing license is \$160,
- Resident youth combination hunting and fishing license is \$5,
- Nonresident youth combination hunting and fishing license is \$5,
- Resident short-term combination hunting and fishing license is \$15 and
- Nonresident short-term combination hunting and fishing license is \$20.

On an annual basis, the Department issues:

- 101,190 resident combination hunting and fishing licenses,
- 27,325 nonresident combination hunting and fishing licenses,
- 66,340 resident youth combination hunting and fishing licenses,
- 3,625 nonresident youth combination hunting and fishing licenses,
- 17,925 resident short-term combination hunting and fishing licenses, and
- 30,925 nonresident short-term combination hunting and fishing licenses.

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. Statutes and rules used in determining consistency include A.R.S. 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 during routine patrols. Officers may issue a warning order or a citation.

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 written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.

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 Commission anticipated establishing new license classifications and prescribing fees for those licenses, as authorized under A.R.S. § 17-333, would generate revenue sufficient to enable the Department to address rising operational expenses, carry out its duties effectively in managing the state's wildlife resources, and provide quality recreational wildlife opportunities and access for the persons regulated by the rule. The Commission's objectives for amending the license rules were to simplify the license structure and remove barriers for recruitment of new hunters and anglers. The Department applied a common equation to almost all fees that were amended or adopted, based on factors such as value, principles of the North American Model, customer input, and Commission direction. In addition, fees were also rounded to the nearest dollar value to eliminate the possibility of rejecting an application because the applicant failed to include the odd cents with the application. It is important to note, hunting and fishing are voluntary recreational activities and only those persons who choose to participate in the activity will pay the fee. The Commission did not anticipate the resident fee increase of \$3 and nonresident fee reduction of \$65.75 would significantly affect a person's ability to participate in the activity or have a significant impact on a person's income, revenue, or employment in this state related to that activity. The license fee increase was effective January 1, 2014, which was seven years after the last over-all fee increase.

- 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 January 1, 2014

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes the requirements and privileges of both the resident and nonresident hunting and fishing combination licenses. The Department issues a total of 247,330 combination hunting and fishing licenses: resident and nonresident: youth, one-year, and short-term. The fee for resident and nonresident youth combination hunting and fishing license was reduced from \$26.50 to \$5 to remove barriers for recruitment of new hunters and anglers. The fee for the resident combination hunting and fishing license was increased to

\$160, which was only \$3 more than it was before. 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 requires a general permit and is in compliance with the requirements prescribed under A.R.S. § 41-1037.

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 R12-4-210 to:

- Remove the Department website Uniform Resource Location (url) and simply reference "Department's website" to ensure the rule remains concise in the event the Department's url should change.
- Remove the reference to R12-4-209 because the report recommends repealing this rule.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by February 2021.

R12-4-211. LIFETIME LICENSE

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-332, 17-333, 17-335.01, and 41-1005

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish the hunting and/or fishing privileges for the three lifetime licenses, application requirements, and fees for lifetime licenses. The rule was adopted to ensure compliance with statutory amendments resulting from the Fifty-first Legislature, 1st Regular Session, which amended statutes within Title 17 to authorize the Commission to establish license, permit, tag, and stamp fees by rule. Arizona's lifetime general hunting and fishing license program provides a unique opportunity for resident sportsmen and sportswomen to participate in the long-term funding of Arizona's Wildlife Conservation programs. The dollars derived from the sale of these special licenses are deposited into the established Arizona Wildlife Endowment Fund from which only the interest accrued will be used for management programs. The license is a great value; the initial investment pays off in 18 years even when purchasing the most costly lifetime license: combination license for a person aged 14 to 29 for \$1026. The purchaser of a lifetime license is entitled to hunt and fish (as applicable) in Arizona for their lifetime, even if the license holder moves out-of-state. In addition, a lifetime license holder who moved out-of-state is not subject to the limits placed on nonresident permit-tags. The lifetime hunting license is valid for the take of small game, fur-bearing animals, predatory animals, nongame animals, and upland game birds. The lifetime fishing license is valid for the take of aquatic wildlife, includes trout, community, and Colorado River fishing privileges and allows simultaneous fishing as defined under R12-4-301. The lifetime combination hunting and fishing license is valid state-wide for the take of small game, fur-bearing animals, predatory animals, nongame animals, and upland game and the take of all aquatic wildlife, allows simultaneous fishing, and includes community program fishing privileges.

Fees for the lifetime fishing, lifetime hunting, and lifetime combination licenses are based on the applicant's age as follows:

- Age 0 through 13 years is 17 times the applicable annual license fee,
- Age 14 through 29 years is 18 times the applicable annual license fee,
- Age 30 through 44 years is 16 times the applicable annual license fee,
- Age 45 through 61 years is 15 times the applicable annual license fee, and
- Age 62 and older is 8 times the applicable annual license fee.

On an annual basis, the Department issues:

- 24 lifetime fishing licenses,
- 128 lifetime hunting licenses, and
- 195 lifetime combination hunting and fishing licenses.

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. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

The Department also issues a Benefactor License. The benefactor license is an additional type of lifetime license and is similar to the lifetime hunting and fishing license, except the person purchasing the license pays an additional amount that is considered a tax deductible donation to the state for the continued management, protection and conservation of the state's wildlife. The Department proposes to amend the rule to incorporate the requirements of the Benefactor License; R12-4-212 Benefactor License will be repealed with the same rulemaking.

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 during routine patrols. Officers may issue a warning order or a citation.

6. Clarity, conciseness, and understandability of the rule.

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

However, the Department proposes to amend the rule to clarify the privileges included with the lifetime license do not include permit-tags, nonpermit-tags, or any stamp required to validate the lifetime license for the take of big game animals, migratory game birds, or other wildlife authorized by an applicable tag or stamp. This change is in response to customer comments received by the Department.

In addition, the Department proposes to amend the rule to remove the Department website Uniform Resource Location (url) and simply reference "Department's website" to ensure the rule remains concise in the event the Department's url should change.

7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or

methods.

The Department received the following written criticism of the rule:

Written Comment: November 4, 2014. I have been inquiring about the new migratory bird stamp requirement for dove hunting. I possess a lifetime hunting/fishing license and have been given conflicting information from the Department as to whether or not I need the stamp. The majority consensus has been that I would need it. I feel that Arizona hunters who have paid for the lifetime license, under the belief that they would pay no more to hunt or fish again except for game tags, should be "grandfathered" in those rights as they stood when they bought the license. I was contemplating giving up hunting before I bought the lifetime license because of the ever increasing cost. I made the purchase believing that would save me from future inflation and expenses, except for tags of course. Now I see that new charges are being added and it is disturbing to me. Please clarify the rule language to address this issue. Furthermore, can the Department also put something out exclusive to lifetime license holders on exactly what you get (i.e. trout stamp, two-pole stamp, etc.)? What about special big game tags exclusively for lifetime license holders? That would probably draw more people into the investment.

Agency Response: Prior to December 31, 2013, a lifetime license holder was required to purchase additional licenses and stamps as required: community (urban) fishing license (\$18.50), Colorado River stamps (\$6), state waterfowl stamp (\$7.50), trout stamp (\$15.75), two-pole stamp (\$6), and Unit 12A Habitat Management stamp (\$15). The licenses and stamps were valid until December 31 of each year, meaning the lifetime license holder purchased these privileges separately and annually each year. On January 1, 2014 the Commission increased the value of hunting and fishing licenses by including all of the privileges listed above in the price of the license. At that time, the lifetime license privileges were amended to include all of the privileges listed above; a total savings of \$68.75 each year. The Department does not support the concept of dedicating special big game tags for lifetime license holders. Arizona's big game populations are not as robust as in many other states, mostly attributable to the arid climate. Arizona's populations are much lower and the demand for the big game tags the Department offers is very high. The Commission's draw process is designed to provide equal opportunity to all classes of persons and not to provide an advantage to certain classes. As a result, the Commission does not believe that any class of persons should be awarded or offered big game tags for which others are not eligible.

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 Commission anticipated establishing new license classifications and prescribing fees for those licenses, as authorized under A.R.S. § 17-333, would generate revenue sufficient to enable the Department to address rising operational expenses, carry out its duties effectively in managing the state's wildlife resources, and provide

quality recreational wildlife opportunities and access for the persons regulated by the rule. The Commission's objectives for amending the license rules were to simplify the license structure and remove barriers for recruitment of new hunters and anglers. The Department applied a common equation to almost all fees that were amended or adopted, based on factors such as value, principles of the North American Model, customer input, and Commission direction. In addition, fees were also rounded to the nearest dollar value to eliminate the possibility of rejecting an application because the applicant failed to include the odd cents with the application. It is important to note, hunting and fishing are voluntary recreational activities and only those persons who choose to participate in the activity will pay the fee. The Commission anticipated the new, simplified license structure would benefit persons regulated by the rule due to the increased value. While other licenses that were previously available prior to December 31, 2013 were either repealed or the fee increased, the three lifetime license fees were not increased, providing a greater benefit to current and future lifetime license holders.

- 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 January 1, 2014

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes the hunting and/or fishing privileges for the three lifetime licenses, application requirements, and fees for lifetime licenses. The Department issues a combined total of 347 lifetime licenses on an annual basis. Prior to January 1, 2014, the lifetime fishing and lifetime combination hunting and fishing licenses did not include simultaneous fishing, community, and Colorado River fishing privileges. In addition, the previous lifetime fishing license did not include trout privileges. A person who desired any or all of these additional privileges had to purchase them separately on an annual basis, with the exception of trout fishing privileges which could be purchased either annually or for a lifetime. When the rule was adopted, the Commission included these additional privileges in the license and also granted persons issued a lifetime license prior to the effective date of the rule change the same privileges applicable to the new lifetime license. The public benefits from a rule that enables a person to obtain a hunting and/or fishing license that lasts a lifetime

for a nominal fee. The Department benefits from a rule that enables the long-term funding of Arizona's Wildlife Conservation programs. The dollars derived from the sale of these special licenses are deposited into the established Arizona Wildlife Endowment Fund from which only the interest accrued will be used for management programs. The public and Department benefit from a rule that is understandable. 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 requires a general permit and is in compliance with the requirements prescribed under A.R.S. § 41-1037.

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 R12-4-211 as follows:

- Incorporate the requirements of the Benefactor License; R12-4-212 Benefactor License will be repealed with the same rulemaking.
- Clarify the privileges included with the lifetime license do not include permit-tags, nonpermit-tags, or any stamp required to validate the lifetime license for the take of big game animals, migratory game birds, or other wildlife authorized by an applicable tag or stamp. This change is in response to customer comments received by the Department.
- Remove the Department website Uniform Resource Location (url) and simply reference "Department's website" to ensure the rule remains concise in the event the Department's url should change.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by February 2021.

R12-4-212. BENEFACTOR LICENSE

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-332, 17-333, 17-335.01, and 41-1005

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish the hunting and fishing privileges for the benefactor combination hunting and fishing license, application requirements, and fee. The rule was adopted to ensure compliance with statutory amendments resulting from the Fifty-first Legislature, 1st Regular Session, which amended statutes within Title 17 to authorize the Commission to establish license, permit, tag, and stamp fees by rule. Arizona's lifetime general hunting and fishing license program provides a unique opportunity for resident sportsmen and sportswomen to participate in the long-term funding of Arizona's Wildlife Conservation programs. The dollars derived from the sale of the benefactor license is deposited into the established Arizona Wildlife Endowment Fund from which only the interest accrued will be used for management programs. In addition, the difference between the cost of the lifetime combination hunting and fishing license and the cost of the benefactor combination hunting and fishing license is considered a donation and may be tax deductible to the extent allowed by federal and state income tax statutes for contributions to qualifying tax-exempt organizations. The purchaser of a benefactor license is entitled to hunt and fish in Arizona for their lifetime, even if the license holder moves out-of-state. In addition, a benefactor license holder who moved out-of-state is not subject to the limits placed on nonresident permit-tags. The benefactor combination hunting and fishing license is valid state-wide for the take of small game, fur-bearing animals, predatory animals, nongame animals, and upland game and the take of all aquatic wildlife, allows simultaneous fishing, and includes community program fishing privileges.

Fee for the lifetime benefactor combination hunting and fishing license is \$1,500.

On an annual basis, the Department issues five lifetime benefactor combination hunting and fishing licenses.

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. Statutes and rules used in determining consistency include A.R.S. 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 during routine patrols. Officers may issue a warning order or a citation.

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 written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.

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 Commission anticipated establishing new license classifications and prescribing fees for those licenses, as authorized under A.R.S. § 17-333, would generate revenue sufficient to enable the Department to address rising operational expenses, carry out its duties effectively in managing the state's wildlife resources, and provide quality recreational wildlife opportunities and access for the persons regulated by the rule. The Commission's objectives for amending the license rules were to simplify the license structure and remove barriers for recruitment of new hunters and anglers. The Department applied a common equation to almost all fees that were amended or adopted, based on factors such as value, principles of the North American Model, customer input,

and Commission direction. In addition, fees were also rounded to the nearest dollar value to eliminate the possibility of rejecting an application because the applicant failed to include the odd cents with the application. It is important to note, hunting and fishing are voluntary recreational activities and only those persons who choose to participate in the activity will pay the fee. The Commission anticipated the new, simplified license structure would benefit persons regulated by the rule due to the increased value. While other licenses that were previously available prior to December 31, 2013 were either repealed or the fee increased, the lifetime benefactor license fees were not increased, providing a greater benefit to current and future benefactor license holders.

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 January 1, 2014

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The rule establishes establish the hunting and fishing privileges for the benefactor combination hunting and fishing license, application requirements, and fee. The Department issues five benefactor licenses on an annual basis. Prior to January 1, 2014, the benefactor combination hunting and fishing license did not include simultaneous fishing, trout, community, and Colorado River fishing privileges. A person who desired any or all of these additional privileges had to purchase them separately on an annual basis, with the exception of trout fishing privileges which could be purchased either annually or for a lifetime. When the rule was adopted, the Commission included these additional privileges in the license and also granted persons issued a benefactor license prior to the effective date of the rule change the same privileges applicable to the new benefactor license. The public benefits from a rule that enables a person to obtain a hunting and fishing license that lasts a lifetime for a nominal fee. The Department benefits from a rule that enables the long-term funding of Arizona's Wildlife Conservation programs. The dollars derived from the sale of the benefactor license is deposited into the established Arizona Wildlife Endowment Fund from which only the interest accrued will be used for management programs. In addition, the difference between the cost of the lifetime combination hunting and

fishing license and the cost of the benefactor combination hunting and fishing license is considered a donation and may be tax deductible to the extent allowed by federal and state income tax statutes for contributions to qualifying tax-exempt organizations. The public and Department benefit from a rule that is understandable. 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 requires a general permit and is in compliance with the requirements prescribed under A.R.S. § 41-1037.

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 repeal R12-4-212 and incorporate the requirements of the Benefactor License into R12-4-211 Lifetime Licenses.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by February 2021.

R12-4-213. HUNT PERMIT-TAGS AND NONPERMIT-TAGS

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-332, 17-333, 17-345, and 41-1005

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish requirements to validate a license for the take a big game animal or any other wildlife requiring a valid tag. The rule was adopted to establish permit-tag and nonpermit-tag requirements. Because tags are issued by the season and the Department no longer issues a hunting or combination hunting and fishing license that is valid for the calendar year (expires on December 31 of each year), the Commission believed the rule was necessary.

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. Statutes and rules used in determining consistency include A.R.S. 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 written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.

The Department received the following written criticisms of the rule:

Written Comment: April 10, 2014. I believe Arizona should consider conservation permits; these permits could be auctioned annually to create a large amount of money to directly benefit each species individually. Please open the link below to see how Utah structures these permits/ programs. <https://wildlife.utah.gov/hunting-in-utah/hunting-information/big-game/118-hunting/big-game/839-conservationpermitprogram.html>

Agency Response: Under A.R.S. § 17-346, the Commission is authorized to award ten Special Big Game License Tags to the Arizona Big Game Super Raffle for the purpose of conducting a raffle. The Arizona Big Game Super Raffle is a 501(c)(3) organization founded in 2006. These special license tags are designed to earn money for wildlife and wildlife management in Arizona. Raffle entries come from all 50 states and other countries; and every dollar raised for each species by the raffle of these special big game tags is returned to the Arizona Game and Fish Department and managed by the Arizona Habitat Partnership Committee for that particular species. With input from local habitat partners across the state, as well as the input from the organizations involved with the fundraising, they collectively determine which projects will provide the most benefit to each species represented. Since, 2006, the raffle has given the Arizona Game and Fish Department almost \$6,000,000 for habitat improvements that benefit wildlife.

Written Comment: June 14, 2017. This is the second time I have appealed to the Department requesting a family tag (deer, elk, etc.) be made available to hunters. I never received a response. When asking for input from the public, please include an email address on the announcement where we can respond in the event we are unable to attend the public hearings.

Agency Response: Currently, the computer draw process allows four applicants to apply for a specific hunt on one application. Approximately four weeks after deadline day, the draw is run by computer. There are three separate passes made during a computer draw. The first is for hunters with maximum bonus points for first and second choices, the second is the “regular pass” for first and second choices, and the third is for third, fourth and fifth choices. Each application is assigned a random number. A person receives an additional random number for each bonus point for that particular genus (bonus points for group applications are averaged). The lowest of all random numbers is the one assigned to the application for that genus for the draw. When the computer draws a group application, it first determines whether there are enough permit-tags available for all members of the group. If there are not enough permit-tags for everyone in the group, the application is rejected and the computer draw goes onto the application with the next lowest random number. Amending the rule to allow more persons to apply on a group application could result in all persons not being drawn. However, a large group can apply for hunts by submitting multiple applications.

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 Commission anticipated establishing new license classifications and prescribing fees for those licenses, as authorized under A.R.S. § 17-333, would generate revenue sufficient to enable the Department to address rising operational expenses, carry out its duties effectively in managing the state's wildlife resources, and provide quality recreational wildlife opportunities and access for the persons regulated by the rule. The Commission's objectives for amending the license rules were to simplify the license structure and remove barriers for recruitment of new hunters. The Department applied a common equation to almost all fees that were amended or adopted, based on factors such as value, principles of the North American Model, customer input, and Commission direction. Some tag fees were increased, while others were reduced. In addition, fees were also rounded to the nearest dollar value to eliminate the possibility of rejecting an application because the applicant failed to include the odd cents with the application. The Commission anticipated increasing some fees will most significantly affect persons regulated by the rule, both resident and nonresident. However, hunting is a voluntary recreational activity and only those persons who choose to participate in the activity requiring the necessary permit-tag or nonpermit-tag will pay the increased fee. The Commission did not anticipate the fee increase would significantly affect a person's ability to practice an activity or have a significant impact on a person's income, revenue, or employment in this state related to that activity. The effective date for the license fee increases is January 1, 2014, which is seven years from the time of the last over-all fee increase.

- 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 January 1, 2014

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes that a person may apply for a hunt permit-tag in accordance with R12-4-104 and at the times, locations, and in the manner established by the hunt permit tag application schedule that the Department publishes at www.azgfd.gov or a license dealer. The public benefits from a rule that establishes permit-tag and

non-permit tag requirements. The public and Department benefit from a rule that is understandable. The Department has determined 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 requires a general permit and is in compliance with the requirements prescribed under A.R.S. § 41-1037.

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.

R12-4-214. APPRENTICE LICENSE

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-332, 17-333, and 41-1005

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish apprentice license privileges and mentor requirements by rule to comply with the recent statutory amendments. The rule was adopted to ensure compliance with statutory amendments resulting from the Fifty-first Legislature, 1st Regular Session, which amended statutes within Title 17 to authorize the Commission to establish license, permit, tag, and stamp fees by rule. The apprentice license is a tool for recruitment that provides both youth and adult novice hunters the opportunity to hunt under the supervision of a licensed hunter; these programs allow apprentice hunters to receive hands-on experience. Apprentice license privileges and mentor requirements were previously prescribed under A.R.S. § 17-333. The

apprentice license is a complimentary license and is valid for the take of small game, fur-bearing animals, predatory animals, nongame animals, and upland game birds. The apprentice license is valid for the take of migratory game birds and waterfowl provided the license holder also possesses the applicable state and federal stamp. The apprentice license is not valid for the take of big game.

The apprentice license is free of charge to eligible applicants.

The Department issues an average of 50 resident and 25 nonresident complimentary apprentice licenses on an annual basis.

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. Statutes and rules used in determining consistency include A.R.S. 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 during routine patrols. Officers may issue a warning order or a citation.

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 written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or

methods.

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 Commission anticipated establishing new license classifications and prescribing fees for those licenses, as authorized under A.R.S. § 17-333, would generate revenue sufficient to enable the Department to address rising operational expenses, carry out its duties effectively in managing the state's wildlife resources, and provide quality recreational wildlife opportunities and access for the persons regulated by the rule. The Commission's objectives for amending the license rules were to simplify the license structure and remove barriers for recruitment of new hunters and anglers. The apprentice license is a tool for recruitment that provides both youth and adult novice hunters the opportunity to hunt under the supervision of a licensed hunter; these programs allow apprentice hunters to receive hands-on experience. This concept is called "Try Before You Buy." However, the Department believes certain persons are using the apprentice license to avoid buying a hunting license. To date, the Department has issued 293 apprentice licenses. Of those licenses: five nonresidents were issued an apprentice license each year for three consecutive years at the start of dove season; eleven nonresidents were issued an apprentice license two consecutive years at the start of dove season; and three residents were issued an apprentice license twice in a three year period, also at the start of dove season. To prevent the abuse of this complimentary license, the Department proposes to limit the number of apprentice licenses a person may obtain to two per the person's lifetime. The Department believes the short-term combination hunting and fishing license is a valid option for persons who may want additional low cost opportunities to hunt and fish in Arizona. The Department also proposes to limit the number of hunters a person may mentor at any one time to two persons to promote hunter safety.

- 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 January 1, 2014

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes apprentice license privileges and mentor requirements. The Department issues an average of 100 resident and 190 nonresident complimentary apprentice licenses on an annual basis. Apprentice license privileges and mentor requirements were previously prescribed under A.R.S. § 17-333. The apprentice license is a complimentary license and is valid for the take of small game, fur-bearing animals, predatory animals, nongame animals, and upland game birds. The Department believes the concept of an apprentice license would be beneficial to persons who would like to try fishing before buying a fishing license. The Department proposes to amend the rule to establish an Apprentice Fishing License to assist in the recruitment of both youth and adult novice anglers by providing an opportunity to fish under the supervision of a licensed angler. The public benefits from a rule that establishes a complimentary license that allows a person to experience hunting without having to purchase a license first. The public and Department benefit from a rule that is understandable. The Department benefits from a rule that encourages hunter recruitment. The Department believes that once the proposed amendments indicated in the report are made, 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 necessary to achieve the underlying regulatory objective.

- 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 requires a general permit and is in compliance with the requirements prescribed under A.R.S. § 41-1037.

- 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 R12-4-214 as follows:

- Establish an apprentice fishing license to provide both youth and adult novice anglers the opportunity to fish without a license under the supervision of a licensed angler.
- Limit the number of apprentice licenses a person may obtain to two per the person's lifetime to maintain the intent of the license. The short-term combination hunting and fishing license is a valid option for persons who may want additional low cost opportunities to hunt and fish in Arizona.
- Limit the number of hunters a person may mentor at any one time to two persons to promote hunter safety.

The Department anticipates submitting the Notice of Final Rulemaking to the Council by April 2020, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking.

R12-4-215. YOUTH GROUP TWO-DAY FISHING LICENSE

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-332, 17-333, and 41-1005

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish youth group two-day fishing license privileges and requirements by rule to comply with the recent statutory amendments. The rule was adopted to ensure compliance with statutory amendments resulting from the Fifty-first Legislature, 1st Regular Session, which amended statutes within Title 17 to authorize the Commission to establish license, permit, tag, and stamp fees by rule. Youth group two-day fishing license privileges were previously prescribed under A.R.S. § 17-333. The youth group two-day fishing license is issued to a nonprofit organization that sponsors adult supervised activities for groups of no more than 25 youth, ages 10 through 17. The youth group two-day fishing license is valid for taking all aquatic wildlife.

Fee for the youth group two-day fishing license is \$25.

The Department issues 55 youth group two-day fishing licenses on an annual basis.

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. Statutes and rules used in determining consistency include A.R.S. 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 during routine patrols. Officers may issue a warning order or a citation.

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 written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.

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 Commission anticipated establishing new license classifications and prescribing fees for those licenses, as authorized under A.R.S. § 17-333, would generate revenue sufficient to enable the Department to address rising operational expenses, carry out its duties effectively in managing the state's wildlife resources, and provide quality recreational wildlife opportunities and access for the persons regulated by the rule. It is important to note, the fee for the youth group two-day fishing license was not changed. Fishing is a voluntary recreational activity and only those persons who choose to participate in the activity will pay the fee. The Commission did not anticipate the rulemaking would significantly affect a person's ability to participate in the activity or have a

significant impact on a person's income, revenue, or employment in this state related to that activity. The license fee increase was effective January 1, 2014, which was seven years after the last over-all fee increase.

- 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 January 1, 2014.

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The objective of the rule is to establish youth group two-day fishing license privileges and requirements by rule to comply with the recent statutory amendments. The Department issues 55 youth group two-day fishing licenses on an annual basis. The rule was adopted to ensure compliance with statutory amendments resulting from the Fifty-first Legislature, 1st Regular Session, which amended statutes within Title 17 to authorize the Commission to establish license, permit, tag, and stamp fees by rule. The youth group two-day fishing license privileges were amended to lower the minimum age for eligible youth from 14 to 10 and increase the maximum age for eligible youth from 14 to 17 to increase consistency between Commission fishing license rules. The public benefits from a rule that establishes a low-cost fishing license that allows a nonprofit organization or governmental entity to take up to 25 youth fishing. The Department benefits from a rule that promotes angler recruitment. The public and Department benefit from a rule that is understandable. 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 requires a general permit and is in compliance with the requirements prescribed under A.R.S. § 41-1037.

- 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

R12-4-216. CROSSBOW PERMIT

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(3), 17-332, 17-301(D)(2), and 41-1005

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish eligibility requirements, conditions, and restrictions for the crossbow permit. The permit allows a person who cannot draw and hold a bow to use a crossbow during an archery-only hunt. The rule was adopted to provide a mechanism that afforded persons with a disability the opportunity to participate in hunting.

The crossbow permit (both temporary and lifetime) are free of charge to eligible applicants.

The Department issues an average of 1 lifetime crossbow permit and 85 temporary crossbow permits on an annual basis.

- 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. Statutes and rules used in determining consistency include A.R.S. 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 written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.

The Department received the following written criticisms of the rule:

Written Comment: July 16, 2013. The Department should allow the use of crossbows for all archery hunting opportunities. Many Arizonan's are getting older and having more difficulty drawing a compound bow back to full draw at the minimum draw weight. This would also provide more opportunity to hunters and generate more revenue for the Arizona Game and Fish Department.

Written Comment: April 14, 2014. I would like to suggest that people 70 years of age and older be permitted to use a crossbow during archery seasons.

Written Comment: July 28, 2014. It would be nice to allow the use of a crossbow for a person 70 years and older during bow season.

Written Comment: January 7, 2015. Arizona should allow deer hunting with a crossbow during archery season for everyone. The current crossbow disability rules are ridiculous. Stop forcing us to go to the many other states that allow crossbow hunting and spending our money there instead of at home.

Written Comment: January 7, 2015. Crossbows for Archery. Some of us do not qualify for the handicapped rules but with shoulder injuries that still cannot draw even today's 80% drop off compounds.

Written Comment: July 1, 2015. I think crossbow should be able to be used during archery seasons for senior citizens over 65.

Written Comment: November 8, 2016. I would like to see those that have Pioneer License be able to use a crossbow when hunting without a physical exam for disability.

Agency Response: The Department disagrees. Crossbows generally fire with higher levels of kinetic energy, more speed and greater accuracy, providing an advantage to a hunter who uses a crossbow over one that uses a bow and arrow. At this time, crossbows may be used during general season for the take of big game, small game, predators, furbearers, nongame, and the handgun, archery and muzzleloader (HAM) season for the take of javelina. In addition, a person with a crossbow permit issued under R12-4-216 may use a crossbow during an archery-only hunt. The Department does not believe that any class of individuals (persons of a certain age) should be afforded preferential treatment.

Written Comment: February 1, 2016. You may have already heard about the new arrow shooting airgun from Crosman, called the Benjamin "Pioneer Airbow" (press release copied below). It made its debut at ATA show just after the first of the year, and set social media ablaze for a few days, then at SHOT last week the interest was almost overwhelming. The weapon is basically an adaptation of the .35 cal. Bulldog PCP airgun. It shoots a full-length 26-inch 375 grain arrow at 450 feet-per-second, each and every shot due to an internal metering system. And, it actually shoots arrows more accurately than the Bulldog shoots slugs - "robin hoods" are a common occurrence out to 50 yards. I have been testing a prototype of the airbow that is very close to what the final production model will be. They are scheduled to start shipping in April, and Crosman has a pile of pre-orders. I showed the airbow to Dan Diamond and Dave Cagle in the Pinetop office, with somewhat mixed reaction. It's my contention that since it is a .35 cal. PCP airgun adapted to shoot arrows, and since AZ regulations do not specify requirements for the projectile, that this should be legal for hunting where PCP airguns are allowed. Dan questioned that it is not marked .35 cal. externally, and Crosman says this will be corrected on the final production version. I have a general javelina hunt later this month, and I hope to use this remarkable new weapon on that hunt. We also discussed that Crosman is targeting crossbow seasons with this new weapon, as it is more accurate, faster and more lethal, easier to load, unload and handle, and much safer than a crossbow. I believe this weapon to be an excellent alternative for disabled hunters or those with physical limitations that prevent them from cocking and using a crossbow (at least in a safe manner). I spoke with Celeste Cook regarding the possibility of clarifying the legality of this new weapon, since article 3 is open once again for changes. Here's what I would like to see addressed: 1) clarification so it's easily understood that the airbow is legal for use where PCP airguns are legal. 2) consideration for classification of the new airbow as a crossbow, so it can be used by disabled hunters with a legitimate crossbow permit. 3) modification of rule 3

(and also rule 2 if necessary) to allow the take of elk with the airbow (during general hunts, where .35 cal. PCP airguns are not currently legal). You may recall the EEE chart we developed in 2012 when regulations for hunting with airguns were being developed. I have attached an updated version of this chart, which includes both the airbow and modern crossbow. Finally, I would welcome the opportunity to demonstrate the airbow for you, as well as any of the other commissioners and G&F personnel that may be interested. There's a good possibility that I will have a couple of airbows available for hands-on demonstration at the Outdoor Expo at Ben Avery April 1-2. Rob Potter with Shoot Right American club has invited me to do so at his booth, and I should have an actual production model by then. **Additional Follow-up Comment: August 8, 2016.** I sent the email copied below back in February regarding the new arrow shooting airgun, and intended to follow-up since I did not hear back from you. Unfortunately, we were unable to get the necessary approvals to demonstrate the Pioneer Airbow at the Expo in April, and time flies by... I see the Commissioners will be meeting in Pinetop this month (8/26-27), and I plan to submit a blue card to speak about the Airbow and current airgun hunting regulations at this meeting. I will have one at the meeting on Friday for the Commissioners to review, and possibly shoot -- if we can get this cleared with the Pinetop office (we can probably set up a 20-30 yard range behind the office if anyone wants to try the Airbow, possible at the lunch break or after the meeting). And, I can be available for demonstrations/questions, etc. on Saturday as well if necessary. I think addressing this new weapon class is important for several reasons. There are now more than a dozen arrow shooting airguns marketed in the US, and some have greater utility as hunting weapons (safer and more lethal) than others. Also, last week Air Venturi announced they are now marketing specially adapted arrows that can be launched from virtually any .50 caliber airgun. Thus, there's no question AZGFD will be encountering more arrow launchers in the field.

Agency Response: The Commission is currently amending rules within Article 3, which addresses the taking and handling of wildlife, to allow a Crossbow Permit holder to use a pre-charged pneumatic weapon, as defined under R12-4-301, using bolts or arrows and with a capacity of holding and firing only one arrow or bolt at a time during an archery-only season. This change is proposed as a result of customer comments received by the Department.

Written Comment: February 10, 2015. I am not handicapped but my father is. I have had the pleasure of hunting with him my entire life and have seen how hard it has become for him to even get within shooting range with a rifle. In one particular year we had the chance meeting with a father and son hunter, where the son was severely handicapped and was not expected to live another three years. That young man was 16 at the time and I suspect that he has now passed as it was five years ago. Both of these hunts were right after a major muzzleloader hunt in 6A and even seeing an animal was rare as both parties were confined to road hunting. The boy was completely chair bound and my father can walk a couple of hundred yards at best in an hour. How do we as hunters and humans expect these people to have half a chance if we don't even give them a 10% chance to start. I would like to see these hunts moved in front of the rifle hunts and give them that half a chance. It also

wouldn't hurt if you allowed the animals a few days to settle down after each hunt either. So many other states have hunts that do this, why shouldn't we. It seems only fair to game more so than the hunters.

Agency Response: The Department appreciates your comments and suggestions. Your comment relates to the Department's hunt guidelines and was forwarded to the Department's Terrestrial Wildlife Branch for consideration during the next hunt guideline evaluation process.

- 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 was amended to define "healthcare provider" to reduce the regulatory burden on the applicant; establish a temporary crossbow permit for applicants who are temporarily disabled to reduce the regulatory burden on the applicant; allow the Department to issue a crossbow permit to a person who holds a valid Challenged Hunter Access/Mobility Permit (CHAMP); and expand the list of qualifying medical conditions. The Commission anticipated persons who apply for a crossbow permit would benefit from the proposed amendments that expand the medical eligibility criteria and allow a person to apply for a temporary crossbow permit. The Commission anticipated the amendments would result in an overall benefit to persons regulated by the rule, members of the public, and the Department.

- 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 report was approved by G.R.R.C. at the November 26, 2013 Council Meeting; the report 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: 20 A.A.R. 1233, May 30, 2014
- Notice of Proposed Rulemaking: 20 A.A.R. 1191, May 30, 2014
- Notice of Public Information: 20 A.A.R. 1335, June 13, 2014
- G.R.R.C. approved the Notice of Final Rulemaking at the November 4, 2014 Council Meeting.
- Notice of Final Rulemaking: 20 A.A.R. 3045, November 21, 2014.

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes eligibility requirements, conditions, and restrictions for the crossbow permit. The Department issues an average of 1 lifetime crossbow permit and 85 temporary crossbow permits on an annual basis. The public benefits from a rule that provides a mechanism that afforded persons with a disability the opportunity to participate in hunting. The public and Department benefit from a rule that is understandable. The Department has determined 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 requires a general permit and is in compliance with the requirements prescribed under A.R.S. § 41-1037.

- 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.

R12-4-217. CHALLENGED HUNTERS ACCESS/MOBILITY PERMIT (CHAMP)

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(3), 17-332, 17-301(D)(2), and 41-1005

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish eligibility requirements, conditions, and restrictions for the Challenged Hunter Access/Mobility Permit (CHAMP). The permit allows a disabled person to perform activities while hunting normally prohibited under A.R.S. § 17-301. The rule was adopted to provide a mechanism that afforded persons with a disability the opportunity to participate in hunting.

The CHAMP is free of charge to eligible applicants.

The Department issues an average of one CHAMP on an annual basis.

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. Statutes and rules used in determining consistency include A.R.S. 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 during routine patrols. Officers may issue a warning order or a citation.

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 written criticisms of the rule received in last five years including any written analyses

submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.

The Department received the following written criticism of the rule:

Written Comment: August 20, 2013. I think the CHAMP rule needs to be looked at. There are people who enjoy hunting and are very limited too. They should be able to qualify for the CHAMP; such as people who have COPD, CHF, and other similar limiting health issues. Imagine a person who takes an deer or elk, they could die trying to get it back to their truck on foot, but if they were missing a foot, arm, or leg - they could use their quad to retrieve that deer or elk. The requirements are not fair. The CHAMP should cover more than just handicapped hunters. Just because I have both arms and legs, does not mean I am not just as limited. I used to walk 15 to 20 miles a day, scouting and hunting. Now it takes me all day just to cover a couple of miles. I called the Department to ask about the CHAMP and the person I spoke to told me to get one of my children to take me hunting. That is the last thing I want; to have lean on or burden my children. My daughter is 15, if something happened to me - how would she drag me out of the woods. The second person I spoke to suggested that I write in and bring this to the Department's attention. Maybe no one has ever looked at it this way before, maybe it could be put on the agenda and voted on when considering new regulations.

Agency Response: On January 3, 2015, the CHAMP rule was amended to expand the list of qualifying medical conditions to include one or more permanent physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, intellectual disability, muscular dystrophy, musculoskeletal disorders, neurological disorders, paraplegia, pulmonary disorders, quadriplegia and other spinal cord conditions, sickle cell anemia, and end stage renal disease or a combination of permanent disabilities resulting in comparable substantial functional limitations.

- 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 was amended to define "healthcare provider" to reduce the regulatory burden on the applicant; expand the list of persons authorized to complete the medical certification portion of the application; and expand the list of qualifying medical conditions. The Commission anticipated persons who apply for a CHAMP would benefit from the proposed amendments that expand the medical eligibility criteria. The Commission anticipated the amendments would result in an overall benefit to persons regulated by the rule, members of the public, and the Department.

- 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 report was approved by G.R.R.C. at the November 26, 2013 Council Meeting; the report 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: 20 A.A.R. 1233, May 30, 2014
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- Notice of Public Information: 20 A.A.R. 1335, June 13, 2014
- G.R.R.C. approved the Notice of Final Rulemaking at the November 4, 2014 Council Meeting.
- Notice of Final Rulemaking: 20 A.A.R. 3045, November 21, 2014.

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The rule establishes eligibility requirements, conditions, and restrictions for the Challenged Hunter Access/Mobility Permit (CHAMP). The Department issues an average of one CHAMP on an annual basis. The public benefits from a rule that provides a mechanism that afforded persons with a disability the opportunity to participate in hunting. The public and Department benefit from a rule that is understandable. The Department has determined 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 requires a general permit and is in compliance with the requirements prescribed under A.R.S. § 41-1037.

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.

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ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS**R12-4-201. Pioneer License**

- A.** A pioneer license grants all of the hunting and fishing privileges of a combination hunting and fishing license. The pioneer license is only available at a Department office.
- B.** The pioneer license is a complimentary license and is valid for the license holder's lifetime.
- C.** A person who is age 70 or older and has been a resident of Arizona for at least 25 consecutive years immediately preceding application may apply for a pioneer license by submitting an application to the Department. The application form is furnished by the Department and is available at any Department office and online at www.azgfd.gov. A pioneer license applicant shall provide all of the following information on the application:
 1. The applicant's personal information:
 - a. Name;
 - b. Date of birth;
 - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
 - d. Department identification number, when applicable;
 - e. Residency status and number of years of residency immediately preceding application, when applicable;
 - f. Mailing address, when applicable;
 - g. Physical address;
 - h. Telephone number, when available; and
 - i. E-mail address, when available;
 2. Affirmation that:
 - a. The applicant is 70 years of age or older and has been a resident of this state for 25 or more consecutive years immediately preceding application for the license; and
 - b. The information provided on the application is true and accurate.
 3. Applicant's signature and date. The applicant's signature shall be either notarized or witnessed by a Department employee.
- D.** In addition to the requirements listed under subsection (C), an applicant for a pioneer license shall also submit any one of the following documents at the time of application:
 1. Valid U.S. passport;
 2. Original or certified copy of the applicant's birth certificate;
 3. Original or copy of a valid government-issued driver's license; or
 4. Original or copy of a valid government-issued identification card.
- E.** All information and documentation provided by the applicant is subject to Department verification. The Department shall return the original or certified copy of a document to the applicant after verification.
- F.** The Department shall deny a pioneer license when the applicant:
 1. Fails to meet the criteria prescribed under A.R.S. § 17-336(A)(1),
 2. Fails to comply with this Section, or
 3. Provides false information on the application.
- G.** The Department shall provide written notice to the applicant stating the reason for the denial. The applicant may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Ch 6, Article 10.
- H.** A pioneer license holder may request a no-fee duplicate of the paper license provided:
 1. The license was lost or destroyed;

2. The license holder submits a written request to the Department for a no-fee duplicate paper license; and
 3. The Department's records indicate a pioneer license was previously issued to that person.
- I.** A person issued a pioneer license prior to January 1, 2014 shall be entitled to the privileges established under subsection (A).

Historical Note

Former Section R12-4-31 renumbered as Section R12-4-201 without change effective August 13, 1981. New Section R12-4-201 amended effective August 31, 1981 (Supp. 81-4). Amended subsection (B) effective December 9, 1985 (Supp. 85-6). Amended subsections (D) and (E), and changed application for a Pioneer License effective September 24, 1986 (Supp. 86-5). Former Section repealed, new Section adopted effective December 22, 1989 (Supp. 89-4). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 12 A.A.R. 212, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 20 A.A.R. 3045, effective January 3, 2015 (Supp. 14-4).

R12-4-202. Disabled Veteran's License

- A.** A disabled veteran's license grants all of the hunting and fishing privileges of a combination hunting and fishing license. The disabled veteran's license is only available at a Department office.
- B.** The disabled veteran's license is a complimentary license and is valid for a three-year period from the issue date or the license holder's lifetime, as established under subsection (F).
- C.** An eligible applicant is a disabled veteran who:
 1. Has been a resident of Arizona for at least one year immediately preceding application, and
 2. Is receiving compensation from the United States government for permanent service-connected disabilities rated as 100% disabling. Eligibility for the disabled veteran's license is based on the disability rating, not on the compensation received by the veteran.
- D.** A person applying for a disabled veteran's license shall submit an application to the Department. The application form is furnished by the Department and available at any Department office and online at www.azgfd.gov. The applicant shall provide all of the following information on the application:
 1. The applicant's personal information:
 - a. Name;
 - b. Date of birth,
 - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
 - d. Department identification number, when applicable;
 - e. Residency status and number of years of residency immediately preceding application, when applicable;
 - f. Mailing address, when applicable;
 - g. Physical address;
 - h. Telephone number, when available; and
 - i. E-mail address, when available;
 2. Affirmation that:
 - a. The applicant meets the eligibility requirements prescribed under A.R.S. § 17-336(A)(2),
 - b. The applicant has been a resident of this state for at least one year immediately preceding application for the license, and

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- c. The information provided on the application is true and accurate.
3. Applicant's signature and date.
- E. In addition to the requirements established under subsection (D), an applicant for a disabled veteran's license shall, at the time of application, also submit an original certification or a benefits letter issued by the United States Department of Veteran's Affairs (DVA) or obtained from the DVA website that meets the requirements specified in subsections (D)(1), (2), and (3). The certification form is furnished by the Department and is available at any Department office and online at www.azgfd.gov. The certification shall be completed by an agent of the United States Department of Veteran's Affairs. The certification shall include all of the following information:
1. The applicant's full name,
 2. Certification that the applicant is receiving compensation from the United States government for permanent service-connected disabilities rated as 100% disabling,
 3. Certification that the 100% rating is permanent, and:
 - a. Will not require reevaluation or
 - b. Will be reevaluated in three years, and
 4. The signature and title of the Department of Veterans' Affairs agent who issued or approved the certification.
- F. If the certification or benefits letter required under subsection (E) indicate the applicant's disability rating of 100% is permanent and:
1. Will not be reevaluated, the disabled veteran's license will not expire.
 2. Will be reevaluated in three years, the disabled veteran's license will expire three years from the date of issuance.
- G. All information and documentation provided by the applicant is subject to Department verification. The Department shall return the original or certified copy of a document to the applicant after verification.
- H. The Department shall deny a disabled veteran's license when the applicant:
1. Fails to meet the criteria prescribed under A.R.S. § 17-336(A)(2),
 2. Fails to comply with the requirements of this Section, or
 3. Provides false information during the application process.
- I. The Department shall provide written notice to the applicant stating the reason for the denial. The applicant may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.
- J. A disabled veteran's license holder may request a no-fee duplicate paper license provided:
1. The license was lost or destroyed,
 2. The license holder submits a written request to the Department for a duplicate license, and
 3. The Department's records indicate a disabled veteran's license was previously issued to that person.
- K. A person issued a disabled veteran's license prior to January 1, 2014 shall be entitled to the privileges established under subsection (A).
- L. For the purposes of this Section, "disabled veteran" means a veteran of the armed forces of the United States with a service connected disability.

Historical Note

Former Section R12-4-66 renumbered, then repealed and readopted as Section R12-4-43 effective February 20, 1981 (Supp. 81-1). Former Section R12-4-43 renumbered as Section R12-4-202 without change effective August 13, 1981 (Supp. 81-4). Amended effective December 31, 1984 (Supp. 84-6). Repealed effective April 28, 1989 (Supp. 89-2). New Section R12-4-202 adopted effective December 22, 1989 (Supp. 89-4). Amended by final

rulemaking at 6 A.A.R. 211, effective December 14, 1999 (Supp. 99-4). Amended by final rulemaking at 12 A.A.R. 212, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 1199, effective June 30, 2012 (Supp. 12-2). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 20 A.A.R. 3045, effective January 3, 2015 (Supp. 14-4). Amended by final rulemaking at 21 A.A.R. 2550, effective January 5, 2015 (Supp. 15-2).

R12-4-203. National Harvest Information Program (HIP); State Waterfowl and Migratory Bird Stamp

- A. All state fish and wildlife agencies are required to obtain data to assess the harvest of migratory game birds in compliance with the federally mandated National Harvest Information Program administered by the United States Fish and Wildlife Service in accordance with 50 C.F.R. Part 20.
- B. In compliance with the National Harvest Information Program, the Department requires a person to possess a migratory bird stamp or authorization number, which may be affixed to or written on the appropriate license, and a current, valid federal waterfowl stamp. The migratory bird stamp and authorization number are required to take band-tailed pigeons, moorhen, coots, doves, ducks, geese, snipe, or swans.
1. The state migratory bird stamp expires on June 30 of each year. To obtain a state migratory bird stamp, a person shall submit:
 - a. The fee required under R12-4-102, and
 - b. A completed state migratory bird registration form to a license dealer or a Department office.
 2. The person shall provide on the state migratory bird registration form the person's:
 - a. Name,
 - b. Mailing address,
 - c. Date of birth, and
 - d. Information on past and anticipated hunting activity.
 3. The youth combination hunting and fishing license includes the state migratory bird stamp privileges. A youth hunter who possesses a valid combination hunting and fishing license shall obtain:
 - a. A Federal waterfowl stamp when the youth hunter is 16 years of age or older and is taking ducks, geese, swans, coots, gallinules; or
 - b. A permit-tag when the youth hunter is taking sand-hill crane.
- C. A license dealer shall submit state migratory bird registration forms for all state migratory bird stamps sold with the monthly report required under A.R.S. § 17-338.

Historical Note

Amended effective March 7, 1979 (Supp. 79-2).
 Amended effective April 22, 1980 (Supp. 80-2).
 Amended subsections (A), (C), (D), and (G) effective December 29, 1980 (Supp. 80-6). Former Section R12-4-41 renumbered as Section R12-4-203 without change effective August 13, 1981 (Supp. 81-4). Amended subsections (A), (C), (E), (G) and added Form 7016 (Supp. 81-6). Repealed effective April 28, 1989 (Supp. 89-2). New Section adopted effective July 1, 1997; filed with the Office of the Secretary of State November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 6 A.A.R. 1146, effective July 1, 2000 (Supp. 00-1). Amended by final rulemaking at 12 A.A.R. 212, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 13 A.A.R. 462, effective February 6, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 3225, effective

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tive January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

Editor's Note

For similar subject matter, see Section R12-4-411. This editor's note does not apply to the new Section adopted effective July 1, 1997 (Supp. 96-4).

R12-4-204. Repealed**Historical Note**

Amended effective May 31, 1976 (Supp. 76-3). Correction, Historical Note Supp. 76-3 should read "Amended effective May 3, 1976" (Supp. 78-5). Amended effective March 7, 1979 (Supp. 79-2). Amended effective March 20, 1981 (Supp. 81-2). Former Section R12-4-32 renumbered as Section R12-4-204 without change effective August 13, 1981 (Supp. 81-4). Repealed effective April 28, 1989 (Supp. 89-2). New Section made by final rulemaking at 12 A.A.R. 212, effective March 11, 2006 (Supp. 06-1). Repealed by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

R12-4-205. High Achievement Scout License

- A.** A high achievement scout license is offered to a resident who is:
1. Eligible for a combination hunting and fishing license,
 2. Under 21 years of age, and
 3. A member of the Boy Scouts of the United States of America and has attained the rank of Eagle Scout, or
 4. A member of the Girl Scouts of the United States of America and has attained the Gold Award.
- B.** The high achievement scout license grants all of the hunting and fishing privileges of the youth combination hunting and fishing license and is only available at Department offices.
1. The license is valid for one year from the date of purchase or selected start date provided the date selected is no more than 60 calendar days from and after the date of purchase.
 2. A valid hunt permit-tag, nonpermit-tag, or stamp is required to validate the high achievement scout license for the take of big game animals, migratory game birds, or other wildlife authorized by an applicable tag or stamp.
- C.** An applicant for a high achievement scout license shall apply on an application form available from any Department office and on the Department's web site at www.azgfd.gov. The applicant shall provide all of the following information on the application:
1. The applicant's:
 - a. Name;
 - b. Date of birth;
 - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
 - d. Department identification number, when applicable;
 - e. Residency status and number of years of residency immediately preceding application, when applicable;
 - f. Mailing address, when applicable;
 - g. Physical address;
 - h. Telephone number, when available; and
 - i. E-mail address, when available;
 2. Affirmation that the information provided on the application is true and accurate; and
 3. Applicant's signature and date.
- D.** In addition to the application, an eligible applicant shall present with the application:

1. For an applicant who is a member of the Boy Scouts of the United States of America, any one of the following original documents:
 - a. A certification letter from the Boy Scouts of the United States of America stating that the applicant has attained the rank of Eagle Scout,
 - b. A Boy Scouts of the United States of America Eagle Scout Award Certificate, or
 - c. A Boy Scouts of the United States of America Eagle Scout wallet card.
 2. For an applicant who is a member of the Girl Scouts of the United States of America, any one of the following original documents:
 - a. A certification letter from the Girl Scouts of the United States of America stating that the applicant has completed the award,
 - b. A Girl Scouts of the United States of America Gold Award Certificate, or
 - c. A Girl Scouts Gold Award Certificate from the local council.
- E.** The Department shall deny a high achievement scout license to an applicant who:
1. Is not eligible for the license;
 2. Fails to comply with the requirements of this Section; or
 3. Provides false information during the application process.
- F.** The Department shall provide written notice to the applicant stating the reason for the denial. The applicant may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

Amended effective May 3, 1976 (Supp. 76-3). Editorial correction subsection (A) (Supp. 78-5). Amended effective March 7, 1979 (Supp. 79-2). Amended effective September 23, 1980 (Supp. 80-5). Former Section R12-4-33 renumbered as Section R12-4-205 without change effective August 13, 1981 (Supp. 81-4). Repealed effective April 28, 1989 (Supp. 89-2). New Section made by final rulemaking at 17 A.A.R. 1472, effective July 12, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 20 A.A.R. 3045, effective January 3, 2015 (Supp. 14-4).

R12-4-206. General Hunting License; Exemption

- A.** A general hunting license is valid for the taking of small game, fur-bearing animals, predatory animals, nongame animals, and upland game birds. A valid hunt permit-tag, nonpermit-tag, or stamp is required to validate the general hunting license for the take of big game animals, migratory game birds, or other wildlife authorized by an applicable tag or stamp.
- B.** The general hunting license is valid for one-year from:
1. The date of purchase when a person purchases the hunting license from a license dealer, as defined under R12-4-101;
 2. On the last day of the application deadline for that draw, as established by the hunt permit-tag application schedule published by the Department;
 3. On the last day of an extended deadline date, as authorized under subsection R12-4-104(C). If an applicant does not possess an appropriate license that meets the requirements of this subsection, the applicant shall purchase the license at the time of application; or
 4. The selected start date when a person purchases the hunting license from a Department office or online. A person may select the start date for the hunting license provided

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the date selected is no more than 60 calendar days from and after the date of purchase.

- C. A resident may apply for a general hunting license by submitting an application to the Department, a License Dealer as defined under R12-4-101, or online at www.azgfd.gov. The application is furnished by the Department and is available at any Department office, license dealer, and online at www.azgfd.gov. A general hunting license applicant shall provide the following information on the application:
1. The applicant's:
 - a. Name;
 - b. Date of birth,
 - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
 - d. Department identification number, when applicable;
 - e. Residency status and number of years of residency immediately preceding application, when applicable;
 - f. Mailing address, when applicable;
 - g. Physical address;
 - h. Telephone number, when available; and
 - i. E-mail address, when available; and
 2. Affirmation that the information provided on the application is true and accurate; and
 3. Applicant's signature and date.
- D. In addition to the requirements listed under subsection (C), at the time of application an applicant who is applying for a general hunting license:
1. In person shall pay the applicable fee required under R12-4-102.
 2. Online shall electronically pay the fee required under R12-4-102 and print the new license. A person applying online shall affirm, or provide permission for another person to affirm, the information electronically provided is true and accurate.
- E. A person who is under 10 years of age may hunt wildlife other than big game without a hunting license when accompanied by a properly licensed person who is 18 years of age or older.

Historical Note

Amended effective March 7, 1979 (Supp. 79-2).
 Amended effective December 4, 1980 (Supp. 80-6). Former Section R12-4-34 renumbered as Section R12-4-206 without change effective August 13, 1981 (Supp. 81-4).
 Repealed effective April 28, 1989 (Supp. 89-2). New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

R12-4-207. General Fishing License; Exemption

- A. A general fishing license is valid for the taking of all aquatic wildlife and allows the license holder to engage in simultaneous fishing as defined under R12-4-301. The general fishing license is valid:
1. State-wide including Mittry Lake and Topock Marsh and the Arizona shoreline of Lake Mead, Lake Mohave and Lake Havasu, and Commission designated community waters. The list of Commission designated community waters is available at any license dealer, Department office, and online at www.azgfd.gov.
 2. On that portion of the Colorado River that forms the common boundary between Arizona and Nevada and Arizona and California and connected adjacent water, provided Arizona has an agreement with California and Nevada that recognizes a general fishing license as valid for taking aquatic wildlife on any portion of the Colorado River that forms the common boundary between Arizona and Nevada and Arizona and California.

- B. The general fishing license is valid for one-year from:
1. The date of purchase when a person purchases the fishing license from a license dealer, as defined under R12-4-101; or
 2. The selected start date when a person purchases the fishing license from a Department office or online. A person may select the start date for the fishing license provided the date selected is no more than 60 calendar days from and after the date of purchase.
- C. A resident or nonresident may apply for a general fishing license by submitting an application to the Department, a License Dealer as defined under R12-4-101, or online at www.azgfd.gov. The application is furnished by the Department and is available at any Department office, license dealer, and online at www.azgfd.gov. A general fishing license applicant shall provide the following information on the application:
1. The applicant's:
 - a. Name;
 - b. Date of birth,
 - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
 - d. Department identification number, when applicable;
 - e. Residency status and number of years of residency immediately preceding application, when applicable;
 - f. Mailing address, when applicable;
 - g. Physical address;
 - h. Telephone number, when available; and
 - i. E-mail address, when available; and
 2. Affirmation that the information provided on the application is true and accurate; and
 3. Applicant's signature and date.
- D. In addition to the requirements listed under subsection (C), an applicant who is applying for a general fishing license:
1. In person shall pay the applicable fee required under R12-4-102.
 2. Online shall electronically pay the fee required under R12-4-102 and print the new license. A person applying online shall affirm, or provide permission for another person to affirm, the information electronically provided is true and accurate.
- E. In addition to the exemption prescribed under A.R.S. § 17-335, a person who is under 10 years of age may fish without a fishing license.

Historical Note

Amended effective March 7, 1979 (Supp. 79-2).
 Amended effective December 4, 1980 (Supp. 80-6). Former Section R12-4-35 renumbered as Section R12-4-207 without change effective August 13, 1981 (Supp. 81-4).
 Repealed effective April 28, 1989 (Supp. 89-2). New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

R12-4-208. Guide License

- A. A guide, as defined under A.R.S. § 17-101, is a person who does any one of the following:
1. Advertises for guiding services.
 2. Is presented to the public for hire as a guide.
 3. Is employed by a commercial enterprise as a guide.
 4. Accepts compensation in any form commensurate with the market value in this state for guiding services in exchange for aiding, assisting, directing, leading, or instructing a person in the field to locate and take wildlife.

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5. Is not a landowner or lessee who, without full fair market compensation, allows access to the landowner's or lessee's property and directs and advises a person in taking wildlife.
- B.** A person shall not act as a guide unless the person holds one of the following guide licenses:
1. A hunting guide license, which authorizes the license holder to act as a guide for the taking of lawful wildlife other than aquatic wildlife as defined under A.R.S. § 17-101.
 2. A fishing guide license, which authorizes the license holder to act as a guide for the taking of lawful aquatic wildlife.
 3. A hunting and fishing guide license, which authorizes the license holder to act as a guide for the taking of lawful wildlife.
- C.** A guide license shall expire on December 31 of each year.
- D.** A person is not eligible to apply for an original or renewal guide license when any one of the following conditions apply:
1. The applicant was convicted of a felony violation of any federal wildlife law, within five years immediately preceding the date of application;
 2. The applicant was convicted of a violation listed under A.R.S. § 17-309(D), within five years immediately preceding the date of application;
 3. The applicant was convicted of a violation of a federal or state wildlife law for which a license to take wildlife may be revoked or suspended within five years immediately preceding the date of application; or
 4. The applicant's privilege to take or possess wildlife or to guide or act as a guide is currently suspended or revoked anywhere in the United States for violation of a federal or state wildlife law.
- E.** Notwithstanding subsection (D), a person who was convicted of a misdemeanor violation of any wildlife law within one year preceding the date of application may apply for a guide license provided the person immediately and voluntarily reported the violation to the Department after committing the violation.
- F.** An applicant for a guide license shall:
1. Be 18 years of age or older, and
 2. Possess the required Department-issued license, as applicable:
 - a. A current Arizona hunting license when applying for a hunting guide license;
 - b. A current Arizona fishing license when applying for a fishing guide license;
 - c. A current Arizona combination hunting and fishing license when applying for a hunting and fishing guide license;
- G.** The guide license does not exempt the license holder from any applicable method of take or licensing requirement. The guide license holder shall comply with all applicable Commission rules, including, but not limited to, rules governing:
1. Lawful methods of take,
 2. Lawful devices, and
 3. License requirements.
- H.** Unless otherwise provided under this Section, a person shall successfully complete the Department administered examination, and answer at least 80% of the questions correctly, prior to applying for a guide license. Guide examinations are:
1. Provided at a Department office.
 2. Valid for a period up to twelve months prior to the date on which the applicant submits an application to the Department.
 3. Conducted during normal business hours.
4. Conducted on the first Monday of the month or by special appointment. A person interested in taking the guide examination shall contact a Department office to obtain scheduling information.
- I.** The examination is based on the type of guide license the person is seeking.
1. A person shall provide acceptable proof of identity, as listed under subsection (L)(2), prior to taking the examination.
 2. The examination may include questions regarding any of the following topics:
 - a. A.R.S. Title 17 Game and Fish statutes and Commission rules regarding the taking and handling of terrestrial and aquatic wildlife;
 - b. A.R.S. Title 28, Ch 3, Article 20 Off-highway Vehicles statutes and rule regarding the use of off-highway vehicles;
 - c. A.R.S. Title 5, Ch 3, Boating and Water Sports statutes and Commission rules on boating;
 - d. Requirements for guiding on federal lands;
 - e. Identification of aquatic wildlife species;
 - f. Identification of wildlife;
 - g. Special state and federal laws regarding certain species;
 - h. General knowledge of species habitat and wildlife that may occur in the same habitat;
 - i. General knowledge of the types of habitat within the State; and
 - j. General knowledge of special or concurrent jurisdictions within the State.
 3. An applicant who fails an examination may retake the examination on the same day or as otherwise agreed upon by the applicant and the examination administrator. An applicant who fails an examination twice on the same day shall wait at least seven calendar days, from the examination date, before retaking the examination.
- J.** In addition to the guide examination requirement under subsection (H), a guide license holder shall take the Department administered examination when:
1. The applicant is applying to add a new guiding authority to a current guide license;
 2. The applicant for a hunting guide license was convicted of a violation of A.R.S. Title 17 or Game and Fish Commission rule governing the taking and handling of terrestrial wildlife within one year preceding the date of application;
 3. The applicant for a fishing guide license was convicted of a violation of A.R.S. Title 17 or Game and Fish Commission rule governing the taking and handling of aquatic wildlife within one year preceding the date of application;
 4. The applicant failed to submit a renewal application post-marked before the expiration date of the guide license; or
 5. The applicant failed to submit the annual report for the preceding license year by January 10 of the following license year.
- K.** A person may apply for a guide license by submitting an application to the Department. The application form is furnished by the Department and is available at any Department office and online at www.azgfd.gov. A guide license applicant shall provide all of the following information on the application:
1. The applicant's personal information:
 - a. Name;
 - b. Date of birth;
 - c. Physical description, to include the applicant's eye color, hair color, height, and weight;

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- d. Social Security Number or Department identification number;
 - e. Residency status;
 - f. Mailing address, when applicable;
 - g. Physical address;
 - h. Telephone number, when available;
 - i. E-mail address, when available;
 - j. Type of guide license sought; and
 - k. Calendar year for which the application is made;
2. The outfitting or guide:
 - a. Business name; and
 - b. Business address, as applicable;
 3. Responses to questions relating to criminal violations;
 4. Affirmation that:
 - a. The applicant meets the eligibility requirements prescribed under this Section; and
 - b. The information provided on the application is true and accurate;
 5. Applicant's signature and date.
- L.** In addition to the requirements listed under subsection (K), an applicant for a guide license shall also submit the following documents at the time of application for an original or renewal of a guide license:
1. Proof of the successful completion of the guide examination required under subsection (H). The applicant must successfully complete the examination within the twelve months immediately preceding the date of application.
 2. One of the following as proof of the applicant's identity:
 - a. Valid U.S. passport;
 - b. Original or certified copy of the applicant's birth certificate;
 - c. Original or copy of a valid government-issued driver's license; or
 - d. Original or copy of a valid government-issued identification card.
- M.** All information and documentation provided by the guide license applicant is subject to Department verification. The Department shall return the original or certified copy of a document to the applicant after verification.
- N.** An applicant for a guide license shall pay all applicable fees required under R12-4-102 upon approval of an initial or renewal application for a guide license.
- O.** The Department shall deny a guide license when the applicant:
1. Fails to meet the criteria prescribed under A.R.S. § 17-362,
 2. Fails to comply with the requirements of this Section,
 3. Provides false information during the application process,
 4. Fails to provide the annual report required under subsection (R) by January 10, or
 5. Provides false information in the annual report required under subsection (R) within three years immediately preceding the date of application.
- P.** The Department shall provide written notice to the applicant stating the reason for the denial. The applicant may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.
- Q.** A guide license holder may submit an application for renewal of a guide license after December 1 of the year it was issued. The Department shall not start the substantive review, as defined under A.R.S. § 41-1072, before January 10 of the following license year, unless the Department receives the annual report prior to the date established under subsection (R). The current guide license shall remain valid pending a Department decision on the application for renewal, provided:
1. The application for renewal is submitted to the Department by December 31, and
 2. The Department receives the annual report submitted in compliance with subsection (R).
- R.** A guide license holder shall submit to the Department the annual report required under A.R.S. § 17-362(C) for the previous calendar year before January 10 of the following license year. The report form is furnished by the Department and is available at any Department office or online at www.azgfd.gov.
1. A report is required whether or not the license holder performed any guiding activities.
 2. The annual report shall include all of the following information, as applicable:
 - a. License holder's personal information:
 - i. Name;
 - ii. Guide license number; and
 - iii. E-mail address, when available; and
 - b. Client's personal information:
 - i. Name;
 - ii. Mailing address; and
 - iii. Arizona license, tag and permit numbers, and
 - c. Dates guiding activities were conducted;
 - d. Number and species of wildlife taken by the clients;
 - e. Game management unit or body of water where guiding activities took place;
 - f. Affirmation that the information provided in the annual report is true and accurate; and
 - g. License holder's signature and date.
 3. The Department shall not renew a guide license if the annual report is not submitted to the Department by January 10 of the following license year.
- S.** The date of receipt for the items required under subsections (K), (L), (Q), and (R) shall be as follows:
1. The date a person presents the items to a Department office;
 2. The date a private express mail carrier receives the package containing the items as indicated on the shipping package; or
 3. The date of the United States Postal Service postmark stamped on the envelope containing the items.
- T.** While performing guide activities or providing guide services, a guide license holder shall:
1. Possess a valid guide license.
 2. Possess a valid Arizona hunting, fishing, or combination hunting and fishing license, as applicable under subsection (F)(2).
 3. Present the license for inspection upon the request of any peace officer, wildlife manager, or game ranger.
 4. Report any violation of a federal or state wildlife regulation, law, or rule personally witnessed by the guide license holder.
- U.** A guide license holder shall not:
1. Use, or allow another person to use, any method or device prohibited under any federal or state wildlife regulation, law, or rule while taking wildlife.
 2. Aid, counsel, agree to aid, or attempt to aid another person in planning or engaging in conduct that results in a violation of any federal or state wildlife regulation, law, or rule while taking wildlife.
 3. Pursue any wildlife or hold at bay any wildlife for a person unless that person is present during the pursuit to take the wildlife.
 - a. The person shall be continuously present during the entire pursuit of that specific target animal.
 - b. If dogs are used, the person shall be present when the dogs are released on a specific target animal and

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- shall be continuously present for the remainder of the pursuit.
4. Hold wildlife at bay other than during daylight hours, unless a Commission Order authorizes the take of the species at night.
- V. As authorized under A.R.S. § 17-362(A), the Commission may revoke or suspend a guide license when any one or more of the following actions occur:
1. The guide license holder failed to comply with the requirements of A.R.S. Title 17 or was convicted of violating any provision of A.R.S. Title 17;
 2. The guide license holder was convicted of a felony violation of any federal wildlife law;
 3. The guide license holder was convicted of a violation listed under A.R.S. § 17-309(D);
 4. The guide license holder was convicted of a violation of a federal or state wildlife law for which a license to take wildlife may be revoked or suspended; or
5. The guide license holder's privilege to take or possess wildlife is suspended or revoked by any jurisdiction for violation of a federal or state wildlife law.

Historical Note

Amended effective March 7, 1979 (Supp. 79-2). Former Section R12-4-40 renumbered as Section R12-4-208 without change effective August 13, 1981 (Supp. 81-4). Former rule repealed, new Section R12-4-208 adopted effective December 22, 1989 (Supp. 89-4). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 211, effective January 1, 2000 (Supp. 99-4). Amended by final rulemaking at 12 A.A.R. 212, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3045, effective January 3, 2015 (Supp. 14-4).

R12-4-209. Community Fishing License; Exemption

- A. A community fishing license is valid for taking all aquatic wildlife from Commission designated community waters, only, and allows the license holder to engage in simultaneous fishing as defined under R12-4-301. The list of Commission designated community waters is available at any license dealer, Department office, and online at www.azgfd.gov.
- B. The community fishing license is valid for one-year from:
1. The date of purchase when a person purchases the community fishing license from a license dealer, as defined under R12-4-101; or
 2. The selected start date when a person purchases the community fishing license from a Department office or online. A person may select the start date for the community fishing license provided the date selected is no more than 60 calendar days from and after the date of purchase.
- C. A resident or nonresident may apply for a community fishing license by submitting an application to the Department, a License Dealer as defined under R12-4-101, or online at www.azgfd.gov. The application is furnished by the Department and is available at any Department office, license dealer, and online at www.azgfd.gov. A community fishing license applicant shall provide the following information on the application:
1. The applicant's:
 - a. Name;
 - b. Date of birth,
 - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
 - d. Department identification number, when applicable;

- e. Residency status and number of years of residency immediately preceding application, when applicable;
 - f. Mailing address, when applicable;
 - g. Physical address;
 - h. Telephone number, when available; and
 - i. E-mail address, when available; and
2. Affirmation that the information provided on the application is true and accurate; and
 3. Applicant's signature and date.
- D. In addition to the requirements listed under subsection (C), an applicant who is applying for a community fishing license:
1. In person shall pay the applicable fee required under R12-4-102.
 2. Online shall electronically pay the fee required under R12-4-102 and print the new license. A person applying online shall affirm, or provide permission for another person to affirm, the information electronically provided is true and accurate.
- E. In addition to the exemption prescribed under A.R.S. § 17-335, a person who is under 10 years of age may fish in Commission designated community waters without a fishing license.

Historical Note

Adopted effective March 20, 1981 (Supp. 81-2). Former Section R12-4-42 renumbered as Section R12-4-209 without change effective August 13, 1981 (Supp. 81-4). Repealed effective April 28, 1989 (Supp. 89-2). New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

R12-4-210. Combination Hunting and Fishing License; Exemption

- A. A combination hunting and fishing license is valid for the taking of small game, fur-bearing animals, predatory animals, nongame animals, and upland game birds.
- B. A combination hunting and fishing license is valid for the taking of all aquatic wildlife and allows the license holder to engage in simultaneous fishing as defined under R12-4-101. The combination hunting and fishing license is valid:
1. State-wide including Mitty Lake and Topock Marsh and the Arizona shoreline of Lake Mead, Lake Mohave and Lake Havasu, and Commission designated community waters. The list of Commission designated community waters is available at any license dealer, Department office, and online at www.azgfd.gov.
 2. On that portion of the Colorado River that forms the common boundary between Arizona and Nevada and Arizona and California and connected adjacent water, provided Arizona has an agreement with California and Nevada that recognizes a combination hunting and fishing license as valid for taking aquatic wildlife on any portion of the Colorado River that forms the common boundary between Arizona and Nevada and Arizona and California.
- C. The Department offers three combination hunting and fishing licenses:
1. A short-term combination hunting and fishing license, valid for one 24-hour period from midnight to midnight.
 - a. The short-term combination hunting and fishing license is not valid for the take of big game animals.
 - b. The short-term combination hunting and fishing license is valid for the take of migratory game birds and waterfowl, provided the person possesses the applicable State Migratory Bird stamp and Federal Waterfowl stamp.

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- c. The Department does not limit the number of short-term combination hunting and fishing licenses a resident or nonresident may purchase.
2. A combination hunting and fishing license for a person age 18 and over.
- a. The combination hunting and fishing license is valid for one-year from:
- The date of purchase when a person purchases the combination hunting and fishing license from a license dealer, as defined under R12-4-101;
 - On the last day of the application deadline for that draw, as established by the hunt permit-tag application schedule published by the Department;
 - On the last day of an extended deadline date, as authorized under subsection R12-4-104(C). If an applicant does not possess an appropriate license that meets the requirements of this subsection, the applicant shall purchase the license at the time of application; or
 - The selected start date when a person purchases the combination hunting and fishing license from a Department office or online. A person may select the start date for the combination hunting and fishing license provided the date selected is no more than 60 calendar days from and after the date of purchase.
- b. A valid hunt permit-tag, nonpermit-tag, or stamp is required to validate the combination hunting and fishing license for the take of big game animals, migratory game birds, or other wildlife authorized by an applicable tag or stamp.
3. A youth combination hunting and fishing license for a person through age 17.
- a. The combination hunting and fishing license is valid for one-year from:
- The date of purchase when a person purchases the combination hunting and fishing license from a license dealer, as defined under R12-4-101;
 - On the last day of the application deadline for that draw, as established by the hunt permit-tag application schedule published by the Department;
 - On the last day of an extended deadline date, as authorized under subsection R12-4-104(C). If an applicant does not possess an appropriate license that meets the requirements of this subsection, the applicant shall purchase the license at the time of application; or
 - The selected start date when a person purchases the combination hunting and fishing license from a Department office or online. A person may select the start date for the combination hunting and fishing license provided the date selected is no more than 60 calendar days from and after the date of purchase.
- b. A valid hunt permit-tag, nonpermit-tag, or stamp is required to validate the combination hunting and fishing license for the take of big game animals, migratory game birds, or other wildlife authorized by an applicable tag or stamp.
- D. A resident or nonresident may apply for a combination hunting and fishing license by submitting an application to the Department, a License Dealer as defined under R12-4-101, or online at www.azgfd.gov. The application is furnished by the Department and is available at any Department office, license dealer, and online at www.azgfd.gov. A combination hunting and fishing license applicant shall provide the following information on the application:
- The applicant's:
 - Name;
 - Date of birth,
 - Physical description, to include the applicant's eye color, hair color, height, and weight;
 - Department identification number, when applicable;
 - Residency status and number of years of residency immediately preceding application, when applicable;
 - Mailing address, when applicable;
 - Physical address;
 - Telephone number, when available; and
 - E-mail address, when available; and
 - Affirmation that the information provided on the application is true and accurate; and
 - Applicant's signature and date.
- E. In addition to the requirements listed under subsection (C), an applicant who is applying for a combination hunting and fishing license:
- In person shall pay the applicable fee required under R12-4-102.
 - Online shall electronically pay the fee required under R12-4-102 and print the new license. A person applying online shall affirm, or provide permission for another person to affirm, the information electronically provided is true and accurate.
- F. Exemptions authorized under R12-4-206(E), R12-4-207(E), and R12-4-209(E) also apply to this Section, as applicable.
- Historical Note**
- Former Section R12-4-39 repealed, new Section R12-4-39 adopted effective January 20, 1977 (Supp. 77-1). Editorial correction subsection (A), paragraph (2) (Supp. 78-5). Amended effective March 7, 1979 (Supp. 79-2). Amended effective April 22, 1980 (Supp. 80-2). Former Section R12-4-39 repealed, new Section R12-4-39 adopted effective March 17, 1981 (Supp. 81-2). Former Section R12-4-39 renumbered as Section R12-4-210 without change effective August 13, 1981 (Supp. 81-4). Amended effective December 16, 1982 (Supp. 82-6). Repealed effective April 28, 1989 (Supp. 89-2). New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).
- R12-4-211. Lifetime License**
- A. The Department offers the following lifetime licenses:
- A lifetime hunting license includes the privileges established under R12-4-206(A).
 - A lifetime fishing license includes the privileges established under R12-4-207(A).
 - A lifetime combination hunting and fishing license includes the privileges established under R12-4-210(A) and (B).
- B. A lifetime license does not expire and remains valid if the licensee subsequently resides outside of this state.
- A licensee who resides outside of Arizona shall submit the nonresident fee to purchase any required permit-tag, nonpermit-tag, or stamp to hunt and fish in this state.
 - Limits established under R12-4-114 for nonresident permit-tags do not apply to a lifetime license holder.
- C. A resident may apply for a lifetime license by submitting an application to the Department and paying the applicable fee

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required under subsection (D). The application is furnished by the Department and is available at any Department office and online at www.azgfd.gov. A lifetime license applicant shall provide the following information on the application:

1. The applicant's:
 - a. Name;
 - b. Date of birth,
 - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
 - d. Social Security Number, when required under A.R.S. §§ 25-320(P) and 25-502(K);
 - e. Department identification number, when applicable;
 - f. Residency status and number of years of residency immediately preceding application, when applicable;
 - g. Mailing address, when applicable;
 - h. Physical address;
 - i. Telephone number, when available; and
 - j. E-mail address, when available; and
 2. Affirmation that the information provided on the application is true and accurate; and
 3. Applicant's signature and date.
- D.** The fees for resident lifetime licenses are determined by the age of the applicant as follows:
1. Age 0 through 13 years is 17 times the fee established under R12-4-102 for the equivalent one-year license.
 2. Age 14 through 29 years is 18 times the fee established under R12-4-102 for the equivalent one-year license.
 3. Age 30 through 44 years is 16 times the fee established under R12-4-102 for the equivalent one-year license.
 4. Age 45 through 61 years is 15 times the fee established under R12-4-102 for the equivalent one-year license.
 5. Age 62 and older is 8 times the fee established under R12-4-102 for the equivalent one-year license.
 6. For the purposes of this subsection, when the applicant is under the age of 18, the fee for the lifetime license is based on the full priced license fee, not the youth license fee.
- E.** A lifetime license may be denied or suspended pursuant to, and for the offenses described under, A.R.S. § 17-340.
- F.** A person issued a lifetime license prior to the effective date of this Section shall be entitled to the privileges established under subsection (A)(1), (A)(2), or (A)(3), as applicable, for the equivalent lifetime license.

Historical Note

Amended effective March 7, 1979 (Supp. 79-2).
Amended effective October 9, 1980 (Supp. 80-5). Former Section R12-4-36 renumbered as Section R12-4-211 without change effective August 13, 1981 (Supp. 81-4).
Repealed effective April 28, 1989 (Supp. 89-2). New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

R12-4-212. Benefactor License

- A.** A benefactor license includes the privileges established under R12-4-210(A) and (B). A valid hunt permit-tag, nonpermit-tag, or stamp is required to validate the benefactor license for the take of big game animals, migratory game birds, or other wildlife authorized by an applicable tag or stamp.
- B.** A benefactor license does not expire and remains valid if the licensee subsequently resides outside of this state.
1. A licensee who resides outside of Arizona shall submit the nonresident fee to purchase any required permit-tag, nonpermit-tag, or stamp to hunt and fish in this state.
 2. Limits established under R12-4-114 for nonresident permit-tags do not apply to a benefactor license holder.

- C.** The benefactor license fee is \$1,500. The difference between \$1,500 and the license fee for a resident lifetime combination hunting and fishing license established under R12-4-211(D):
1. Is a donation to the State for continued management, protection, and conservation of the State's wildlife.
 2. Shall be credited to the wildlife endowment fund established under A.R.S. § 17-271.
 3. May be tax deductible to the extent allowed by federal and state income tax statutes for contributions to qualifying tax-exempt organizations.
- D.** A resident may apply for a benefactor license by submitting an application to the Department. The application is furnished by the Department and is available at any Department office and online at www.azgfd.gov. A benefactor license applicant shall provide the following information on the application:
1. The applicant's:
 - a. Name;
 - b. Date of birth;
 - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
 - d. Social Security Number, when required under A.R.S. §§ 25-320(P) and 25-502(K);
 - e. Department identification number, when applicable;
 - f. Residency status and number of years of residency immediately preceding application, when applicable;
 - g. Mailing address, when applicable;
 - h. Physical address;
 - i. Telephone number, when available; and
 - j. E-mail address, when available; and
 2. Affirmation that the information provided on the application is true and accurate; and
 3. Applicant's signature and date.
- E.** A benefactor license may be denied or suspended pursuant to, and for the offenses described under, A.R.S. § 17-340.
- F.** A person issued a benefactor license prior to the effective date of this Section shall be entitled to the privileges established under subsection (A).

Historical Note

Amended as an emergency effective April 10, 1975 (Supp. 75-1). Amended effective January 1, 1977 (Supp. 76-5). Former Section R12-4-37 renumbered as Section R12-4-211 without change effective August 13, 1981 (Supp. 81-4). Repealed effective April 28, 1989 (Supp. 89-2). New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

R12-4-213. Hunt Permit-tags and Nonpermit-tags

- A.** A valid hunt permit-tag or nonpermit-tag is required to validate a license to take a big game animal or other wildlife requiring a valid tag. Before a person may take a big game animal or other wildlife requiring a tag, the person shall apply for and obtain the appropriate tag required for the take of that big game animal or other wildlife.
- B.** A person may apply for a hunt permit-tag in accordance with R12-4-104 and at the times, locations, and in the manner established by the hunt permit-tag application schedule that the Department publishes and is available at any Department office, online at www.azgfd.gov, or a license dealer as defined under R12-4-101.
- C.** A person applying for a nonpermit-tag shall apply in accordance with R12-4-114 and pay the required fee established under R12-4-102.

Historical Note

Amended effective March 7, 1979 (Supp. 79-2).
Amended effective December 4, 1980 (Supp. 80-6). For-

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mer Section R12-4-38 renumbered as Section R12-4-213 without change effective August 13, 1981 (Supp. 81-4). Repealed effective April 28, 1989 (Supp. 89-2). New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

R12-4-214. Apprentice License

- A.** An apprentice license authorizes the taking of small game, fur-bearing animals, predatory animals, nongame animals, and upland game birds. The apprentice license is only available from a Department office.
- B.** An apprentice license is:
1. A complimentary license,
 2. Valid for any two consecutive days; and
 3. Issued to a person only once per calendar year.
- C.** The apprentice license is not valid for the take of big game animals.
- D.** The apprentice license is valid for the take of migratory game birds and waterfowl when the apprentice also possesses the applicable Migratory Bird stamp and federal waterfowl stamp.
- E.** An apprentice license holder shall be accompanied by a mentor at all times while in the field. A mentor is eligible to apply for no more than two apprentice hunting licenses in any calendar year. A mentor shall:
1. Be a resident of Arizona,
 2. Be 18 years of age or older,
 3. Possess an appropriate and valid Arizona hunting license, and
 4. Provide the apprentice with instruction and supervision on safe and ethical hunting practices.
 5. A short-term license does not meet the license requirement of this subsection.
- F.** A mentor may apply for an apprentice license at any Department office. An applicant for an apprentice license shall provide the following information at the time of application:
1. The mentor's:
 - a. Name;
 - b. Arizona hunting license number and effective date of the license; and
 2. The applicant's:
 - a. Name;
 - b. Age;
 - c. Date of birth;
 - d. Telephone number, when available;
 - e. Department identification number, when applicable;
 - f. E-mail address, when available;
 - g. Physical description, to include the applicant's eye color, hair color, height, and weight;
 - f. Mailing address, when applicable;
 - g. Physical address; and
 - h. Residency status.

Historical Note

Former Section R12-4-67 renumbered as Section R12-4-214 without change effective August 13, 1981 (Supp. 81-4). Repealed effective December 22, 1989 (Supp. 89-4). New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

R12-4-215. Youth Group Two-day Fishing License

- A.** A youth group two-day fishing license authorizes a nonprofit organization or governmental entity as defined under subsection (C) that sponsors adult supervised activities for youth to take up to 25 youths fishing. The youth group two-day fishing license is only available from a Department office. The youth group two-day fishing license is valid for:
1. Two consecutive days,
 2. The take of all aquatic wildlife, and

3. All privileges established under R12-4-207(A).

- B.** A nonprofit organization or governmental entity may apply for a youth group two-day fishing license at any Department office. An applicant for a youth group two-day fishing license shall be a resident. The applicant shall pay the fee required under R12-4-102 and provide the following information at the time of application:
1. The nonprofit organization's or governmental entity's:
 - a. Name;
 - b. Mailing address; and
 - c. Telephone number, when available;
 2. The applicant's:
 - a. Name;
 - b. Date of birth,
 - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
 - d. Department identification number, when applicable;
 - e. Mailing address, when applicable;
 - f. Physical address;
 - g. Telephone number, when available; and
 - h. E-mail address, when available;
 3. The dates on which the nonprofit organization intends to conduct the youth group fishing activity.
 4. The approximate number of youth participating in the group fishing activity.
- C.** For the purpose of this Section, "governmental entity" means any town, city, county, municipality, or other political subdivision of this state or any department, agency, board, commission, authority, division, office, public school, public charter school, public corporation, or other public entity of this state or any department agency bureau, or office of the federal government that is physically located within this state.

Historical Note

Adopted effective December 9, 1982 (Supp. 82-6). Section repealed, new Section adopted effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 4308, effective December 31, 2003 (Supp. 05-4). New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

R12-4-216. Crossbow Permit

- A.** For the purposes of this Section, "healthcare provider" means a person who is licensed to practice by the federal government, any state, or U.S. territory with one of the following credentials:
- Medical Doctor,
 Doctor of Osteopathy,
 Doctor of Chiropractic,
 Nurse Practitioner, or
 Physician Assistant.
- B.** A crossbow permit allows a person to use a crossbow, or any bow to be drawn and held with an assisting device, during an archery-only season, as prescribed under R12-4-318, when authorized under R12-4-304 as lawful for the species hunted.
- C.** The crossbow permit does not exempt the permit holder from any other applicable method of take or licensing requirement. The permit holder shall be responsible for compliance with all applicable regulatory requirements.
- D.** The crossbow permit does not expire, unless:
1. The medical certification portion of the application indicates the person has a temporary physical disability; then the crossbow permit shall be valid only for the period of time indicated on the crossbow permit as specified by the healthcare provider,

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2. The permit holder no longer meets the criteria for obtaining the crossbow permit, or
 3. The Commission revokes the person's hunting privileges under A.R.S. § 17-340. A person whose crossbow permit is revoked by the Commission may petition the Commission for a rehearing as established under R12-4-607.
- E.** An applicant for a crossbow permit shall apply by submitting an application to the Department. The application form is furnished by the Department and is available at any Department office and online at www.azgfd.gov. A crossbow permit applicant shall provide all of the following information on the application:
1. The applicant's:
 - a. Name;
 - b. Date of birth;
 - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
 - d. Department identification number, when applicable;
 - e. Residency status;
 - f. Mailing address, when applicable;
 - g. Physical address;
 - h. Telephone number, when available; and
 - i. E-mail address, when available;
 2. Affirmation that:
 - a. The applicant meets the requirements of this Section, and
 - b. The information provided on the application is true and accurate, and
 3. Applicant's signature and date.
 4. The certification portion of the application shall be completed by a healthcare provider. The healthcare provider shall:
 - a. Certify the applicant has one or more of the following physical limitations:
 - i. An amputation involving body extremities required for stable function to use conventional archery equipment;
 - ii. A spinal cord injury resulting in a disability to the lower extremities, leaving the applicant nonambulatory;
 - iii. A wheelchair restriction;
 - iv. A neuromuscular condition that prevents the applicant from drawing and holding a bow;
 - v. A failed functional draw test that equals 30 pounds of resistance and involves holding it for four seconds;
 - vi. A failed manual muscle test involving the grading of shoulder and elbow flexion and extension or an impaired range-of-motion test involving the shoulder or elbow; or
 - vii. A combination of comparable physical disabilities resulting in the applicant's inability to draw and hold a bow.
 - b. Indicate whether the disability is temporary or permanent and, when temporary, specify the expected duration of the physical limitation; and
 - c. Provide the healthcare provider's:
 - i. Typed or printed name,
 - ii. License number,
 - iii. Business address,
 - iv. Telephone number, and
 - v. Signature and date;
 5. A person who holds a valid Challenged Hunter Access/Mobility Permit (CHAMP) and who is applying for a crossbow permit is exempt from the requirements of subsection (E)(4) and shall indicate "CHAMP" in the space provided for the medical certification on the crossbow permit application
- F.** All information and documentation provided by the applicant is subject to Department verification. The Department shall return the original or certified copy of a document to the applicant after verification.
 - G.** The Department shall deny a crossbow permit when the applicant:
 1. Fails to meet the criteria prescribed under this Section,
 2. Fails to comply with the requirements of this Section, or
 3. Provides false information during the application process.
 - H.** The Department shall provide written notice to the applicant stating the reason for the denial. The applicant may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.
 - I.** The applicant claiming a temporary or permanent disability is responsible for all costs associated with obtaining the medical documentation, re-evaluation of the information, or a second medical opinion.
 - J.** When acting under the authority of a crossbow permit, the crossbow permit holder shall possess the permit, and exhibit the permit upon request to any peace officer, wildlife manager, or game ranger.
 - K.** A crossbow permit holder shall not:
 1. Transfer the permit to another person, or
 2. Allow another person to use or possess the permit.
- Historical Note**
- Adopted effective April 7, 1983 (Supp. 83-2). Repealed effective January 1, 1993; filed December 18, 1993 (Supp. 92-4). New Section adopted effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended by final rulemaking at 6 A.A.R. 211, effective January 1, 2000 (Supp. 99-4). Amended by final rulemaking at 12 A.A.R. 212, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3045, effective January 3, 2015 (Supp. 14-4).
- R12-4-217. Challenged Hunter Access/Mobility Permit (CHAMP)**
- A.** For the purposes of this Section, the following definitions apply:
 "Healthcare provider" means a person who is licensed to practice by the federal government, any state, or U.S. territory with one of the following credentials:
- Medical Doctor,
 Doctor of Osteopathy,
 Doctor of Chiropractic,
 Nurse Practitioner, or
 Physician Assistant.
- "Severe permanent disability" means one or more permanent physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, intellectual disability, muscular dystrophy, musculoskeletal disorders, neurological disorders, paraplegia, pulmonary disorders, quadriplegia and other spinal cord conditions, sickle cell anemia, and end stage renal disease or a combination of permanent disabilities resulting in comparable substantial functional limitations.
- B.** The Challenged Hunter Access/Mobility Permit (CHAMP) allows a person with a severe permanent disability to perform one or more of the following activities:
1. Discharge a firearm or other legal hunting device from a motor vehicle if, under existing conditions:
 - a. The discharge is otherwise lawful;

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- b. The motor vehicle is not in motion;
 - c. The motor vehicle is not on any road, as defined under A.R.S. § 17-101; and
 - d. The motor vehicle's engine is turned off.
2. Discharge a firearm or other legal hunting device from a watercraft, as defined under R12-4-501; provided the motor is turned off, the sail furled, or both; and progress has ceased.
 - a. The watercraft may be drifting as a result of current or wind, beached, moored, resting at anchor, or propelled by paddle, oars, or pole.
 - b. A person may use a watercraft under power to retrieve dead or wounded wildlife.
 - c. For the purposes of this subsection, "watercraft" does not include a sinkbox.
 3. Use off-road locations in a motor vehicle if use is not in conflict with federal or state statutes or regulations or local ordinances or regulations and the motor vehicle is used as a place to wait for game. A person shall not use a motor vehicle to chase or pursue game.
 4. Designate an assistant to track and dispatch a wounded animal, and to retrieve the animal, in accordance with the requirements of this Section.
- C.** The CHAMP holder shall comply with all applicable regulatory requirements. A CHAMP does not exempt the permit holder from any other applicable method of take or licensing requirement.
- D.** The CHAMP does not expire, unless:
1. The permit holder no longer meets the criteria for obtaining the CHAMP, or
 2. The Commission revokes the person's hunting privileges under A.R.S. § 17-340. A person whose CHAMP is revoked by the Commission may petition the Commission for a rehearing as established under R12-4-607.
- E.** An applicant for a CHAMP shall apply by submitting an application to the Department. The application form is furnished by the Department and is available from any Department office and online at www.azgfd.gov. The CHAMP applicant shall provide all of the following information on the application:
1. The applicant's:
 - a. Name;
 - b. Date of birth;
 - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
 - d. Department identification number, when applicable;
 - e. Residency status;
 - f. Mailing address, when applicable;
 - g. Physical address;
 - h. Telephone number, when available; and
 - i. E-mail address, when available;
 2. Affirmation that:
 - a. The applicant meets the requirements of this Section, and
 - b. The information provided on the application is true and accurate, and
 3. Applicant's signature and date.
 4. The certification portion of the application shall be completed by a healthcare provider. The healthcare provider shall:
 - a. Certify the applicant is a person with a severe permanent disability as defined under subsection (A), and
 - b. Provide the healthcare provider's:
 - i. Typed or printed name,
 - ii. Business address,
 - iii. Telephone number, and
 - iv. Signature and date;
- F.** All information and documentation provided by the applicant is subject to Department verification. The Department shall return the original or certified copy of a document to the applicant after verification.
- G.** The applicant claiming a severe permanent disability is responsible for all costs associated with obtaining the medical documentation, re-evaluation of the information, or a second medical opinion.
- H.** The Department shall deny a CHAMP when the applicant:
1. Fails to meet the criteria prescribed under this Section,
 2. Fails to comply with the requirements of this Section, or
 3. Provides false information during the application process.
- I.** The Department shall provide written notice to the applicant stating the reason for the denial. The applicant may appeal the denial to the Commission as prescribed in A.R.S. Title 41, Chapter 6, Article 10.
- J.** When acting under the authority of the CHAMP, the permit holder shall possess and exhibit the permit upon request to any peace officer, wildlife manager, or game ranger.
- K.** The CHAMP holder shall ensure the CHAMP vehicle placard, issued with the CHAMP, is visibly displayed on the motor vehicle or watercraft when in use.
- L.** The Department shall provide a CHAMP holder with a dispatch permit that allows the CHAMP holder to designate a licensed hunter as an assistant to:
1. Dispatch and retrieve an animal wounded by the CHAMP holder, or
 2. Retrieve wildlife killed by the CHAMP holder.
- M.** The CHAMP holder shall:
1. Designate an assistant only after the animal is wounded or killed.
 2. Ensure the designation on the dispatch permit is in ink and includes:
 - a. A description of the animal,
 - b. The assistant's name and valid Arizona hunting license number,
 - c. The date and time the animal was wounded or killed, and
 3. Ensure compliance with all of the following requirements:
 - a. The site where the animal is wounded and the location from which tracking begins are marked so they can be identified later.
 - b. The assistant possesses the dispatch permit and a valid hunting license while tracking and dispatching the wounded animal. When acting under the authority of the dispatch permit, the assistant shall possess and exhibit the dispatch permit and hunting license upon request to any peace officer, wildlife manager, or game ranger.
 - c. The CHAMP holder is in the field while the assistant is tracking and dispatching the wounded animal.
 - d. The assistant does not transfer the dispatch permit to anyone except that the dispatch permit may be transferred back to the CHAMP holder.
 - e. Dispatch is made by a method that is lawful for the take of the particular animal in the particular season in accordance with requirements established under R12-4-304 and R12-4-318.
 - f. The assistant attaches the dispatch permit to the carcass of the animal and returns the carcass to the CHAMP holder, and the tag of the CHAMP holder is affixed to the carcass.
 - g. If the assistant is unsuccessful in locating and dispatching the wounded animal, the assistant returns

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the dispatch permit to the CHAMP holder. The CHAMP holder shall strike the name and authorization of the assistant from the dispatch permit.

- N. A dispatch permit may not be reused when all spaces for designation of an assistant are filled or the dispatch permit is attached to a carcass. The CHAMP holder may request another dispatch permit from the Department if:
1. All spaces for assistants are filled,
 2. The dispatch permit is lost, or
 3. When the CHAMP holder needs another dispatch permit for another big game hunt.
- O. A CHAMP holder shall not:
1. Transfer the permit to another person, or
 2. Allow another person to use or possess the permit.

Historical Note

Adopted effective October 9, 1980 (Supp. 80-5). Former Section R12-4-59 renumbered as Section R12-4-310 without change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-310 renumbered as R12-4-217 and amended effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Former Section R12-4-310 renumbered as R12-4-217 and amended effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). Section repealed, new Section adopted effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended by final rulemaking at 6 A.A.R. 211, effective January 1, 2000 (Supp. 99-4). Amended by final rulemaking at 12 A.A.R. 212, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3045, effective January 3, 2015 (Supp. 14-4).

R12-4-218. Repealed**Historical Note**

Adopted effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Adopted effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). Repealed effective November 7, 1996 (Supp. 96-4).

R12-4-219. Renumbered**Historical Note**

Adopted as an emergency effective July 5, 1988 pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-3). Correction, Historical Note, Supp. 88-3, should read, "Adopted as an emergency effective July 15, 1988..."; readopted and amended as an emergency effective October 13, 1988 pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 24, 1989 pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Former Section R12-4-219 amended and adopted as a permanent rule and renumbered as Section R12-4-424 effective April 28, 1989 (Supp. 89-2).

R12-4-220. Repealed**Historical Note**

Adopted effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Adopted effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). Repealed effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4).

ARTICLE 3. TAKING AND HANDLING OF WILDLIFE**R12-4-301. Definitions**

In addition to the definitions provided under A.R.S. § 17-101, the following definitions apply to this Article unless otherwise specified:

"Administer" means to pursue, capture, or otherwise restrain wildlife in order to directly apply a drug to wildlife by injection, inhalation, ingestion or any other means.

"Aircraft" means any contrivance used for flight in the air or any lighter-than-air contrivance.

"Artificial lures and flies" means man-made devices intended as visual attractants for fish and does not include living or dead organisms or edible parts of those organisms, natural or prepared food stuffs, artificial salmon eggs, artificial corn, or artificial marshmallows.

"Barbless hook" means any fishhook manufactured without barbs or on which the barbs have been completely closed or removed.

"Body-gripping trap" means a device designed to capture an animal by gripping the animal's body.

"Cervid" means any member of the deer family (Cervidae); which includes caribou, elk, moose, mule deer, reindeer, wapiti, and whitetail deer.

"Confinement trap" means a device designed to capture wildlife alive and hold it without harm.

"Crayfish net" means a net that does not exceed 36 inches on a side or in diameter and is retrieved by means of a hand-held line.

"Dip net" means any net, excluding the handle, that is no greater than 3 feet in the greatest dimension, that is hand-held, non-motorized, and the motion of the net is caused by the physical effort of the individual.

"Drug" means any chemical substance, other than food or mineral supplements, which affects the structure or biological function of wildlife.

"Evidence of legality" means the wildlife is accompanied by the applicable license, tag, stamp, or permit required by law and is identifiable as the "legal wildlife" prescribed by Commission Order, which may include evidence of species, gender, antler or horn growth, maturity and size.

"Foothold trap" means a device designed to capture an animal by the leg or foot.

"Instant kill trap" means a device designed to render an animal unconscious and insensitive to pain quickly with inevitable subsidence into death without recovery of consciousness.

"Land set" means any trap used on land rather than in water.

"Minnow trap" means a trap with dimensions that do not exceed 12 inches in depth, 12 inches in width and 24 inches in length.

"Muzzleloading handgun" means a firearm intended to be fired from the hand, incapable of firing fixed ammunition, having a single barrel, and loaded through the muzzle with black powder or synthetic black powder and a single projectile.

"Muzzleloading rifle" means a firearm intended to be fired from the shoulder, incapable of firing fixed ammunition, having a single barrel and single chamber, and loaded through the

17-101. Definitions

A. In this title, unless the context otherwise requires:

1. "Angling" means the taking of fish by one line and not to exceed two hooks, by one line and one artificial lure, which may have attached more than one hook, or by one line and not to exceed two artificial flies or lures.
2. "Bag limit" means the maximum limit, in number or amount, of wildlife that may lawfully be taken by any one person during a specified period of time.
3. "Closed season" means the time during which wildlife may not be lawfully taken.
4. "Commission" means the Arizona game and fish commission.
5. "Department" means the Arizona game and fish department.
6. "Device" means any net, trap, snare, salt lick, scaffold, deadfall, pit, explosive, poison or stupefying substance, crossbow, firearm, bow and arrow, or other implement used for taking wildlife. Device does not include a raptor or any equipment used in the sport of falconry.
7. "Domicile" means a person's true, fixed and permanent home and principal residence. Proof of domicile in this state may be shown as prescribed by rule by the commission.
8. "Falconry" means the sport of hunting or taking quarry with a trained raptor.
9. "Fishing" means to lure, attract or pursue aquatic wildlife in such a manner that the wildlife may be captured or killed.
10. "Fur dealer" means any person engaged in the business of buying for resale the raw pelts or furs of wild mammals.
11. "Guide" means a person who does any of the following:
 - (a) Advertises for guiding services.
 - (b) Holds himself out to the public for hire as a guide.
 - (c) Is employed by a commercial enterprise as a guide.
 - (d) Accepts compensation in any form commensurate with the market value in this state for guiding services in exchange for aiding, assisting, directing, leading or instructing a person in the field to locate and take wildlife.
 - (e) Is not a landowner or lessee who, without full fair market compensation, allows access to the landowner's or lessee's property and directs and advises a person in taking wildlife.
12. "License classification" means a type of license, permit, tag or stamp authorized under this title and prescribed by the commission by rule to take, handle or possess wildlife.
13. "License year" means the twelve-month period between January 1 and December 31, inclusive, or a different twelve-month period as prescribed by the commission by rule.
14. "Nonresident", for the purposes of applying for a license, permit, tag or stamp, means a citizen of the United States or an alien who is not a resident.
15. "Open season" means the time during which wildlife may be lawfully taken.

16. "Possession limit" means the maximum limit, in number or amount of wildlife, that may be possessed at one time by any one person.
17. "Resident", for the purposes of applying for a license, permit, tag or stamp, means a person who is:
- (a) A member of the armed forces of the United States on active duty and who is stationed in:
 - (i) This state for a period of thirty days immediately preceding the date of applying for a license, permit, tag or stamp.
 - (ii) Another state or country but who lists this state as the person's home of record at the time of applying for a license, permit, tag or stamp.
 - (b) Domiciled in this state for six months immediately preceding the date of applying for a license, permit, tag or stamp and who does not claim residency privileges for any purpose in any other state or jurisdiction.
18. "Road" means any maintained right-of-way for public conveyance.
19. "Statewide" means all lands except those areas lying within the boundaries of state and federal refuges, parks and monuments, unless specifically provided differently by commission order.
20. "Take" means pursuing, shooting, hunting, fishing, trapping, killing, capturing, snaring or netting wildlife or the placing or using of any net or other device or trap in a manner that may result in the capturing or killing of wildlife.
21. "Taxidermist" means any person who engages for hire in the mounting, refurbishing, maintaining, restoring or preserving of any display specimen.
22. "Traps" or "trapping" means taking wildlife in any manner except with a gun or other implement in hand.
23. "Wild" means, in reference to mammals and birds, those species that are normally found in a state of nature.
24. "Wildlife" means all wild mammals, wild birds and the nests or eggs thereof, reptiles, amphibians, mollusks, crustaceans and fish, including their eggs or spawn.
25. "Youth" means a person who is under eighteen years of age.
26. "Zoo" means a commercial facility open to the public where the principal business is holding wildlife in captivity for exhibition purposes.

B. The following definitions of wildlife shall apply:

1. Aquatic wildlife are all fish, amphibians, mollusks, crustaceans and soft-shelled turtles.
2. Game mammals are deer, elk, bear, pronghorn (antelope), bighorn sheep, bison (buffalo), peccary (javelina), mountain lion, tree squirrel and cottontail rabbit.
3. Big game are wild turkey, deer, elk, pronghorn (antelope), bighorn sheep, bison (buffalo), peccary (javelina), bear and mountain lion.
4. "Trophy" means:
 - (a) A mule deer buck with at least four points on one antler, not including the eye-guard point.
 - (b) A whitetail deer buck with at least three points on one antler, not including the eye-guard point.

- (c) A bull elk with at least six points on one antler, including the eye-guard point and the brow tine point.
 - (d) A pronghorn (antelope) buck with at least one horn exceeding or equal to fourteen inches in total length.
 - (e) Any bighorn sheep.
 - (f) Any bison (buffalo).
5. Small game are cottontail rabbits, tree squirrels, upland game birds and migratory game birds.
 6. Fur-bearing animals are muskrats, raccoons, otters, weasels, bobcats, beavers, badgers and ringtail cats.
 7. Predatory animals are foxes, skunks, coyotes and bobcats.
 8. Nongame animals are all wildlife except game mammals, game birds, fur-bearing animals, predatory animals and aquatic wildlife.
 9. Upland game birds are quail, partridge, grouse and pheasants.
 10. Migratory game birds are wild waterfowl, including ducks, geese and swans; sandhill cranes; all coots, all gallinules, common snipe, wild doves and bandtail pigeons.
 11. Nongame birds are all birds except upland game birds and migratory game birds.
 12. Raptors are birds that are members of the order of falconiformes or strigiformes and include falcons, hawks, owls, eagles and other birds that the commission may classify as raptors.
 13. Game fish are trout of all species, bass of all species, catfish of all species, sunfish of all species, northern pike, walleye and yellow perch.
 14. Nongame fish are all the species of fish except game fish.
 15. Trout means all species of the family salmonidae, including grayling.

17-102. Wildlife as state property; exceptions

Wildlife, both resident and migratory, native or introduced, found in this state, except fish and bullfrogs impounded in private ponds or tanks or wildlife and birds reared or held in captivity under permit or license from the commission, are property of the state and may be taken at such times, in such places, in such manner and with such devices as provided by law or rule of the commission.

17-231. General powers and duties of the commission

A. The commission shall:

1. Adopt rules and establish services it deems necessary to carry out the provisions and purposes of this title.
2. Establish broad policies and long-range programs for the management, preservation and harvest of wildlife.
3. Establish hunting, trapping and fishing rules and prescribe the manner and methods that may be used in taking wildlife, but the commission shall not limit or restrict the magazine capacity of any authorized firearm.
4. Be responsible for the enforcement of laws for the protection of wildlife.
5. Provide for the assembling and distribution of information to the public relating to wildlife and activities of the department.
6. Prescribe rules for the expenditure, by or under the control of the director, of all funds arising from appropriation, licenses, gifts or other sources.
7. Exercise such powers and duties necessary to carry out fully the provisions of this title and in general exercise powers and duties that relate to adopting and carrying out policies of the department and control of its financial affairs.
8. Prescribe procedures for use of department personnel, facilities, equipment, supplies and other resources in assisting search or rescue operations on request of the director of the division of emergency management.
9. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

B. The commission may:

1. Conduct investigations, inquiries or hearings in the performance of its powers and duties.
2. Establish game management units or refuges for the preservation and management of wildlife.
3. Construct and operate game farms, fish hatcheries, fishing lakes or other facilities for or relating to the preservation or propagation of wildlife.
4. Expend funds to provide training in the safe handling and use of firearms and safe hunting practices.
5. Remove or permit to be removed from public or private waters fish which hinder or prevent propagation of game or food fish and dispose of such fish in such manner as it may designate.
6. Purchase, sell or barter wildlife for the purpose of stocking public or private lands and waters and take at any time in any manner wildlife for research, propagation and restocking purposes or for use at a game farm or fish hatchery and declare wildlife salable when in the public interest or the interest of conservation.
7. Enter into agreements with the federal government, with other states or political subdivisions of the state and with private organizations for the construction and operation of facilities and for management studies, measures or procedures for or relating to the preservation and propagation of wildlife and expend funds for carrying out such agreements.
8. Prescribe rules for the sale, trade, importation, exportation or possession of wildlife.

9. Expend monies for the purpose of producing publications relating to wildlife and activities of the department for sale to the public and establish the price to be paid for annual subscriptions and single copies of such publications. All monies received from the sale of such publications shall be deposited in the game and fish publications revolving fund.

10. Contract with any person or entity to design and produce artwork on terms that, in the commission's judgment, will produce an original and valuable work of art relating to wildlife or wildlife habitat.

11. Sell or distribute the artwork authorized under paragraph 10 of this subsection on such terms and for such price as it deems acceptable.

12. Consider the adverse and beneficial short-term and long-term economic impacts on resource dependent communities, small businesses and the state of Arizona, of policies and programs for the management, preservation and harvest of wildlife by holding a public hearing to receive and consider written comments and public testimony from interested persons.

13. Adopt rules relating to range operations at public shooting ranges operated by and under the jurisdiction of the commission, including the hours of operation, the fees for the use of the range, the regulation of groups and events, the operation of related range facilities, the type of firearms and ammunition that may be used at the range, the safe handling of firearms at the range, the required safety equipment for a person using the range, the sale of firearms, ammunition and shooting supplies at the range, and the authority of range officers to enforce these rules, to remove violators from the premises and to refuse entry for repeat violations.

14. Solicit and accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title.

C. The commission shall confer and coordinate with the director of water resources with respect to the commission's activities, plans and negotiations relating to water development and use, restoration projects under the restoration acts pursuant to chapter 4, article 1 of this title, where water development and use are involved, the abatement of pollution injurious to wildlife and in the formulation of fish and wildlife aspects of the director of water resources' plans to develop and utilize water resources of the state and shall have jurisdiction over fish and wildlife resources and fish and wildlife activities of projects constructed for the state under or pursuant to the jurisdiction of the director of water resources.

D. The commission may enter into one or more agreements with a multi-county water conservation district and other parties for participation in the lower Colorado river multispecies conservation program under section 48-3713.03, including the collection and payment of any monies authorized by law for the purposes of the lower Colorado river multispecies conservation program.

17-235. Migratory birds

The commission shall prescribe seasons, bag limits, possession limits and other regulations pertaining to taking migratory birds in accordance with the migratory bird treaty act and regulations issued thereunder, but the commission may shorten or modify seasons, bag and possession limits and other regulations on migratory birds as it deems necessary.

17-245. Training courses

The commission may:

1. Offer training courses on a voluntary basis to all persons as prescribed by rule.
2. Require any person whose hunting, fishing or guide license has been revoked or suspended to show a certificate of completion of a training course as a condition to issuance or renewal of a hunting, fishing or guide license.

17-271. Wildlife endowment fund

A. The wildlife endowment fund is established to be used by the commission for wildlife conservation and management purposes. The fund consists of:

1. Revenues from sales of lifetime licenses and benefactor licenses.
2. Gifts, grants and contributions specifically designated for the fund.
3. Interest and investment income derived from monies in the fund as provided by subsection C of this section.

B. Monies in the wildlife endowment fund are:

1. Subject to annual appropriation by the legislature pursuant to section 35-143.01.
2. Exempt from lapsing under section 35-190.

C. The commission shall administer the wildlife endowment fund. On notice from the commission the state treasurer shall invest and divest monies in the wildlife endowment fund as provided by section 35-313, and monies earned from investment shall be credited to the fund. On July 1 of each year the department of administration shall transfer from the wildlife endowment fund to the game and fish fund an amount equal to the interest and investment income deposited in the wildlife endowment fund during the preceding fiscal year.

17-301. Times when wildlife may be taken; exceptions; methods of taking

A. A person may take wildlife, except aquatic wildlife, only during daylight hours unless otherwise prescribed by the commission. A person shall not take any species of wildlife by the aid or with the use of a jacklight, other artificial light, or illegal device, except as provided by the commission.

B. A person shall not take wildlife, except aquatic wildlife, or discharge a firearm or shoot any other device from a motor vehicle, including an automobile, aircraft, train or powerboat, or from a sailboat, boat under sail, or a floating object towed by powerboat or sailboat except as expressly permitted by the commission. No person may knowingly discharge any firearm or shoot any other device upon, from, across or into a road or railway.

C. Fish may be taken only by angling unless otherwise provided by the commission. The line shall be constantly attended. In every case the hook, fly or lure shall be used in such manner that the fish voluntarily take or attempt to take it in their mouths.

D. It shall be unlawful to take wildlife with any leghold trap, any instant kill body gripping design trap, or by a poison or a snare on any public land, including state owned or state leased land, lands administered by the United States forest service, the federal bureau of land management, the national park service, the United States department of defense, the state parks board and any county or municipality. This subsection shall not prohibit:

1. The use of the devices prescribed in this subsection by federal, state, county, city, or other local departments of health which have jurisdiction in the geographic area of such use, for the purpose of protection from or surveillance for threats to human health or safety.
2. The taking of wildlife with firearms, with fishing equipment, with archery equipment, or other implements in hand as may be defined or regulated by the Arizona game and fish commission, including but not limited to the taking of wildlife pursuant to a hunting or fishing license issued by the Arizona game and fish department.
3. The use of snares, traps not designed to kill, or nets to take wildlife for scientific research projects, sport falconry, or for relocation of the wildlife as may be defined or regulated by the Arizona game and fish commission or the government of the United States or both.
4. The use of poisons or nets by the Arizona game and fish department to take or manage aquatic wildlife as determined and regulated by the Arizona game and fish commission.
5. The use of traps for rodent control or poisons for rodent control for the purpose of controlling wild and domestic rodents as otherwise allowed by the laws of the state of Arizona, excluding any fur-bearing animals as defined in section 17-101.

17-309. Violations; classification

A. Unless otherwise prescribed by this title, it is unlawful for a person to:

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

B. Unless a different or other penalty or punishment is specifically prescribed, a person who violates any provision of this title, or who violates or fails to comply with a lawful order or rule of the commission, is guilty

of a class 2 misdemeanor.

C. A person who knowingly takes any big game during a closed season or who knowingly possesses, transports or buys any big game that was unlawfully taken during a closed season is guilty of a class 1 misdemeanor.

D. A person is guilty of a class 6 felony who knowingly:

1. Barter, sells or offers for sale any big game or parts of big game taken unlawfully.
2. Barter, sells or offers for sale any wildlife or parts of wildlife unlawfully taken during a closed season.
3. Barter, sells or offers for sale any wildlife or parts of wildlife imported or purchased in violation of this title or a lawful rule of the commission.
4. Assists another person for monetary gain with the unlawful taking of big game.
5. Takes or possesses wildlife while under permanent revocation under section 17-340, subsection B, paragraph 3.

E. A peace officer who knowingly fails to enforce a lawful rule of the commission or this title is guilty of a class 2 misdemeanor.

17-331. License or proof of purchase required; violation of child support order

A. Except as provided by this title, rules prescribed by the commission or commission order, a person shall not take any wildlife in this state without a valid license or a commission approved proof of purchase. The person shall carry the license or proof of purchase and produce it on request to any game ranger, wildlife manager or peace officer.

B. A certificate of noncompliance with a child support order issued pursuant to section 25-518 invalidates any license or proof of purchase issued to the support obligor for taking wildlife in this state and prohibits the support obligor from applying for any additional licenses issued by an automated drawing system under this title.

C. On receipt of a certificate of compliance with a child support order from the court pursuant to section 25-518 and without further action:

1. Any license or proof of purchase issued to the support obligor for taking wildlife that was previously invalidated by a certificate of noncompliance and that has not otherwise expired shall be reinstated.
2. Any ineligibility to apply for any license issued by an automated drawing system shall be removed.

17-332. Form and content of license; duplicate licenses; transfer of license prohibited; exceptions; period of validity.

A. Licenses and license materials shall be prepared by the department and may be furnished and charged to dealers that are authorized to issue licenses. Each license shall be issued in the name of the department and signed in a manner provided by rule adopted by the commission. With each license authorizing the taking of big game, the department shall provide such tags as the commission may prescribe, which the licensee shall attach to the big game animal in the manner prescribed by the commission. The commission shall limit the number of big game permits issued to nonresidents in a random drawing to ten percent or fewer of the total hunt permits, but in extraordinary circumstances, at a public meeting the commission may increase the number of permits issued to nonresidents in a random drawing if, on separate roll call votes, the members of the commission unanimously:

1. Support the finding of a specifically described extraordinary circumstance.
2. Adopt the increased number of nonresident permits for the hunt.

B. The commission shall issue with each license a shipping permit entitling the holder of the license to a shipment of game or fish as provided by article 4 of this chapter.

C. It is unlawful, except as provided by the commission, for any person to apply for or obtain in any one license year more than one original license permitting the taking of big game. A duplicate license or tag may be issued by the department or by a license dealer if the person requesting such a license or tag furnishes the information deemed necessary by the commission.

D. A license or permit is not transferable and may not be used by anyone except the person to whom the license or permit was issued, except that:

1. The commission may prescribe the manner and conditions of transferring and using permits and tags under this paragraph, including an application process for a qualified organization, to allow a person to transfer the person's big game permit or tag to a qualified organization for use by:

(a) A minor child who has a life-threatening medical condition or a permanent physical disability. If a child with a physical disability is under fourteen years of age, the child must satisfactorily complete the Arizona hunter education course or another comparable hunter education course that is approved by the director.

(b) A veteran of the armed forces of the United States who has a service-connected disability. For the purposes of this paragraph:

(i) "Disability" means a permanent physical impairment that substantially limits one or more major life activities and that requires the assistance of another person or a mechanical device for physical mobility.

(ii) "Qualified organization" means a nonprofit organization that is qualified under section 501(c)(3) of the United States internal revenue code and that affords opportunities and experiences to children with life-threatening medical conditions or with physical disabilities or to veterans with service-connected disabilities.

2. A parent, grandparent or legal guardian may allow the parent's, grandparent's or guardian's minor child or minor grandchild to use the parent's, grandparent's or guardian's big game permit or tag to take big game pursuant to the following requirements:

(a) The parent, grandparent or guardian must transfer the permit or tag to the minor child in a manner prescribed by the commission.

(b) The minor child must possess a valid hunting license and, if under fourteen years of age, must satisfactorily complete, before the beginning of the hunt, the Arizona hunter education course or another comparable hunter education course that is approved by the director.

(c) Any big game that is taken counts toward the minor child's bag limit.

E. Refunds may not be made for the purchase of a license or permit.

F. Licenses are valid for a license year as prescribed in rule by the commission. Lifetime licenses and benefactor licenses are valid for the lifetime of the licensee.

17-333. License classifications; fees; reduced-fee and complimentary licenses; annual report; review

- A. The commission shall prescribe by rule license classifications that are valid for the taking or handling of wildlife, fees for licenses, permits, tags and stamps and application fees.
- B. The commission may temporarily reduce or waive any fee prescribed by rule under this title on the recommendation of the director.
- C. The commission may reduce the fees of licenses and issue complimentary licenses, including the following:
1. A complimentary license to a pioneer who is at least seventy years of age and who has been a resident of this state for twenty-five or more consecutive years immediately before applying for the license. The pioneer license is valid for the licensee's lifetime, and the commission may not require renewal of the license.
 2. A complimentary license to a veteran of the armed forces of the United States who has been a resident of this state for one year or more immediately before applying for the license and who receives compensation from the United States government for a permanent service-connected disability rated as one hundred percent disabling.
 3. A license for a reduced fee to a veteran of the United States armed forces who has been a resident of this state for one year or more immediately before applying for the license and who receives compensation from the United States government for a service-connected disability.
 4. A youth license for a reduced fee to a resident of this state who is a member of the boy scouts of America who has attained the rank of eagle scout or a member of the girl scouts of the USA who has received the gold award.
- D. All monies collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the game and fish fund established by section 17-261.
- E. On or before December 31 of each year, the commission shall submit an annual report to the president of the senate, the speaker of the house of representatives, the chairperson of the senate natural resources, energy and water committee and the chairperson of the house of representatives energy, environment and natural resources committee, or their successor committees, that includes information relating to license classifications, fees for licenses, permits, tags and stamps and any other fees that the commission prescribes by rule. The joint legislative audit committee may assign a committee of reference to hold a public hearing and review the annual report submitted by the commission.

17-335. Blind resident; fishing license exemption

A blind resident may fish without a license and is entitled to the same privileges as the holder of a valid license.

17-335.01. Lifetime license and benefactor license

A. For the purposes of this title, the commission may prescribe by rule a lifetime license and a benefactor license and privileges associated with the taking and handling of fish and wildlife in this state pursuant to section 17-333. All monies derived from the sale of lifetime licenses and benefactor licenses shall be deposited, pursuant to sections 35-146 and 35-147, in the wildlife endowment fund established by section 17-271.

B. A lifetime license, benefactor license and trout stamp may be denied or suspended pursuant to, and for the offenses described in, section 17-340.

C. A lifetime license, benefactor license and trout stamp remain valid if the licensee subsequently resides outside this state, but the licensee must pay the nonresident fee to purchase any additional privileges, including stamps, permits and tags required to hunt and fish in this state. Limits set by the commission on issuing nonresident stamps, permits or tags do not apply to stamps, permits or tags sold to a lifetime licensee.

17-338. Remission of fees from sale of licenses and permits; violation; classification

A. License dealers shall transmit to the department all license and permit fees collected and furnish such information as the commission prescribes by rule. The failure to transmit these fees within thirty days after the deadline the commission prescribes by rule is cause to cancel a license dealer's license. The knowing failure to transmit all collected license and permit fees within thirty days is a class 2 misdemeanor.

B. A license dealer may collect and retain a reasonable fee as determined by the license dealer in addition to the fee charged to issue the license or permit.

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

A. On conviction or after adjudication as a delinquent juvenile as defined in section 8-201 and in addition to other penalties prescribed by this title, the commission, after a public hearing, may revoke or suspend a license issued to any person under this title and deny the person the right to secure another license to take or possess wildlife for a period of not to exceed five years for:

1. Unlawful taking, unlawful selling, unlawful offering for sale, unlawful bartering or unlawful possession of wildlife.
2. Careless use of firearms that resulted in the injury or death of any person.
3. Destroying, injuring or molesting livestock, or damaging or destroying growing crops, personal property, notices or signboards or other improvements while hunting, trapping or fishing.
4. Littering public hunting or fishing areas while taking wildlife.
5. Knowingly allowing another person to use the person's big game tag, except as provided by section 17-332, subsection D.
6. A violation of section 17-303, 17-304, 17-316 or 17-341 or section 17-362, subsection A.
7. A violation of section 17-309, subsection A, paragraph 5 involving a waste of edible portions other than meat damaged due to the method of taking as follows:
 - (a) Upland game birds, migratory game birds and wild turkey: breast.
 - (b) Deer, elk, pronghorn (antelope), bighorn sheep, bison (buffalo) and peccary (javelina): hind quarters, front quarters and loins.
 - (c) Game fish: fillets of the fish.
8. A violation of section 17-309, subsection A, paragraph 1 involving any unlawful use of aircraft to take, assist in taking, harass, chase, drive, locate or assist in locating wildlife.

B. On conviction or after adjudication as a delinquent juvenile and in addition to any other penalties prescribed by this title:

1. For a first conviction or a first adjudication as a delinquent juvenile, for unlawfully taking or wounding wildlife at any time or place, the commission, after a public hearing, may revoke, suspend or deny the person's privilege to take wildlife for a period of up to five years.
2. For a second conviction or a second adjudication as a delinquent juvenile, for unlawfully taking or wounding wildlife at any time or place, the commission, after a public hearing, may revoke, suspend or deny the person's privilege to take wildlife for a period of up to ten years.
3. For a third conviction or a third adjudication as a delinquent juvenile, for unlawfully taking or wounding wildlife at any time or place, the commission, after a public hearing, may revoke, suspend or deny the person's privilege to take wildlife permanently.

C. In accordance with title 41, chapter 6, article 10 and notwithstanding subsection A of this section, a person against whom the commission imposes a civil penalty under section 17-314 for the unlawful taking, wounding, killing or possession of wildlife may be denied the right to obtain a license to take wildlife until the person has made full payment of the civil penalty.

D. On receiving a report from the licensing authority of a state that is a party to the wildlife violator compact adopted under chapter 5 of this title that a resident of this state has failed to comply with the terms of a wildlife citation, the commission, after a public hearing, may suspend any license issued under this title to take wildlife until the licensing authority furnishes satisfactory evidence of compliance with the terms of the wildlife citation.

E. In carrying out this section, the director shall notify the licensee, within one hundred eighty days after conviction, to appear and show cause why the license should not be revoked, suspended or denied. The notice may be served personally or by certified mail sent to the address appearing on the license.

F. The commission shall furnish to license dealers the names and addresses of persons whose licenses have been revoked or suspended, and the periods for which they have been denied the right to secure licenses.

G. The commission may use the services of the office of administrative hearings to conduct hearings and to make recommendations to the commission pursuant to this section.

H. Except for a person who takes or possesses wildlife while under permanent revocation, a person who takes wildlife in this state, or attempts to obtain a license to take wildlife, at a time when the person's privilege to do so is suspended, revoked or denied under this section is guilty of a class 1 misdemeanor.

17-345. Surcharges; purposes

In addition to any other fees, the commission may impose and collect:

1. A surcharge on a license, permit, tag and stamp as the commission prescribes by rule. Monies collected pursuant to this paragraph shall be segregated from other fees and deposited in the conservation development fund.
2. Surcharges on Arizona-Colorado river special use permits, California-Colorado river special use permits and Nevada-Colorado river special use permits issued in this state as provided by sections 17-342, 17-343 and 17-344. The amount of the surcharges shall be determined by the commission. A surcharge under this paragraph is to be used solely for the purpose of the lower Colorado river multispecies conservation program under section 48-3713.03. Any monies collected pursuant to this paragraph shall be segregated from other revenues and deposited, pursuant to sections 35-146 and 35-147, in a fund designated as the Colorado river special use permit clearing account. Each month, on notification by the department, the state treasurer shall pay all of the monies in the clearing account to an account designated by a multi-county 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.

17-362. Guide license; violations; annual report

A. A person shall not act as a guide without first satisfying the director of the person's qualifications and without having procured a guide license. A person who is under eighteen years of age shall not be issued a guide license.

B. If a licensed guide fails to comply with this title or is convicted of violating any provision of this title, in addition to any other penalty prescribed by this title:

1. For a first offense, the commission, after a public hearing, may revoke or suspend the guide license and deny the person the right to secure another license for a period of up to five years.

2. For a second offense, the commission, after a public hearing, may revoke or suspend the guide license and deny the person the right to secure another license for a period of up to ten years.

3. For a third offense, the commission, after a public hearing, may revoke or suspend the guide license and permanently deny the person the right to secure another license.

C. By January 10 of each year, or at the request of the commission, guides shall report to the department, on forms provided by the department, the name and address of each person guided, the number of days so employed and the number and species of game animals taken. A guide license shall not be issued to any person who has failed to deliver the report to the department for the preceding license year, or until meeting such requirements as the commission may prescribe.

41-1005. Exemptions

A. This chapter does not apply to any:

1. Rule that relates to the use of public works, including streets and highways, under the jurisdiction of an agency if the effect of the order is indicated to the public by means of signs or signals.
2. Order or rule of the Arizona game and fish commission that does the following:
 - (a) Opens, closes or alters seasons or establishes bag or possession limits for wildlife.
 - (b) Establishes a fee pursuant to section 5-321, 5-322 or 5-327.
 - (c) Establishes a license classification, fee or application fee pursuant to title 17, chapter 3, article 2.
3. Rule relating to section 28-641 or to any rule regulating motor vehicle operation that relates to speed, parking, standing, stopping or passing enacted pursuant to title 28, chapter 3.
4. Rule concerning only the internal management of an agency that does not directly and substantially affect the procedural or substantive rights or duties of any segment of the public.
5. Rule that only establishes specific prices to be charged for particular goods or services sold by an agency.
6. Rule concerning only the physical servicing, maintenance or care of agency owned or operated facilities or property.
7. Rule or substantive policy statement concerning inmates or committed youths of a correctional or detention facility in secure custody or patients admitted to a hospital, if made by the state department of corrections, the department of juvenile corrections, the board of executive clemency or the department of health services or a facility or hospital under the jurisdiction of the state department of corrections, the department of juvenile corrections or the department of health services.
8. Form whose contents or substantive requirements are prescribed by rule or statute, and instructions for the execution or use of the form.
9. Capped fee-for-service schedule adopted by the Arizona health care cost containment system administration pursuant to title 36, chapter 29.
10. Fees prescribed by section 6-125.
11. Order of the director of water resources adopting or modifying a management plan pursuant to title 45, chapter 2, article 9.
12. Fees established under section 3-1086.
13. Fees established under sections 41-4010 and 41-4042.
14. Rule or other matter relating to agency contracts.
15. Fees established under section 32-2067 or 32-2132.
16. Rules made pursuant to section 5-111, subsection A.
17. Rules made by the Arizona state parks board concerning the operation of the Tonto natural bridge state park, the facilities located in the Tonto natural bridge state park and the entrance fees to the Tonto natural bridge state park.

18. Fees or charges established under section 41-511.05.
 19. Emergency medical services protocols except as provided in section 36-2205, subsection B.
 20. Fee schedules established pursuant to section 36-3409.
 21. Procedures of the state transportation board as prescribed in section 28-7048.
 22. Rules made by the state department of corrections.
 23. Fees prescribed pursuant to section 32-1527.
 24. Rules made by the department of economic security pursuant to section 46-805.
 25. Schedule of fees prescribed by section 23-908.
 26. Procedure that is established pursuant to title 23, chapter 6, article 6.
 27. Rules, administrative policies, procedures and guidelines adopted for any purpose by the Arizona commerce authority pursuant to chapter 10 of this title if the authority provides, as appropriate under the circumstances, for notice of an opportunity for comment on the proposed rules, administrative policies, procedures and guidelines.
 28. Rules made by a marketing commission or marketing committee pursuant to section 3-414.
 29. Administration of public assistance program monies authorized for liabilities that are incurred for disasters declared pursuant to sections 26-303 and 35-192.
 30. User charges, tolls, fares, rents, advertising and sponsorship charges, services charges or similar charges established pursuant to section 28-7705.
 31. Administration and implementation of the hospital assessment pursuant to section 36-2901.08, except that the Arizona health care cost containment system administration must provide notice and an opportunity for public comment at least thirty days before establishing or implementing the administration of the assessment.
 32. Rules made by the Arizona department of agriculture to adopt and implement the provisions of the federal milk ordinance as prescribed by section 3-605.
 33. Rules made by the Arizona department of agriculture to adopt, implement and administer the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) and any other federal produce safety regulation, order or guideline or other requirement adopted pursuant to the FDA food safety modernization act (P.L. 111-353; 21 United States Code sections 2201 through 2252) as provided by title 3, chapter 3, article 4.1.
 34. Calculations performed by the department of economic security associated with the adjustment of the sliding fee scale and formula for determining child care assistance pursuant to section 46-805.
- B. Notwithstanding subsection A, paragraph 21 of this section, at such time as the federal highway administration authorizes the privatization of rest areas, the state transportation board shall make rules governing the lease or license by the department of transportation to a private entity for the purposes of privatization of a rest area.
- C. Coincident with the making of a final rule pursuant to an exemption from the applicability of this chapter under this section, another statute or session law, the agency shall:
1. Prepare a notice and follow formatting guidelines prescribed by the secretary of state.

2. Prepare the rulemaking exemption notices pursuant to chapter 6.2 of this title.
 3. File a copy of the rule with the secretary of state for publication pursuant to section 41-1012 and provide a copy to the council.
- D. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the Arizona board of regents and the institutions under its jurisdiction, except that the Arizona board of regents shall make policies or rules for the board and the institutions under its jurisdiction that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies or rules proposed.
- E. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the Arizona state schools for the deaf and the blind, except that the board of directors of all the state schools for the deaf and the blind shall adopt policies for the board and the schools under its jurisdiction that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies proposed for adoption.
- F. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the state board of education, except that the state board of education shall adopt policies or rules for the board and the institutions under its jurisdiction that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies or rules proposed for adoption. In order to implement or change any rule, the state board of education shall provide at least two opportunities for public comment. The state board of education shall consider the fiscal impact of any proposed rule pursuant to this subsection.
- G. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the state board for charter schools, except that the board shall adopt policies or rules for the board and the charter schools sponsored by the board that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies or rules proposed for adoption. In order to implement or change any policy or rule, the board shall provide at least two opportunities for public comment. The state board for charter schools shall consider the fiscal impact of any proposed rule pursuant to this subsection.

GAME AND FISH COMMISSION (F19-0615)

Title 12, Chapter 4, Article 1, Definitions and General Provisions



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 4, 2019

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

FROM: Council Staff

DATE: May 6, 2019

SUBJECT: ARIZONA GAME AND FISH DEPARTMENT
Title 12, Chapter 4, Article 1, Definitions and General Provisions

This five year review report (5YRR) from the Arizona Game and Fish Department (Department) relates to all Sections of Title 12, Chapter 4, Article 1 related to definitions and general provisions.

In its prior 5YRR, approved by this Council on April 1, 2014, the Department stated it anticipated submitting final rules to the Council by June 2016. The Department completed the course of action by undergoing an exempt rulemaking in October 2013 and regular rulemaking which was approved by this Council on November 3, 2015 and became effective December 4, 2015.

Proposed Action

The Department anticipates requesting an exception to the rulemaking moratorium by April 2019 and submitting the Notice of Final Rulemaking for actions proposed in the Department's report to the Council by July 2020.

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

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

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Commission has determined that the economic impact of Article 1 does not differ significantly from what was originally determined by the economic, small business, and consumer impact statement (EIS) from the most recent rulemaking in 2015. The Commission notes that R12-4-122 and R12-4-123 were last amended in 2006, and no EIS was available.

The stakeholders include the Commission, the Department, the General Accounting Office, the Department of Revenue, outdoor recreation businesses, and the public.

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

The Commission indicates that the rules require numerous amendments. Once the amendments are completed, the rules will impose the least burden and costs to those regulated by the rules.

4. Has the agency received any written criticisms of the rules over the last five years?

Yes. The Department has received numerous written criticisms of the rules over the last five years. These written criticisms are listed in more detail in the Department's report. The Department has adequately responded to these written criticisms.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?

The Department indicates that the rules are generally clear, concise, and understandable except for the following:

R12-4-101:

- The terms "import" and "export" typically mean something being brought into or taken out of the country. For the purposes of the Department's rules, "import and export" mean something is being brought into or taken out of the State. The Department proposes to amend the rules to define "export" and "import" to reduce regulatory ambiguity.
- The Department proposes to amend the rule to replace references to "animal" with "wildlife" to make the rule more concise.
- The Department proposes to amend the rule to replace references to "buffalo" with "bison" to reflect terminology used by the scientific community.

R12-4-102:

- The Department proposes to amend the rule to replace references to "buffalo" with "bison" to reflect terminology used by the scientific community.

R12-4-104:

- The Department proposes to amend the rule to remove the Department website URL and simply reference “Department’s website” to ensure the rule remains concise in the event the Department’s URL should change.
- The Department proposes to amend the rule to replace references to “buffalo” with “bison” to reflect terminology used by the scientific community.

R12-4-106:

- Make minor grammatical changes to make the rule more concise.

R12-4-107:

- The Department proposes to amend the rule to clarify that a person who is 9 years old or older may take the Arizona hunter education certification course and, upon successful completion of the course, be awarded one permanent bonus point for each big game species.
- The Department proposes to amend the rule to remove references to “Department-sanctioned” to reflect changes made to the Department’s Hunter Education Program.

R12-4-113:

- The Department proposes to amend the rule to remove the Department website URL and simply reference “Department’s website” to ensure the rule remains concise in the event the Department’s URL should change.

R12-4-115:

- The Department proposes to amend the rule to remove the Department website URL and simply reference “Department’s website” to ensure the rule remains concise in the event the Department’s URL should change.

R12-4-118:

- The Department proposes to amend the rule to remove the Department website URL and simply reference “Department’s website” to ensure the rule remains concise in the event the Department’s URL should change.

R12-4-124:

- The Department proposes to amend the rule to define “current address” and clarify rule language to make the rule more concise

The Department indicates that the rules are generally consistent with other rules and statutes except for the following:

R12-4-101:

- Because the terms “cervid,” “nonprofit organization,” and “person” are used in multiple rules, the Department proposes to amend the rules to define these terms under R12-4-101.

- The Department proposes to define “Arizona Hunter Education Certification” and “Hunter Education Certification to reflect amendments proposed to R12-4-107 and increase consistency between rules.
- The Department proposes to amend the rule to replace references to “antelope” with “pronghorn antelope” to reflect language used in Commission Order and public outreach materials.

R12-4-102:

- The Department proposes to amend the rule to replace references to “antelope” with “pronghorn antelope” to reflect language used in Commission Order and public outreach materials.

R12-4-104:

- The Department proposes to amend this rule to reflect changes made to R12-4-107 (bonus point system)

R12-4-105:

- The Department proposes to amend the rule to remove language referencing the 5% commission and allow license dealers to collect and retain a reasonable fee to align the rule with amended A.R.S. § 17-338.

R12-4-106:

- The Department proposes to amend the rule to replace the references to “permit” with “license” for the aquatic wildlife stocking license to increase consistency between Commission rules.

R12-4-107:

- The Department proposes to amend the rule to replace references to “antelope” with “pronghorn antelope” to reflect language used in Commission Order and public outreach materials.

R12-4-114:

- The Department proposes to amend the rule to replace references to “antelope” with “pronghorn antelope” to reflect language used in Commission Order and public outreach materials.

R12-4-116:

- The Department proposes to amend the rule to replace references to “antelope” with “pronghorn antelope” to reflect language used in Commission Order and public outreach materials.
- The Department proposes to amend the rule to establish the reward payments to be paid for information received regarding attendant acts of vandalism pursuant to A.R.S. § 17-315(B)(1).

R12-4-120:

- The Department proposes to amend the rule to reference the hunt permit-tag transfer established under R12-4-121.

The Department indicates that the rules are generally effective in achieving its objective except as follows:

R12-4-101:

- The Department proposes to amend rule to define “bow,” “crossbow,” and “handgun,” which are used in multiple Department rules and Commission Orders.

R12-4-107:

- The Department proposes to amend the rule to specify that any bonus point that is fraudulently obtained, whether purchased or accrued, shall be removed from the person’s Department record.

R12-4-120:

- The Department proposes to amend the rule to specify the organization shall submit the winning bidder’s license information to the Department within 90 days of the close of the raffle or auction.
- In an effort to maintain the integrity of the auction and raffle and make the auction and raffle process more transparent, the Department proposes to amend the rule to establish measures designed to prevent the abuse of tags sales and transfers.

R12-4-122:

- The Department proposes to amend the rule to allow the donation of bear and mountain lion meat to public institutions and charitable organizations in compliance with A.R.S. § 17-240 and to ensure edible game meat is not wasted.

R12-4-124:

- The Department is aware of instances where a person has attempted to sue outdated documents to prove residency. For example, because the rule does not specify the document needs to be current and contain a valid address, an expired driver license with an old address may be used as proof of domicile. This makes residency requirements more difficult to enforce. The Department proposes to amend the rule to require a person to present a valid document that contains a current address.
- There are times where more than one document is needed to fully establish a person’s domicile. The Department proposes to amend the rule to clarify that more than one document may be required to fully establish the persons’ domicile.

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

The Department indicates that the rules are enforced as written. However, the Department proposes the following amendments to increase enforcement:

R12-4-105:

- A person may purchase hunting and fishing licenses online, using the Department's online license sales system. This means any person can sell the Department's licenses, which is unlawful under A.R.S. § 17-334. The Department proposes to amend the rule to establish a person who is not authorized to sell licenses on behalf of the Department is prohibited from selling Department-issued hunting and fishing licenses.

R12-4-110:

- The Department is aware of ongoing issues with illegally locked gate in certain areas of the state. The Department proposes to amend the rule to clarify that, although a person may close State Land to hunting, fishing, and trapping; a person may not deny lawful access to State Land.

R12-4-124:

- When a person is cited by a member of law enforcement, the officer writes down the address given by the person. There is no follow-up action taken to ensure the address is valid and this address may continue to be used throughout the court process. For this reason, the Department proposes to remove a certified copy of a court order from the list of acceptable proof of domicile.

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

To the extent federal law is applicable to these rules, the rules are not more stringent than federal law.

8. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

The rules require a general permit and are in compliance with the requirements prescribed under A.R.S. § 41-1037.

9. Conclusion

The rules are generally clear, concise, understandable, consistent, and effective. However, the Department's proposed amendments will make the rules more clear, concise, understandable, consistent, and effective. While the rules are generally enforced as written, the Department has identified several amendments that would improve enforcement. The Department anticipates requesting an exception to the rulemaking moratorium by April 2019 and submitting the Notice of Final Rulemaking for actions proposed in the Department's report to the Council by July 2020. Council staff recommends approval of this report.



April 15, 2019

Nicole Sornsin, Madam Chair
The Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, AZ 85007

SUBJECT: Five-year-Review Report: 12 A.A.C. 4, Article 1. Definitions and General Provisions

Dear Ms Sornsin:

On April 12, 2019, the Arizona Game and Fish Commission adopted the enclosed five-year-review report for submission to the Council; 12 A.A.C. 4, Article 1 Definitions and General Provisions. The report is prepared in accordance with A.R.S. § 41-1056 and the rules and guidelines of the Council. The established due date for the report is May 2019.

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,

A handwritten signature in black ink, appearing to read "Ty Gray", is written over a large, stylized flourish that extends to the right.

Ty Gray
Director

**ARIZONA GAME AND FISH
COMMISSION
2019 FIVE-YEAR REVIEW REPORT**

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS



Prepared for the
Governor's Regulatory Review Council

12 A.A.C. 4, ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS
2017 FIVE-YEAR REVIEW REPORT
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REPORT: ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

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, 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 1, Definitions and General Provisions, are scheduled to be reviewed by April 2019.

The Arizona Game and Fish Department (Department) tasked a team of employees to review the rules contained within Article 1. 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 April 2019 and submitting the Notice of Final Rulemaking for actions proposed in this report to the Council by July 2020, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking.

With this report, the Department also certifies its compliance with the requirements of A.R.S. § 41-1091:

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;
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, AZ 85086.

R12-4-101. DEFINITIONS

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. § 17-231(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 persons regulated by the rule and members of the public in understanding the unique terms that are used throughout 12 A.A.C. Chapter 4. The rule was adopted to facilitate consistent interpretation and to prevent the persons regulated by the rule 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, etc. Responses indicate the rule is understandable and applicable. The Department believes this data indicates the rule is effective.

The Department proposes to amend the rule to define terms used in multiple Game and Fish Commission rules and Commission Orders: "bow," "crossbow," and "handgun." Defining these terms will aid in facilitating a consistent interpretation of Commission Orders and rules.

- 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.**

Overall, the rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

Because the terms "cervid," "nonprofit organization," and "person" are used in multiple Game and Fish Commission rules, the Department proposes to amend the rule to define these terms under R12-4-101.

The Department proposes to define "Arizona Hunter Education Certification" and "Hunter Education Certification" to reflect amendments proposed to R12-4-107 (bonus point system) and increase consistency between Commission rules.

The Department proposes to amend the rule to replace references to "antelope" with "pronghorn antelope" to reflect language used in Commission Order and public outreach materials.

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 this rule through proper administration. The rule is currently being enforced as written. Providing definitions for the unique terms used within Commission rules assists the public, Department personnel, and members of law enforcement in understanding the content and intent of Commission 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.

The terms "import" and "export" typically mean something is being brought into or taken out of the country, respectively. For the purposes of Game and Fish Commission rules, "import" and "export" mean something is being brought into or taken out of the State. The Department proposes to amend the rule to define "export" and "import" to reduce regulatory ambiguity. These changes are proposed as a result of customer comments received by the Department.

The Commission proposes to amend the rule to replace references "animal" with "wildlife" to make the rule more concise.

The Department proposes to amend the rule to replace references to "buffalo" with "bison" to reflect terminology used by the scientific community.

7. Summary of any written criticism of the rule received by the agency within the five years immediately preceding the five-year review report.

The Department received the following written criticism of the rule:

Written Comment: August 11, 2013. Has the Department defined "edible portions of game meat" and

"waste"? I cannot locate a definition for either anywhere in the regulations. Also, if the Department has not already defined these terms, please do so in order to inform hunters, Department officers, and court personnel of what is meant? Wyoming seems to have very useful definitions for these two terms that could be considered for adoption within Arizona.

Agency Response: A.R.S. 17-340(A)(7) defines edible portions of game meat; however, this definition does not address edible portions of mountain lion or bear. The Commission is pursuing rulemaking to amend R12-4-301 to define "edible portions of game meat" as part of the Article 3. Taking and Handling of Wildlife rulemaking: "Edible portions of game meat" means, for: Upland game birds, migratory game birds and wild turkey: breast. Bear, bighorn sheep, bison, deer, elk, javelina, mountain lion, and pronghorn antelope: front quarters, hind quarters, loins (backstraps), neck meat, and tenderloins. Game fish: fillets of the fish. Most dictionaries define "waste" as "to fail or neglect to use." The Department believes the common definition of the term "waste" is sufficient.

- 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 November 3, 2015. The rule was amended to clarify the Commission's interpretation of "day-long;" define "person," "proof of purchase," "adult bull buffalo," "adult cow buffalo," "rooster," and "yearling buffalo;" and remove the text, "excluding male lambs." The Commission anticipated persons regulated by the rule and the Department would benefit from the rulemaking that creates or refines terms referenced throughout Commission rules as they help to clarify the Commission's intent and foster consistent interpretation of Commission rules.

- 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 report was approved by G.R.R.C. at the April 1, 2014 Council Meeting, which stated the Department

anticipated submitting the final rules to the Council by June 2016. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 21 A.A.R. 1409, July 10, 2015.
- Notice of Proposed Rulemaking: 21 A.A.R. 1001, July 10, 2015.
- Public Comment Period: July 10, 2015 through August 10, 2015.
- G.R.R.C. approved the Notice of Final Rulemaking at the November 3, 2015 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 3025, December 4, 2015.

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 public benefits from a rule that defines terms referenced throughout Commission rules as they help to clarify the Commission's intent and foster consistent interpretation of Commission rules. Providing definitions for the unique terms used within Commission rules assists the public, Department personnel, and members of law enforcement in understanding the content and intent of Commission rules. The public and Department benefit from a rule that is understandable. 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 requires 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 R12-4-101 as follows:

- Define "Arizona Hunter Education Certification" and "Hunter Education Certification" to reflect amendments proposed to R12-4-107 (bonus point system) and increase consistency between Commission rules.
- Define terms used in multiple Game and Fish Commission rules and Commission Orders: "bow," "cervid," "crossbow," "export," "handgun," "import," "nonprofit organization," and "person" to clarify the Commission's intent and foster consistent interpretation of Commission rules. These changes are proposed as a result of customer comments received by the Department.
- Replace references to "animal" with "wildlife" to make the rule more concise.
- Replace references to "antelope" with "pronghorn antelope" to reflect language used in Commission Order and public outreach materials.
- Replace references to "buffalo" with "bison" to reflect terminology used by the scientific community.

The Department anticipates submitting the Notice of Final Rulemaking to the Council by July 2020, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking.

R12-4-102. LICENSE, PERMIT, STAMP, AND TAG FEES

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ A.R.S. §§ 17-102, 17-333, 17-335.01, 17-342, 17-345, and 41-1005

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to prescribe fees for licenses, tags, stamps, and permits within statutory confines to meet Department operating expenditures and wildlife conservation. The rule was adopted to provide the persons regulated by the rule with a comprehensive listing of license, permit, stamp, and tag fees and to ensure consistency between the fees collected by the Department and license dealers.

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, etc. 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. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

The Department proposes to amend the rule to replace references to "antelope" with "pronghorn antelope" to reflect language used in Commission Order and public outreach materials.

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.

The Department proposes to amend the rule to replace references to "buffalo" with "bison" to reflect terminology used by the scientific community.

7. Summary of any written criticism of the rule received by the agency within the five years immediately preceding the five-year review report.

The Department received the following written criticism(s) of the rule:

Written Comment: June 12, 2013. I would like the Department to institute a pricing plan for seniors. This would include a prorated fee, provided the Department maintains the January through December licenses. For example, it is mid-June and I would like to buy a fishing license, but do not want to pay the full fee for half the benefits. I cannot afford to buy a fishing license and the annual Tonto parking pass in January.

Agency Response: License, permit, stamp, and tag fees are set, through the Commission, utilizing a public process. The current fee structure serves the best interest of the public and the Department for preserving and protecting Arizona's wildlife. In 2014, the rules were amended to offer licenses that are valid for one-year from

the date of purchase. Previously, most licenses were valid for the calendar year (January 1 through December 31), which gave the perception that the license had less value when purchased later in the year. The Department and Commission are currently reviewing requests such as yours and contemplating the best way to offer benefits to seniors and maintain the critical funding necessary to properly manage the state's wildlife. The Commission will again seek public input before making any change to the current license structure or fees. It is important to note, sportsmen are the nation's oldest conservationists and provide more direct support for wildlife than any other group. The purchase of a license is the cornerstone of the user pay public benefit model, not only providing direct revenue for conservation but factoring in to other constructs such as the apportionment of Wildlife and Sportfish Restoration dollars to the states.

Written Comment: October 8, 2014. I previously lived in Oregon where a resident with five or more years of residency and over the age of 70 was eligible to purchase a combination hunting and fishing license for one-half the usual cost. I would like to see the Arizona Game and Fish Department offer a reduced license or complimentary license to eligible persons who meet the criteria I described above.

Agency Response: License, permit, stamp, and tag fees are set, through the Commission, utilizing a public process. The Department offers a variety of inexpensive fishing opportunities: a one-day fishing license, a group license, fishing clinics, and Free Fishing Days. These are all no cost or low cost opportunities for persons to fish in Arizona. When the new license structure was established, the Commission also increased the value of the fishing license. For example, the resident general fishing license includes trout, two-pole, community fishing privileges and Colorado River privileges for a \$37 fee. Previously, a resident had to purchase all of these additional privileges separately for a combined total cost of \$69.75 (class A fishing license \$23.50, Urban fishing license \$18.50, trout stamp \$15.75, two-pole stamp \$6, and Arizona/California and Arizona/Nevada Colorado River stamps \$6). The Department and Commission are currently reviewing requests such as yours and contemplating the best way to offer benefits to seniors and maintain the critical funding necessary to properly manage the state's wildlife. The Commission will again seek public input before making any change to the current license structure or fees. It is important to note, sportsmen are the nation's oldest conservationists and provide more direct support for wildlife than any other group. The purchase of a license is the cornerstone of the user pay public benefit model, not only providing direct revenue for conservation but factoring in to other constructs such as the apportionment of Wildlife and Sportfish Restoration dollars to the states.

Written Comment: October 9, 2014. Since crayfish are an invasive species, I suggest the Department remove the fishing license requirement or offer a low cost option for harvesting them. I would love to help out with this but the fishing license is too expensive. Can you help?

Agency Response: License, permit, stamp, and tag fees are set, through the Commission, utilizing a public process. When the new license structure was established, the Commission also increased the value of the fishing

license. For example, the resident general fishing license includes trout, two-pole, community fishing privileges and Colorado River privileges for a \$37 fee. Previously, a resident had to purchase all of these additional privileges separately for a combined total cost of \$69.75 (class A fishing license \$23.50, Urban fishing license \$18.50, trout stamp \$15.75, two-pole stamp \$6, and Arizona/California and Arizona/Nevada Colorado River stamps \$6). When you consider crayfish sell for an average of \$5 per pound, the ability to catch them year-round for only \$37 is a great value. It is important to note, sportsmen are the nation's oldest conservationists and provide more direct support for wildlife than any other group. The purchase of a license is the cornerstone of the user pay public benefit model, not only providing direct revenue for conservation but factoring in to other constructs such as the apportionment of Wildlife and Sportfish Restoration dollars to the states.

Written Comment: January 8, 2015. Tag fees keep increasing each year, while I understand this is needed to keep the Department funded; the increase is starting to price out lower waged workers who do not have the extra funds to afford to hunt. While this does not apply to me, I know people who cannot afford to hunt because of the cost of the tags. Licenses should run calendar year, not from date of purchase year. Increase predator hunting awareness and offer bounties for specific species in areas where predators are a large problem. Increase black powder hunting opportunities, I have watched the numbers of available permits decrease each year for hunting black powder to the point where it's almost not worth owning a black powder anymore. Even offering a ten % increase in black powder hunts and taking that ten % from the other hunts would greatly increase black powder hunting opportunities. Due to very high demand for Kaibab deer hunts, when someone has a successful draw for Kaibab or the Strip they should be excluded from putting in for five to seven years. I know someone who has put in for the past nine years and been drawn three times, while others have put in for over 20 years and never been drawn. Require Hunter Education for all hunters going into Kaibab. Wolves do not need to be here, none the less managed by the federal government. If they are in Arizona, they need to be managed by the Department not the federal government.

Agency Response: The fee increase in 2014 was the first increase since 2007; and when those fees were established, the Commission made a commitment to sportsmen not to raise fees again for five years. The Commission exceeded that commitment despite having to navigate the challenges posed by the economic downturn and increasing costs. License, permit, stamp, and tag fees are set, through the Commission, utilizing a public process. In 2014, the rules were amended to offer licenses that are valid for one-year from the date of purchase. Previously, most licenses were valid for the calendar year (January 1 through December 31), which gave the perception that the license had less value when purchased later in the year. This change was made as a result of customer comments received by the Department. It is important to note, sportsmen are the nation's oldest conservationists and provide more direct support for wildlife than any other group. The purchase of a license is the cornerstone of the user pay public benefit model, not only providing direct revenue for conservation but factoring in to other constructs such as the apportionment of Wildlife and Sportfish Restoration dollars to the states. The Department conducts public outreach (awareness campaigns) regarding all

game animals that may be lawfully taken on an almost daily basis throughout the entire state. The Commission does not have the authority or desire to offer bounties for any game animal. Department biologists and Regional offices responsible for the management of a specific unit submit data concerning wildlife and wildlife habitat to the Department's Terrestrial Wildlife Program. The Terrestrial Wildlife Program then uses this data to formulate hunting seasons, which are included in the hunt recommendations provided to the Commission. Commission Orders establishing hunt structures are based on hunt recommendations resulting from an extensive public process. Your comment regarding muzzleloading hunts (black powder) was forwarded to the Department's Terrestrial Wildlife Branch for consideration during the next hunt guidelines review process. In 2014, the Department evaluated waiting periods (one, eight, and ten year) and determined that, except for youth hunts, implementing a wait period resulted in a projected increase in draw odds of .26 % (elk) to 6.3 % (late season deer) per applicant. The Commission determined implementing a waiting period would not be beneficial to persons who hunt in Arizona. Arizona has one of the lowest hunting accident rates in the country. The Department proactively encourages hunter education by requiring young hunters to complete a hunter education course and by providing a bonus point for adult hunters who complete the course. The Department believes the current mechanisms in place to encourage the completion of Arizona hunter education courses are sufficient and appropriate to maintain hunting safety in the field. The purpose of the Endangered Species Act (ESA) is to protect and recover imperiled species and the ecosystems upon which they depend. The Mexican Gray wolf is listed as endangered on the ESA Threatened and Endangered Species List; "endangered" means a species is in danger of extinction throughout all or a significant portion of its range. Under 16 U.S.C. § 1531 et seq., the U.S. Fish and Wildlife Service is responsible for administering the ESA as it applies to terrestrial wildlife. The Department is involved in the wolf recovery program to ensure federal agencies coordinate their activities with the Department, which ensures the best management outcome possible for all of Arizona's wildlife.

Written Comment: February 5, 2015. We are headed to Arizona for a few weeks this month and I thought I might fish for a few days. I checked online to purchase a nonresident short-term fishing license. It was too expensive and not competitive with all other western states; \$20 per day is too much. Short term licenses in most surrounding states are one half to two thirds the cost for the first day and then a minimal charge for the second and third day. I will not fish in Arizona and Arizona will miss out on my license fee and what I would spent on bait, lures, flies, boat rentals, etc.

Agency Response: License, permit, stamp, and tag fees are set, through the Commission, utilizing a public process. Previously, the Department offered a nonresident one-day fishing license for \$17.25, a five-day nonresident fishing license for \$32, and a four-month nonresident fishing license for \$39.75, all of which included the trout stamp. In 2014, the nonresident short term license structure was simplified to one nonresident combination fishing and hunting license for \$20 per day to make the system simpler, easier to understand, and more user friendly. While the cost of the daily license was increased by \$2.75, the value of the license was enhanced by including two-pole, community, and Colorado River fishing privileges and small game, fur-

bearing animal, predatory animal, nongame animal, and upland game bird hunting privileges. Previously, a nonresident had to purchase all of these additional privileges separately for a combined total cost of \$109 (class D fishing license \$17.25, Urban fishing license \$18.50, two-pole stamp \$6, Arizona/California and Arizona/Nevada Colorado River stamps \$6, and nonresident three-day hunting license \$61.25). The idea behind offering a single-day combination license is to encourage persons to hunt *and* fish in Arizona; with a combination license, a person visiting Arizona for the purpose of participating in the Yuma Dove Hunt may also enjoy spending an afternoon at a local fishing spot. It is important to note, sportsmen are the nation's oldest conservationists and provide more direct support for wildlife than any other group. The purchase of a license is the cornerstone of the user pay public benefit model, not only providing direct revenue for conservation but factoring in to other constructs such as the apportionment of Wildlife and Sportfish Restoration dollars to the states.

Written Comment: January 5, 2016. I am concerned about the increase in the lion population. Over the past three years, I have noted a significant rise in the lion population. While the Department's deer management reports notes deer population levels remain somewhat the same year after year, I cannot help but wonder why a substantial increase in mule deer numbers would have an adverse effect on Arizona's economy, wildlife habitat, or water consumption. An increase in deer numbers would allow more nonresidents an opportunity to hunt, increasing the Arizona's revenue from additional permits sold. Nonresidents pay higher fees for the opportunity to hunt in Arizona. Each year, a few lions are harvested north of the Colorado River and I would suggest they were harvested by bordering nonresidents. Who does the control of predators benefit the most? A resident who has a 90 % chance to draw a deer tag or a nonresident with a 10 % chance? Travel time, economic consideration, and a lack of knowledge may be the reasons residents do not take advantage of the recreational opportunity placed before them, it's only a \$15 tag fee to hunt a lion. Arizona needs to encourage more nonresident recreational participation to hopefully keep the lion population from increasing. I suggest the Department reduce the nonresident lion fee to \$15 (same amount residents pay). Arizona could also benefit from an increase in the nonresident class G licenses being sold, which would make up for the loss in revenue due to the lack of nonresidents hunting in Arizona. A fee reduction may also result in more nonresident mule deer draw permits, adding an additional \$15 for each application requested. Consider how many nonresidents live within twenty miles of the Utah/Arizona border.

Agency Response: License, permit, stamp, and tag fees are set, through the Commission, utilizing a public process. In 2014, the Department reduced the nonresident combination license to \$160 (from \$225) and the mountain lion tag to \$75 (from \$225). The Commission believed the fee reductions would encourage nonresidents, especially those closest to the Arizona border, to take advantage of the great recreational opportunities available in Arizona. The Commission also amended the nonresident license structure to only offer a nonresident combination license. For only \$160, a nonresident can fish in all water bodies and hunt small game, fur-bearing animals, predatory animals, nongame animals, and upland game birds. For \$75 more, the

nonresident can purchase a mountain lion tag and still pay \$215 less for that experience than they would have in 2013. Although nonresident fees are higher than resident fees, the Commission holds that it is in its best interest of the State to maintain opportunities for the resident community not only to generate revenue, but to instill a sense of ownership in the local wildlife resource and to maintain consistently available participation in the management of that resource. It is important to note, sportsmen are the nation's oldest conservationists and provide more direct support for wildlife than any other group. The purchase of a license is the cornerstone of the user pay public benefit model, not only providing direct revenue for conservation but factoring in to other constructs such as the apportionment of Wildlife and Sportfish Restoration dollars to the states.

Written Comment: February 15, 2017: I have a 26 year old developmentally delayed daughter that "loves" to fish. Well, once we get to the lake her love of fishing is over in about 30 minutes. It gets very expensive indulging in a license for her "very limited" time of having her pole in the water. Consider a free or reduced rate for these "special" individuals can enjoy this outdoor activity.

Agency Response: License, permit, stamp, and tag fees are set, through the Commission, utilizing a public process. The Department offers a variety of inexpensive fishing opportunities throughout the year: a one-day fishing license, a group license, fishing clinics, and Free Fishing Days. These are all no cost or low cost opportunities for persons to fish in Arizona. Still, a resident fishing license that is valid for one-year and includes trout, simultaneous fishing, community fishing, and Colorado River privileges for a \$37 fee is an incredible value when you consider the average cost for one night at the movies for only one person is \$18 (ticket \$8, drink \$4, and popcorn \$6). The Department and Commission are currently reviewing requests such as yours and contemplating the best way to offer benefits to persons with disabilities and maintain the critical funding necessary to properly manage the state's wildlife. The Commission will again seek public input before making any change to the current license structure or fees. It is important to note, sportsmen are the nation's oldest conservationists and provide more direct support for wildlife than any other group. The purchase of a license is the cornerstone of the user pay public benefit model, not only providing direct revenue for conservation but factoring in to other constructs such as the apportionment of Wildlife and Sportfish Restoration dollars to the states.

Written Criticism: August 3, 2018. The one negative aspect of the free Pioneer License is that the licensee must have been a resident of Arizona for 25 years. Most states have a provision for a senior license with no prescribed term of residency. In Kentucky, a person who is 65 can get a combination hunting and fishing license for only five dollars. In view of the fact that Arizona is reimbursed by the federal government for each license sold, and considering that many retirees moving to Arizona may want to fish but are unable to pay for the license as currently priced, I suggest Arizona establish a low-cost senior fishing license. I think many more licenses would be sold if seniors found the price more affordable and the community fishing program would be extensively utilized because many retirees have access to the municipal locations of these ponds. Retirees come

from all over the nation and many of them would love to take their grandchildren fishing if they could obtain a low-cost license. I see no good reason a person over 70 years of age, such as myself, having retired in Arizona, being an avid fisherman and supporter of the Department in all its endeavors, should not be able to afford access to our magnificent fishing opportunities because of the cost of a necessary license. Perhaps a fee of five or ten dollars would be sufficient. I am certain many more licenses would be sold, adding to the revenue for the Department. Our seniors deserve a break even if they have not lived in Arizona for 25 years, as other states have recognized.

Agency Response: The requirements for the complimentary pioneer license are prescribed under A.R.S. § 17-333(C)(1) effective August 3, 2018, which states an eligible applicant is a person seventy years of age or older. A legislative amendment is required before the Department may change the age requirement referenced in the rule. The Department and Commission are currently reviewing requests such as yours and contemplating the best way to offer benefits to seniors while maintaining the critical funding necessary to properly manage the state's wildlife. The Commission will again seek public input before making any change to the current license structure or fees. It is important to note, sportsmen are the nation's oldest conservationists and provide more direct support for wildlife than any other group. The purchase of a license is the cornerstone of the user pay public benefit model, not only providing direct revenue for conservation but factoring in to other constructs such as the apportionment of Wildlife and Sportfish Restoration dollars to the states.

The following comments pertain to the Notice of Exempt Final Rulemaking, see 19 A.A.R. 3225, October 18, 2013:

Written Comment: July 7, 2013. The only thing the Department is accomplishing is charging more. I am not impressed with any of the changes.

Written Comment: July 14, 2013. I am an avid outdoorsman and have hunted and fished in Arizona my entire life. I have seven children and all of my kids like to hunt and fish. However, the cost to apply for licenses and tags are going up so much that I do not think I will be able to hunt in this state much longer. Nor will I be able to keep my kids (the future for wildlife) involved in hunting and fishing. Please consider other methods and keep the costs for hunting down. Maybe the Department could not buy and drive brand new vehicles as often as it does? If I can drive a vehicle that is a little older, why can't the Department? There has to be a way the Department can get more money to support wildlife without constantly making hunters pay more.

Written Comment: July 25, 2013. I think the longtime residents who have paid their dues deserve more consideration when it comes to tags and fees over someone who has been here only six months or is a nonresident with a lot of money. Being on disability and with a fixed income I am afraid I will not be able to hunt the "king's deer" any more.

Written Comment: August 1, 2013. I have suffered through an anemic economy for the past six to seven years. I am not pleased to see the potential fee increases considering how my personal livelihood has suffered. Before the Department considers any type of increase, it should do its best to “tighten the belt,” just as I have had to do these past years. As an alternative, I would like to suggest increases to nonresident fees as a way of covering any necessary increases to the Department's budget.

Written Comment: August 1, 2013. As a more than ten year resident of Arizona and an avid outdoorsman, I think the proposed changes are solid. The simplification makes sense, not only from the business perspective, but it makes it much simpler for Wildlife Manager who will no longer have to concern themselves with the multiple, optional fishing stamps and licenses. I am thankful the Department removed the proposed premium fee structure for elk tags from the rulemaking. I also appreciate the Department's efforts to keep me informed in an easily accessible manner and for listening to our thoughts and opinions. I look forward to seeing the final implementation of the proposed changes.

Written Comment: August 1, 2013. I oppose using the application fee as a revenue stream. The Department has other funds that can be used to secure hunter access and habitat enhancement. A \$10 application fee is acceptable, provided it costs that much to process an application. Habitat enhancement should be paid for by the permit tag fee for each species and by successful applicants. The deer, elk, and turkey permit increases are too high and I oppose them as proposed. I could support an overall ten % increase for all permits, rounded up to the nearest whole number to make it easy. The short-term combination hunting and fishing license is too high. I have taken visitors to buy a license and they say the fee is too high and they would rather watch than hunt or fish. A short-term license should be like a "trial license," - cheap. Then, if quality hunting and fishing opportunities are available, they will return as paying customers. The resident short-term license should be \$5 and the nonresident \$10. The White Mountain Apache Tribal reservation one-day license is only \$9 and we are all nonresidents to them. Our state should run like a business and be competitive.

Written Comment: August 1, 2013. Why do I have the feeling that I will soon be priced out of my ability to hunt in Arizona? **Follow-up Comment: August 9, 2013.** My income has not gone up in eight years; how about rolling the fees back to the 2006 prices?

Written Comment: August 2, 2013. I can barely afford a combination hunting and fishing license. If the Department keeps raising the costs, hunting in Arizona will be only for those who have money. The Department needs to keep the playing field as even as possible to ensure that all persons will have a chance at fair chase. It is already hard enough to compete with the hunters who have optics worth thousands, ATVs, or side by sides. Give the working man a break so I do not have to save for five years to hunt for one-year. **Follow-up Comment: August 6, 2013.** All of that is well and wonderful, but the bottom line is the across the board fee

increases to tags surpass any potential savings provided by the combination hunting and fishing license. I guess big game animals will only be available to the people with money, leaving the small game to us poor folks. I hoped the Department would move forward in the years to come and make concessions for all. These increases will only promote poaching and other illegal activity in the field, which will only raise fees to support more law enforcement. The new headquarters sure are nice. Once you create the monster you have to feed it until it is no longer sustainable and then it dies. **Follow-up Comment: August 9, 2013.** Can the Department tell me what the revenue from the fee increases will be used for and why are the increases necessary?

Written Comment: August 4, 2013. Arizona is a great state; unfortunately, I work and live in California. I visit friends and family every year to hunt archery deer. I have yet to take a deer, but that is okay as I have a great time. Many of the Department's proposals are hunter friendly, but if nonresident deer tags are raised to \$300 I will not buy them. The Department states that due to the economy you need to raise prices, I disagree. The economy is harder on the private citizen than the government. I cannot raise my salary whenever I want to. By raising prices, will more hunters be more likely or less likely to return? Not only will the Department lose revenue, but the state will also lose tax revenue generated by gas stations, restaurants, and motels. This can even hurt guides and sporting goods dealers who rely on income generated from out-of-state hunters such as myself. The proposed tag increase has far reaching unintended consequences. I am sure there are many other states that would appreciate my business. I can go out hunting many more times right here in California for \$500 and not have to worry about the cost of fuel lodging etc. Do not raise prices it is not productive.

Written Comment: August 9, 2013. I honestly do not have an issue with the new pricing, except that I believe the Department should make nonresident licenses much more difficult and expensive. The Department should take care of Arizonans. The one-year license being valid from the date purchased is not a bad idea at all. The fishing license changes are ridiculous; essentially an angler who does not use the urban lakes and ponds is paying for an urban license. Common sense approaches, not monetary gains, should be the "norm." Please keep the "common" person in mind. Politicians make a bad habit of being so far out of touch with their constituents that their decisions are just jaw dropping. I would be happy to further extrapolate this for the Department, from a computer instead of my phone, and give the Department some facts.

Written Comment: February 14, 2014. I am angry regarding the increase of the cost of an elk tag (\$27), deer tag (\$15.75) and all other tag rates that were increased. Please explain to me the justification of these extreme increases. The Department states it wants sportsmen to bring in new hunters, yet places financial barriers in the way. The Department is turning what used to be an American and family tradition into a financial burden, for most Arizonans. If one did not know better, it appears the Department is purposely edging the average hunter out of the picture, thereby opening it up for the more affluent customer who can readily afford the cost. Yes, I am angry and I have a right to be. If the Department cannot figure out how to keep the cost of hunting down for the hunter, then it must be placing profit in front of everything else. Hunting is going back to the way it was in

England, when only the rich could hunt on the King's land. Honestly, after looking at the biographies for the Commission panel, it appears most have good retirements coming in and can afford the cost increase as it is more than likely in their personal budget. The Department may say I have no right to judge the Commission members, and I am not, I am simply stating my first impression of the Commission members. I can guarantee I am not the only one who sees it this way. Just remember, the rest of us are not as fortunate as you. We have not gotten to that point in life. Some of us still work two jobs to give our families a little more financial "breathing room." Try thinking about that the next time the Department feels the need to raise tag fees.

Agency Response: The Department simplified its license structure by reducing more than 40 hunting and fishing licenses to just six. This resulted in a license structure that was simpler, easier to understand, and more user friendly. The Department utilized an extensive public process that included approximately 80 meetings (Commission meetings, sportsman's organization meetings, and regional community meetings. The new license structure took effect on January 1, 2014; at that time, tag prices had not increased since 2007. While most tag fees were increased, the fees were still well below the previous statutory cap and well below the rate of inflation. The increase was not about profit, but rather about ensuring the Department can continue doing business. License and tag fee increases had been put off for a long time, but increasing them was necessary as license and tag revenues are a large element of the Department's budget. It is important to note, the Department does not receive general fund appropriations (Arizona tax dollars) and operates only on those funds that the Department raises or generates. Those funds are used to put game wardens in the field to enforce game laws and protect the public, keep our hatcheries in operation to grow sport fish, support research and conduct active on-the-ground wildlife biology (such as big game surveys and management plans) so that big game animals and non-game wildlife persist in healthy numbers across the state, hunter education, community fishing, information and educational activities and so many more of the Department's programs. The Commission and the Department are committed to managing today for wildlife tomorrow. The Department and Commission are currently reviewing requests such as yours and contemplating the best way to offer benefits to those who served and maintain the critical funding necessary to properly manage the state's wildlife. The Commission will again seek public input before making any change to the current license structure or fees. It is important to note, sportsmen are the nation's oldest conservationists and provide more direct support for wildlife than any other group. The purchase of a license is the cornerstone of the user pay public benefit model, not only providing direct revenue for conservation but factoring in to other constructs such as the apportionment of Wildlife and Sportfish Restoration dollars to the states.

- 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 November 3, 2015. The rule was amended to remove barriers for recruitment of new hunters and anglers due to the simplified the license structure, bundled privileges, and reduced costs for youth licenses. The following licenses and their fees were repealed: resident and nonresident Class A fishing license, nonresident Class B four-month fishing license, nonresident Class C five-day fishing license, resident and nonresident Class D one-day fishing license, nonresident Class E Colorado River-only fishing license, resident and nonresident Class F Combination hunting and fishing license, resident and nonresident Class G hunting license, nonresident Class H three-day hunting license, Class I, J, and K resident family licenses, resident and nonresident Class L Super Conservation fishing license, resident Class M Super Conservation hunting license, resident Class N Combination Super Conservation hunting and fishing license, and Class U Urban fishing license. The following stamps and their fees were repealed: Sikes Act Habitat Management (Unit 12A) stamp, trout stamp, all Colorado River Special Use permits and stamps, Lake Powell stamp, state waterfowl stamp, two-pole stamp, and resident and nonresident additional fishing day stamp. The privileges associated with these stamps and permits were included in the new license structure, as described above, to enhance the value of those items. The rule is amended to combine the State Waterfowl (\$8.75) and Migratory Bird stamp (\$4.50) privileges and fees into one State Migratory Bird stamp (\$5). The rule was amended to establish fees for the new licenses and a \$3 surcharge by rule. The surcharge was not a new fee, it was previously authorized under A.R.S. § 17-245 and was rolled into the license fee. The Department applied a common equation to almost all fees based on factors such as value, principles of the North American Model, customer input, and Commission direction. Fees were also rounded to the nearest dollar value. Special license fees were placed under Article 4 Live Wildlife in a new rule, R12-4-412 (special license fees). The rule was amended to increase the application fee to recover resources expended by the Department for the purpose of funding access, habitat conservation, and hunter/angler recruitment/retention projects. The Commission anticipated the rulemaking would generate revenue sufficient to enable the Department to address rising operational expenses, carry out its duties effectively in managing the state's wildlife resources, and provide quality recreational wildlife opportunities and access for the persons regulated by the rule. Although the rulemaking resulted in a 19.1 % increase in revenue, the Department's operational costs and responsibilities have also increased or expanded and the Department continues to make budget adjustments to address rising costs, such as keeping positions vacant and making cuts to program budgets.

At the time of the rulemaking, the Department focused its efforts on analyzing and evaluating hunting and fishing licenses, stamps, and tags with the intent that other licenses would be reviewed at a later date. The Commission directed the Department to develop fees that recover the costs of providing a service now and into the future.

In 2007, the Department increased the duplicate license and tag fee from \$3 to \$4. According to the U.S. Bureau of Labor Statistics, inflation is expected to pick up moderately with an annual growth rate of 2.8%. In

establishing this fee, the Department conducted a transaction cost analysis, multiplied the cost for that transaction by 28%, and then rounded the sum to the nearest dollar amount. The Department proposes to amend the rule to increase the duplicate fee from \$4 to \$8, which is in line with fees charged by other Western states. It is important to note, a person who purchased their license online may obtain a duplicate (re-print) of the license by simply accessing the Department's website.

- 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 report was approved by G.R.R.C. at the April 1, 2014 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 2016. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Exempt Rulemaking: 19 A.A.R. 3225, October 18, 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 Department receives no appropriations from the general fund and operates primarily with the revenue it generates from the sale of licenses, permits, stamps, and tags. Purchasing a license, permit, tag, or stamp is voluntary and a person who chooses to purchase a license, permit, stamp, or tag will incur those costs associated with that license, permit, stamp, or tag. The public benefits from a rule that provides a comprehensive listing of license, permit, stamp, and tag fees. The public and Department benefit from a rule that is understandable. The Department's customers are a voluntary constituency who determine if, and at what levels, they choose to participate; they are not required to participate and have the ultimate vote with their hard-earned dollars. 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 requires 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 R12-4-102 as follows:

- Replace references to "antelope" with "pronghorn antelope" to reflect language used in Commission Order and public outreach materials.
- Replace references to "buffalo" with "bison" to reflect terminology used by the scientific community.
- Increase the duplicate license and tag fee to \$8.

The Department anticipates submitting the Notice of Final Rulemaking to the Council by July 2020, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking.

R12-4-103. DUPLICATE TAGS AND LICENSES

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-331(A) and 17-332

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 issuance of a duplicate license or tag when the original license or tag was not used and was lost, destroyed, mutilated or is otherwise unusable or was placed on a harvested animal that was subsequently condemned and surrendered to a Department employee. The rule was adopted to ensure consistency between the Department and license dealers when issuing a duplicate license or tag.

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, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and 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 during routine patrols. Officers may issue a warning order or a citation.

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 any written criticism of the rule received by the agency within the five years immediately preceding the five-year review report.

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 November 3, 2015. The rule was amended to establish that the license will expire on December 31 of the current year when the license expiration date cannot be verified. The Commission anticipated persons regulated by the rule would benefit from the rulemaking that established an expiration date for duplicate licenses that are not recorded in the Department's database. Persons whose original license expired before December 31 would gain a period of time, while persons who purchased an original license before December 31 would lose a period of time. However, the person could choose to provide proof of when they purchased the original license and they would not lose any time.

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 report was approved by G.R.R.C. at the April 1, 2014 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 2016. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 21 A.A.R. 1409, July 10, 2015.
- Notice of Proposed Rulemaking: 21 A.A.R. 1001, July 10, 2015.
- Public Comment Period: July 10, 2015 through August 10, 2015.
- G.R.R.C. approved the Notice of Final Rulemaking at the November 3, 2015 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 3025, December 4, 2015.

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 public benefits from a rule that establishes the requirements for the issuance of a duplicate license or tag when the original license or tag was not used and was lost, destroyed, mutilated or is otherwise unusable or was placed on a harvested animal that was subsequently condemned and surrendered to a Department employee. The public and Department benefit from a rule that is understandable. 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 requires 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

**R12-4-104. APPLICATION PROCEDURES FOR ISSUANCE OF HUNT PERMIT-TAGS
BY COMPUTER DRAW AND PURCHASE OF BONUS POINTS**

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(2), 25-320(P), 25-502(K), and 25-518

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to prescribe application requirements for the purchase of a bonus point and the issuance of hunt permit-tags; meaning a permit-tag for which the Commission has assigned a hunt number. The rule was adopted to provide the persons regulated by the rule with the information necessary to successfully submit an application for the computer draw or for the purchase of a bonus point.

- 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, etc. 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. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

The Department's Hunter Education Program has implemented two new processes: a person may take the National Rifle Association (NRA) Online Hunter Education course instead of the Arizona Hunter Education Online course; and an NRA Instructor may complete the Arizona Hunter Education Exemption Checklist for students ages 9 through 14 who need to complete the hands-on field-day portion of the course in order to receive their hunter education certification. The Department proposes to amend this rule to reflect changes made to R12-4-107 (bonus point system).

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. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance during routine patrols. Officers may issue a warning order or a citation.

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 Department proposes to amend the rule to remove the Department website Uniform Resource Location (url) and simply reference "Department's website" to ensure the rule remains concise in the event the Department's url should change.

The Department proposes to amend the rule to replace references to "buffalo" with "bison" to reflect terminology used by the scientific community.

7. Summary of any written criticism of the rule received by the agency within the five years immediately preceding the five-year review report.

Written Comment: October 7, 2013. The license simplification is not simple for a person who lives in rural Arizona and has no access to a computer or the Internet. What is the problem with providing a license through a license dealer? Without access to a computer or the Internet some persons will have to drive a long distance to Department office to purchase a license just so they can apply for the spring draw. I do not think a lot of thought was put into this new system. Please remember, not everyone in Arizona lives in a major metropolitan area.

Follow-up Comment: October 8, 2013. The dealer at Wal-Mart in Payson said the Department did not issue them any 2014 license for the early draw and that I would have to purchase them from the Department at an office or online. It was very difficult to get the license because my computer is down and I cannot print a license from my phone.

Agency Response: While there is comfort in doing things "the way we used to," online channels have proven they are the way of the future. For an agency to operate like a business, it must have the ability to keep up with its customer needs in a timely manner. The Commission launched the online license application system in January 2010. Since then, approximately 707,790 licenses have been purchased using the online system. The Commission launched the online draw application system in October 2011. Since then, approximately 95.5 % of draw applicants apply using the online system. The online system increased the Department's efficiency in processing applications and greatly reduced the number of application errors, resulting in fewer rejected applications. In early December 2014, due to inventory issues, the contracted vendor notified the Department that they would not be able to provide the licenses on the due date. The Department was able to find another vendor who had the required materials on hand and could print the license books. The Department either hand-delivered or express mailed those licenses to its license dealers before January 1, 2015 (at that time, all hunting and fishing licenses expired on December 31). The Department is developing an online license dealer portal that will allow a license dealer to log-in and issue hunting and fishing licenses on demand.

Written Comment: March 9, 2014. I am aware that there will be a change made to the nonresident part of the draw going into effect in 2016. That is fantastic news and should really encourage nonresidents to continue to, or start, applying for tags. Each year, I talk with prospective hunters; most are nonresidents with few or no bonus points. They are disappointed when I tell them they have little chance of ever drawing a "premium" archery or early firearms elk tag. From one who truly understands the draw and studies the statistics, this is the unfortunate truth for the elk hunts held in Units 1, 3C, 7W, 8, 9, 10, 23N, 23S, 27, etc. and the deer hunts on the Strip and the Kaibab units. I feel that not only should the tags issued to nonresidents in the 20% bonus point pass of the draw be limited to 50%, but that the remaining 50% should be set aside *only for nonresidents* in the first and second choice pass of the draw. Otherwise, we will get a draw that issues even more tags to the residents, which I do not think is the Department's intention. If the remaining 50% are not designated as

nonresident tags, then residents are going to draw 91%-95% of them due to the fact that there are more residents applying for the hunts. This would further discourage nonresidents from applying. If these tags cannot be reserved for the nonresidents, then I think a better split would be 75% for the bonus point pass, and 25% for the random pass. I feel the current draw system works against nonresidents, especially the younger hunters who are just getting into the sport. If something is not done soon, this problem will only get worse and may result in fewer hunters applying at all. In this Internet age, nonresidents are being educated about this flaw in the draw through chat forums. I do not think we can truly measure the negative impact and lost revenue to the Department if left unchanged. I am confident the Department has the ability to make this adjustment so that it encourages everyone to apply. I know with proper planning, this idea could be implemented into the draw. It would only help the Department to generate more funds due to many more nonresidents applying because they would have a legitimate chance at a great tag without having to wait 20 or more years. If my idea is out of line, I hope that some type of adjustment will be made to the current draw system since it is flawed and will only get worse in its bias against nonresidents as time goes on. By making this adjustment, the Department and nonresident hunters would both benefit. Typically, change is resisted most by the residents, but this idea would have zero impact on the residents and their draw odds.

Agency Response: The first phase of the current draw system issues available tags to those persons with the maximum number of bonus points. The computer draw system monitors the number of nonresidents drawn for tags and once the 10% nonresident cap, required under A.R.S. § 17-332, is reached it will eliminate all other nonresidents from the draw pool. Because nonresidents typically carry higher bonus point totals than residents, the 10% nonresident cap is sometimes reached in the first phase of the computer draw, which means a nonresident with no or few bonus points may never have the opportunity to draw a tag (this is especially true for high demand hunts). Over the years, the Department received numerous comments from the public suggesting the Department modify the draw process to ensure all nonresidents, even those with no or low bonus points, are afforded an opportunity to draw a tag; even for the high demand hunts. As it is now, there are some hunts for which a nonresident applicant with no or low bonus points will never have a chance of drawing a tag due to the number of nonresident applicants with maximum bonus points. The current computer draw system brought the draw process back in line with the original intent and ensured all applicants, regardless of residency and number of bonus points, would have an opportunity to draw a tag in any given hunt. Most state wildlife agencies charge nonresident applicants higher license and tag fees than residents. It is important to note, 17-332(A) states, "The Commission shall limit the number of big game permits issued to nonresidents in a random drawing to 10% or fewer of the total hunt permits." The Department is unable to increase the percentage of tags allocated to nonresidents as the statute governing tag allocation to nonresidents (A.R.S. § 17-332), is very specific and states, "The commission shall limit the number of big game permits issued to nonresidents in a random drawing to ten per cent or fewer of the total hunt permits,..." A legislative amendment is required before the Department may amend the rule as suggested. To control and protect the wildlife populations, state wildlife agencies limit recreational hunting by limiting permits and imposing higher fees on nonresident hunters. This

provides nonresident hunters with the opportunity to contribute to the state wildlife agency funds that are used to protect and manage wildlife. Resident hunters pay local and state taxes to support the wildlife and wildlife habitat in their areas. The higher fees for nonresidents help compensate for the taxes that residents pay. Therefore, nonresident fee and license regulations provide state wildlife agencies with funds to manage the wildlife, which in turn benefits both resident and nonresident hunters. Fee differentials for residents and nonresidents have been upheld in other areas. In *Baldwin vs Fish and Game Commission of Montana*, the U.S. Supreme Court upheld a higher hunting license fee imposed upon nonresidents by the State of Montana. The Court stated that, where the opportunity to enjoy a recreational activity is created or supported by a state, where there is no nexus between the activity and any fundamental right, and where by its very nature the activity can be enjoyed by only a portion of those who would enjoy it, a state may prefer its residents over the residents of other states or condition the enjoyment of the nonresident upon such terms as it sees fit.

Written Comment: May 29, 2014. I was a long-time resident of Arizona and have had to move several times due to my position in the military. I love Arizona and hope to come back, be employed, and possibly retire there. I would like the Commission to consider allowing all military members currently in active status or "honorably" retired (to include Active Duty, Reservists and Army National Guard members) located in any state be considered a "resident applicant" for all species during the draw process. That would be an excellent way to honor our military members for their service to our nation. I am unsure of how this may impact the draw process across the board, but I believe it will be worth the effort to show all of our military members that Arizona appreciates the sacrifice they make to keep our nation safe.

Agency Response: Under A.R.S. § 17-101, "a nonresident, for the purposes of applying for a license, permit, tag or stamp, means a citizen of the United States or an alien who is not a resident; and a resident, for the purposes of applying for a license, permit, tag or stamp, means a person who is: a member of the armed forces of the United States on active duty and who is stationed in: this state for a period of thirty days immediately preceding the date of applying for a license, permit, tag or stamp; another state or country but who lists this state as the person's home of record at the time of applying for a license, permit, tag or stamp; domiciled in this state for six months immediately preceding the date of applying for a license, permit, tag or stamp and who does not claim residency privileges for any purpose in any other state or jurisdiction." The suggestion to allow any military member in any state to be considered a resident for the purpose of the computer draw would be problematic to implement and unenforceable; it would also complicate the definition of what constitutes a resident and provide an unfair advantage to a select group of people.

Written Comment: January 9, 2015. I hunt with a great group of guys; there are usually 8 to 10 of us in camp. Last year, we all put in for the same hunt on two different applications; we were not drawn. Then we applied for the second draw on two different applications with the same hunt numbers. We were drawn for the same hunt,

but unfortunately our normal group of 8 was now split up because one application was drawn for a different unit. We had the same hunt, but in different units. My suggestion is to allow more than four applicants to apply on any one application to ensure bigger hunting parties get to hunt together.

Agency Response: Before each of the three passes in the drawing, each application is processed through a random number generator program which assigns one random number for the group application plus an additional random number for each group bonus point. The lowest random number generated for an application is used in the drawing process. An application receives a new random number for each pass of the computer draw. When an application is read and the hunt choices are checked for available hunt permit-tags, there must be enough hunt permit-tags available in a hunt choice for all applicants on the application; if there are not enough hunt permit-tags, the application is passed and the next one is read. Expanding the number of persons allowed on an application can lower the groups potential for being drawn. In addition, current trends indicate the Department receives fewer applicants per application, not more.

Written Comment: August 8, 2015. I am a Nevada resident and am familiar with the dynamic of resident vs. nonresident tag allocation in a state where tags are precious and highly sought after. Take the tags the Department is proposing to put into the general draw and keep them as nonresident tags to be drawn by nonresidents, only, on a random basis. This will not benefit residents, but will blunt legal challenges and increase the interest of the many younger nonresidents who do not apply because they do not think they will live long enough to draw a tag in Arizona. I hope the Department will reject the proposal in favor of a fairer plan, which can also be a win-win solution.

Agency Response: The first phase of the current draw system issues available tags to those persons with the maximum number of bonus points. The computer draw system monitors the number of nonresidents drawn for tags and once the 10% nonresident cap, required under A.R.S. § 17-332, is reached it eliminates all other nonresidents from the draw pool. Because nonresidents typically carry higher bonus point totals than residents, the 10% nonresident cap is sometimes reached in the first phase of the computer draw, which means a nonresident with no or low bonus points may never have the opportunity to draw a tag (this is especially true for high demand hunts). The bonus point system was established to reward loyal applicants while providing new applicants an opportunity to successfully participate in the computer draw; the intent has always been to allow every applicant a chance of drawing a tag, even when the odds are very low. The bonus point system has been successful in meeting its objective to improve odds for long-term participants, but not successfully enough for everyone. Over the years, the Department received numerous comments from the public suggesting the Department modify the draw process to ensure all nonresidents, even those with no or low bonus points, are afforded an opportunity to draw a tag; even for the high demand hunts. As it is now, there are some hunts for which a nonresident applicant with no or low bonus points will never have a chance of drawing a tag due to the number of nonresident applicants with maximum bonus points. Therefore, the Commission amended the rule to

bring the draw process back in line with the original intent and ensure all applicants, regardless of residency and number of bonus points, will have an opportunity to draw a tag in any given hunt.

Written Comment: February 10, 2016. The rule should be amended to allow parents to determine when a child is mature enough to hunt big game. As a hunter education instructor and Game Ranger, I have observed many children pass through the courses I have taught and spoken with hundreds of hunters in the field. Some children were not ready to hunt until 16 years of age and others were clearly able to hunt big game at much younger ages. The determining factor should be the child's ability to pass a hunter education before being allowed to pursue big game. It clearly should be the parent's decision rather than an arbitrary minimum age. There may be those hunters who object to opening up more competition for tags to young hunters, but it is critically important that we have new hunters fill the ranks of those who are reaching an age where they are no longer able. If we are to have wildlife for future generations funded by hunters, we must increase the number of youngsters annually becoming hunters. Making this simple change would help accomplish that objective. I might suggest, if that is not acceptable to the Commission, I suggest it might be possible to allow younger hunters to hunt with their parents or grandparents tag. Currently an animal cannot be tagged by someone who has not harvested the animal. So, a grandparent or parent cannot let a young aspiring hunter shoot an animal the parent or grandparent possesses a tag to hunt. If that change was accomplished, the same objective could be met as changing the minimum age. Another way to make the change more acceptable is to allow younger children to at least hunt turkeys and javelina. Both are excellent animals for young beginner hunters. I would appreciate the Commission consider changing the current rule during the next rules review process to remove another barrier to recruitment.

Agency Response: The Department benchmarked with all other states and learned that there are only two states that allow a person under the age of 10 to hunt big game: Arkansas and Texas. It is true, some children mature faster than others, but for the majority of children, the Department believes the age of ten is an appropriate threshold for permitting children to hunt big game. Although big game hunting is exciting, hunting for small game and game birds, such as squirrel or cottontail rabbits can increase the chance of harvesting an animal and be just as exciting because small game is quicker and involves more movement. In addition, even though a child under the age of ten cannot hunt big game themselves, they can still go on a big game hunt and enjoy the hunting experience.

Written Comment: January 6, 2017. Curtail the system allowing persons to pay for their application using credit cards. Go back to requiring persons to send the tag money at the time of application. Then place the money in a 30-day money market account. Use the interest for hunting and fishing purposes.

Agency Response: The current application/draw time-frames provide the public with greater flexibility in managing their funds and hunt choices. The Commission believes offering both the paper and online application process best serves our constituency.

The following comments express displeasure with the requirement that a person purchase a hunting or combination hunting and fishing license in order to participate in the computer draw:

Written Comment: January 7, 2015. I do not think it is fair that I have to buy a license every year just to apply for a tag. I used to only buy a license when I was drawn. I do not set foot in the state if I do not draw a tag, so having a license is useless to me. Having to pay \$160.00 for something you never plan to use is not right. Being a nonresident and having to pay the higher tag fee, I think is more than adequate to sustain the funds to manage wildlife. I think Arizona does an excellent job of managing wildlife. I live in Idaho where you can buy elk tags over the counter. This sounds great until you hit the hills and spend days on end trying to catch a glimpse of one; and finding a mature bull is next to impossible, the competition from too many hunters is frustrating beyond belief. Idaho should take note of Arizona practices to rebuild the herds and do something to sustain the maturity of the bulls.

Written Comment: January 8, 2015. My son and I apply once a year to hunt javelina with a resident friend in Arizona. I must purchase a hunting license at full price for a \$160 in order to apply. If not drawn it cost my son and I \$320, because we will not be coming down to Arizona with no tag to hunt with. If Arizona were more like Montana, where you purchase a \$10 conservation tag and pay a nonrefundable application fee, Arizona is more likely to get nonresidents to apply.

Agency Response: The Commission, through an extensive public process, amended the rule to require both residents and nonresidents to purchase a hunting license in order to be considered during the hunt draw process. This requirement was put in place with the understanding that the ultimate beneficiaries are Arizona's wildlife resources and hunters (both resident and nonresident), since license fees go directly into wildlife conservation, development, and management. The Commission and Department hold that over time, the increased costs will create a benefit to all hunters who enjoy Arizona's wildlife opportunities by providing greater revenue for Department wildlife management objectives. Ultimately, this will enable the Department to maintain the nationally-recognized wildlife populations for which Arizona is known. In addition, several other western states require draw applicants to purchase a hunting license in order to participate in their limited draws: Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming. Furthermore, while unsuccessful applicants may not have the opportunity to hunt the big game animal of their choice in Arizona, the license they purchase will allow them to participate in many other hunting and fishing opportunities within the state including over-the-counter archery deer hunts, population management hunts, and multiple small game and waterfowl hunting opportunities, to include cottontail rabbits, tree squirrels, upland game birds (quails, chukar, grouse, and

pheasants), and migratory game birds (ducks, geese, swan, sandhill, cranes, coot, gallinule, common snipe, mourning and white-winged doves, and band-tailed pigeon).

The following comments express displeasure with the Department's process for handling declined charges for online computer draw applications:

Written Comment: July 19, 2015. Why is the Department calling applicants five days after the draw to get updated information after all of the notices the Department sent asking customers to update their payment information? These tags should be issued to the hunters who complied with the rules.

Written Comment: July 20, 2015. I understand that Department employees are calling applicants back whose cards failed for the fall deer hunt and giving them a chance to correct their payment issue. I hope the Department realizes how much this upsets the people who do apply with valid cards or accounts. It is also a huge waste of time for the Department's employees. This is a waste of state funds and a potential waste of my application fee.

Agency Response: In 2012, when the Department started the online application system again, many people voiced their frustration with the declined credit card rejection process. The majority of those persons stated the charges were declined because their banking institution thought the tag charges were fraudulent. Based on the number of complaints, the Department determined those persons whose charges were declined would be contacted by telephone and given the opportunity to provide updated payment information for those tags. If the person did not answer the call, the Department gave the person three business days to respond to its request for information. As a result, the posting of the computer draw results was delayed by one to two weeks until all persons whose charges had been declined were contacted. As people became more familiar with the online application process, the numbers of declined charges decreased; this was due to persons taking the time to ensure their payment information was up to date. Because the instances of charges being declined had dropped so drastically, the Department determined it was no longer necessary to delay posting the draw results and ended this practice in early 2017.

- 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 November 3, 2015. The rule was amended to replace references to "Department-approved" with "Department-sanctioned;" prohibit a person, who has reached the bag limit for a

specific genus, from applying for another hunt permit-tag for that genus during the same calendar year; establish the Commission's authority to determine the times, locations, and manner in which an applicant may apply for a hunt permit-tag; require all applicants submitting an application to the Department to certify the information provided on the application is true and correct; clarify the differences in how the Department processes fees submitted manually (paper application) and electronically (online application); establish overpayments of \$5 or less will not be refunded and are considered a donation to the Arizona Game and Fish Fund; allow a customer to retain any accrued loyalty and bonus points and be awarded a bonus point for that computer draw when the payment submitted is less than the required fees, but is sufficient to cover the application and license fees; and allow the Department to issue a license and award a bonus point, provided the funds submitted are sufficient to cover the application and license fees. The Commission anticipated persons regulated by the rule and the Department would benefit from the rulemaking, mostly from the amendments implementing customer-service-oriented processes that allowed applicant to retain their bonus points under certain circumstances.

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 report was approved by G.R.R.C. at the April 1, 2014 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 2016. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 21 A.A.R. 1409, July 10, 2015.
- Notice of Proposed Rulemaking: 21 A.A.R. 1001, July 10, 2015.
- Public Comment Period: July 10, 2015 through August 10, 2015.
- G.R.R.C. approved the Notice of Final Rulemaking at the November 3, 2015 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 3025, December 4, 2015.

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 application requirements for the purchase of a bonus point and the issuance of hunt permit-tags; meaning a permit-tag for which the Commission has assigned a hunt number. The public benefits from a rule that provides the information necessary to successfully submit an application for the computer draw or for the purchase of a bonus point. The Department benefits from a rule that helps reduce the number of returned applications. 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 requires 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 R12-4-104 as follows:

- Reflect changes made to R12-4-107 (bonus point system).
- Remove the Department website Uniform Resource Location (url) and simply reference "Department's website" to ensure the rule remains concise in the event the Department's url should change.
- Replace references to "buffalo" with "bison" to reflect terminology used by the scientific community.

The Department anticipates submitting the Notice of Final Rulemaking to the Council by July 2020, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking.

R12-4-105. LICENSE DEALER'S LICENSE

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-332, 17-333, 17-334, 17-338, and 17-339

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish definitions, eligibility criteria, application procedures, license holder requirements, authorized activities, and prohibited activities for a license dealer's license. The rule was adopted in order to provide better customer service to the public, while protecting the Department's license sales revenue, by authorizing businesses to sell hunting and fishing licenses.

The Department issues an approximately:

- Ninety license dealer's licenses on an annual basis.
- One-hundred eighty dealer outlet licenses on an annual basis.

The fee for the:

- License dealer's license is \$100.
- License dealer outlet license is \$25.

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, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

Overall, the rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

However, during the Second Regular Session of the 53rd Arizona State Legislature, the Legislature amended A.R.S. § 17-338 to remove the five % commission license dealers were authorized to retain as compensation for selling Game and Fish licenses to the public and allow license dealers to collect and retain a reasonable fee as determined by the license dealer. The Department proposes to amend the rule remove language referencing the five % commission and allow license dealers to collect and retain a reasonable fee to align the rule with statute.

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 during routine patrols. Officers may issue a warning order or a citation.

A person may purchase hunting and fishing licenses online, using the Department's online license sales system. This means any person can sell the Department's licenses, which is unlawful under A.R.S. § 17-334. The Department proposes to amend the rule to establish a person who is not authorized to sell licenses on behalf of the Department is prohibited from selling Department-issued hunting and fishing licenses.

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 any written criticism of the rule received by the agency within the five years immediately preceding the five-year review report.

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 November 3, 2015. The rule was amended to define "License Dealer Portal;" establish a license dealer may be given authorization to issue online licenses through the License Dealer Portal; specify the deadline in which the license dealer shall transmit license and permit fees to the Department; and add a subsection to address duplicate affidavit requirements. The Commission anticipated the Department, GAO, and the Attorney General's office would benefit from the rulemaking that established a deadline for the transmittal of license and permit fees. The Commission also anticipated the Department would benefit from the rulemaking that clarifies duplicate affidavit requirements through increased efficiency by allowing the Department to better utilize its resources.

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 report was approved by G.R.R.C. at the April 1, 2014 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 2016. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 21 A.A.R. 1409, July 10, 2015.
- Notice of Proposed Rulemaking: 21 A.A.R. 1001, July 10, 2015.
- Public Comment Period: July 10, 2015 through August 10, 2015.
- G.R.R.C. approved the Notice of Final Rulemaking at the November 3, 2015 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 3025, December 4, 2015.

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 eligibility criteria, application procedures, license holder requirements, authorized activities, and prohibited activities for a license dealer's license. The public and the Department benefit from a rule that authorizes businesses to sell hunting and fishing licenses at multiple locations throughout the state. The Department has six offices located in various cities throughout the state that sell hunting and fishing licenses to the public. License dealers sell approximately 194,105 licenses annually. The Department benefits from a rule that enables it to provide better customer service to the public, while protecting the Department's license sales revenue. 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 requires 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 License Dealer's License 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 R12-4-105 as follows:

- Establish a person who is not authorized to sell licenses on behalf of the Department is prohibited from selling Department-issued hunting and fishing licenses.
- Remove language referencing the five % commission to align the rule with statute.
- Allow license dealers to collect and retain a reasonable fee to align the rule with statute.

The Department anticipates submitting the Notice of Final Rulemaking to the Council by July 2020, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking.

R12-4-106. SPECIAL LICENSES LICENSING TIME-FRAMES

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 41-1072 and 41-1073

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish the time-frame during which the agency will either grant or deny a special license subject to the requirements of A.R.S. § 41-1073. The overall time-frame consists of both the administrative review time-frame and the substantive review time-frame. The rule was adopted to comply with the requirements established under A.R.S. § 41-1073 and to provide the regulated community with a definitive timeline for the review of applications submitted to the Department.

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, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

In 2015, the Commission amended the Article 4 rules (live wildlife) to replace all references to "permit" with "license" for the aquatic wildlife stocking license. The Department proposes to amend the rule to replace the references to "permit" with "license" for the aquatic wildlife stocking license to increase consistency between Commission rules.

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

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

6. Clarity, conciseness, and understandability of the rule.

Overall, the rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

However, the Department proposes to make minor grammatical changes to make the rule more concise.

7. Summary of any written criticism of the rule received by the agency within the five years immediately preceding the five-year review report.

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 November 3, 2015. The rule was amended to clearly indicate the rule applies only to special licenses issued by the Department and does not include hunting or fishing licenses or permit- and nonpermit-tags; to define "license" and "administrative," "overall," and "substantive" review time-frames; describe when a time-frame period begins and ends; and specify how an applicant may withdraw an application; specify possible outcomes that may occur when a person submits an application for a special license; allow the applicant and the Department to extend the over-all time-frame; address scenarios where an applicant either demonstrates they are not eligible for the license prior to the substantive review or fails to respond to Department correspondence; establish time-frames for the Authorization for Use of Drugs on Wildlife; reflect changes made to R12-4-414 (all four game bird license rules were combined into one rule); and remove references to special license-tags. The Commission anticipated persons regulated by the rule and the Department would benefit from a rulemaking designed to clarify the rule and reduce the regulatory burden.

- 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 report was approved by G.R.R.C. at the April 1, 2014 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 2016. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 21 A.A.R. 1409, July 10, 2015.
- Notice of Proposed Rulemaking: 21 A.A.R. 1001, July 10, 2015.
- Public Comment Period: July 10, 2015 through August 10, 2015.
- G.R.R.C. approved the Notice of Final Rulemaking at the November 3, 2015 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 3025, December 4, 2015.

- 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 administrative- and substantive-review time-frame during which the Department will either grant or deny a special license. If an agency fails to comply with the established time-frame for that special license, the agency must refund the special license fee and, provided the applicant meets the required criteria, issue a no-fee special license to the applicant. The public benefits from a rule that establishes the time-frames in which the Department must review and determine whether a special license may be issued. The public and Department benefit from a rule that is understandable. 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 requires 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 R12-4-106 as follows:

- Make minor grammatical changes to make the rule more concise.
- Replace the references to "permit" with "license" for the aquatic wildlife stocking license to increase consistency between Commission rules.

The Department anticipates submitting the Notice of Final Rulemaking to the Council by July 2020, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking.

R12-4-107. BONUS POINT SYSTEM

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(2) and 17-231(A)(8)

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish requirements for applying for and maintaining bonus points, which may improve an applicant's draw odds for big game computer draws. The rule was adopted in response to customer comments requesting the Department implement a method that would reward loyal applicants and improve the drawing odds for a previously unsuccessful computer draw applicant. The "bonus point" system is used in lieu of other point systems, because it does not preclude a person who has not accrued any bonus points from having a chance at being drawn for an available hunt permit-tag.

In general, there are two types of bonus point systems, the "bonus point" system used by the Department and a "preference point" system. The "bonus point" system increases the number of chances for an application to receive a low random number in the computer draw. Bonus points are accumulated by failing to draw a hunt permit-tag or by buying a bonus point. Applications are assigned a random, computer-generated number. Applications that are assigned the lowest random number draw a tag first. A "preference point" system awards a tag to the person who has the highest number of preference points in the first computer draw and, if any tags are left, a second computer draw is held for those in the next highest point category. Over time, a preference point system guarantees a person a tag, provided they apply for the same species every year. In a preference point system a person with zero or very few points will not have any chance at drawing a tag. In some states, bonus points are squared when an application is submitted. For an application with 5 bonus points, the computer will generate 25 random numbers. It is important to note, having the greatest number of points does not guarantee a person will draw a tag. However, it does provide a better chance of being assigned a low random number in the computer draw.

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, etc. Responses indicate the rule is understandable and applicable. The Department believes this data indicates the

rule is effective. While the Department has received a number of written criticisms in regards to the current bonus point system, the Commission determined through an extensive public process and a random survey of hunters that a bonus point system was preferred by the regulated public. Implementing a preference point system that awards hunt permit-tags based solely on accumulated points would have a negative impact on the recruitment of new hunters. The bonus point system rewards loyal applicants and provides new applicants an opportunity to successfully participate in the draw.

In 2013, the rule was amended to state it is unlawful for a person to purchase a bonus point by fraud or misrepresentation and any bonus point so obtained shall be removed from the person's Department record. to increase consistency between statute and rule. Under A.R.S. § 17-341, it is unlawful for a person to knowingly purchase, apply for, accept, obtain or use, by fraud or misrepresentation a license, permit, tag or stamp to take wildlife and that a license or permit so obtained is void and of no effect from the date of issuance. The amendment inadvertently failed to address bonus points accrued by fraud or misrepresentation. The Department proposes to amend the rule to specify that any bonus point that is fraudulently obtained, whether purchased or accrued, shall be removed from the person's Department record.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

The Department proposes to amend the rule to replace references to "antelope" with "pronghorn antelope" to reflect language used in Commission Order and public outreach materials.

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

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

6. Clarity, conciseness, and understandability of the rule.

Overall, the rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

The Department is aware that there is some confusion as to when a child may take the hunter education course. A youth under the age of 10 may take wildlife, except big game species, without a license when accompanied by a person 18 years of age or older holding a valid hunting license during an open season. A license and the appropriate tag are required to take big game. No one under age 10 may hunt big game in Arizona; this is consistent with other states practices (the average age is 14). An applicant who is under the age of 14 and applying for a big game hunt must complete a hunter education course before the beginning date of that hunt. The Department proposes to amend the rule to clarify that a person who is 9 years of age or older may take the Arizona hunter education certification course and, upon successful completion of the course, be awarded one permanent bonus point for each big game species.

The Department's Hunter Education Program has implemented two new processes designed to decrease burdens and costs and increase customer-service: a person may take the National Rifle Association (NRA) Online Hunter Education course instead of the Arizona Hunter Education Online course; and an NRA certified rifle, shotgun, or hunter clinic instructor may complete the Arizona Hunter Education Exemption Checklist for students ages 9 through 14 who need to complete the hands-on field-day portion of the course in order to receive their hunter education certification. The Department proposes to amend the rule to remove references to "Department-sanctioned" to reflect changes made to the Department's Hunter Education Program.

7. Summary of any written criticism of the rule received by the agency within the five years immediately preceding the five-year review report.

Written Comment: September 3, 2014. I was injured on May 27, 2014 and I am unable to walk or bear my own weight without assistance. I finally drew my first elk tag and tried to return it to the Department so I could get my expended bonus points back as well as obtain another point for the current draw year. The current rule allows me to surrender a tag, but I do not qualify. I have to be active within a military branch or a state worker deployed for emergency purposes. The alternative is to sign over my tag to an "eligible child or grandchild of my own." First, I feel discriminated because this rule places lesser significance on my life as it does not validate any circumstances that have affected my life. Second, the ability to sign over my tag to one of my children or grandchildren also affects me deeply because my wife does not have the ability to bear children. The tag I drew is an archery tag; I am unable to walk, so I am unable to stand or practice shooting consistently or retrieve my arrows. I opted to surrender my tag and was refused. I offered to give my tag to the Department for exchange of my bonus points and was denied. The Department exerted zero energy to aid me in finding a way to resolve my situation and I just want to document confirmation of such actions.

Agency Response: The Department understands your disappointment and frustration with not being able to use your 2014 archery elk tag. The Arizona legislature passes legislation, signed into law by the governor and the Commission establishes rules, respectively. We are bound to abide within the limits of those laws and rules and

apply them consistently and fairly to all our customers. The Department does not currently have a rule that allows surrender of a tag and restoration of bonus points or for the transfer of a tag to anyone except a family member. However, in addition to transferring the tag to a minor child or grandchild, a person who holds a hunt permit-tag may donate it to a nonprofit organization for use by a minor child who has a life threatening medical condition or a veteran of the armed forces of the U.S. who has a service connected disability. The Arizona Hunting Regulations explicitly states, "The issuance of any big game permit has no express or implied guarantee or warranty of hunter success. Any person holding a valid permit assumes the risk that circumstances beyond the control of the Arizona Game and Fish Department may prevent the permit holder from using the permit. In such situations, the Arizona Game and Fish Department disclaims any responsibility to reissue or replace a permit, to reinstate bonus points or to refund any fees, except under specific circumstances, such as activation of military or emergency personnel." The Commission Petition Packet was provided to this commenter. Also, in January 2016, the Commission adopted R12-4-118 (hunt permit-tag surrender), which deals with tag surrenders, transfers, donations, and use of bonus points.

The following comments address ways to increase responses to the Hunter Questionnaire (used by the Department to estimate harvest for each species, along with other vital information that helps lay the groundwork for next year):

Written Comment: October 10, 2013. The Department would get a better response to its surveys if it offered bonus points to fill them out, especially when a hunter comes up empty-handed or upset because of hunt interference.

Written Comment: January 6, 2017. As results are vital to your forecasting and species management, I suggest that any hunter that does not provide harvest information for a drawn hunt, would not be eligible to draw any tags for the following year. We as hunters should be held accountable to help in the management process.

Agency Response: The Department is in the process of developing an online hunter survey; the Department believes a simpler, easier to use survey will result in a larger response. The Commission's draw process is designed to provide equal opportunity to all classes of persons and not to provide an advantage to certain classes. As a result, the Commission does not believe that any class of persons should be awarded bonus points for which others are not eligible.

The following comments address the ability to gift, transfer, or will their bonus points to another person:

Written Comment: February 14, 2015. I would like to propose allowing hunters to pass on bonus points to family members through a will upon death or maybe through gift.

Written Comment: April 13, 2015. I am disgruntled with how the bonus point system works. For three consecutive years, an acquaintance has drawn an elk tag. At this point, I have 16 points for antelope, 15 for bighorn sheep, and 12 for elk. I do not believe I will ever get another tag in my lifetime. Is it possible to give my bonus points away? If not, can legislation be created so that this option can be used in the future?

Written Comment: June 1, 2015. My friend says he has 15 bonus points for pronghorn and 15 for elk, but he is not sure he will be able to hunt either species anymore. He does not want to lose those bonus points and would like to give them to family or friends, or to a conservation organization to raffle off to raise money for conservation. He has a friend in Mississippi who has also been applying for 15 years; he would like to be able to give his points to someone like that who has been contributing for 15 years.

Written Comment: August 25, 2016. With social media, information gets around very quickly. Every year, people post how they got a tag with one or no bonus points and it completely infuriates me. I do not believe I will ever get a tag, other than deer, in my lifetime. I share this information with you because I want the option of giving my bonus points away in-lieu of losing them.

Agency Response: The Commission determined through an extensive public process and a random survey of hunters that a bonus point system was preferred by the regulated public. The computer draw process is designed to provide equal opportunity to all persons and not to provide an advantage to certain persons; a bonus point is awarded to an applicant who submits a valid application and is either unsuccessful in the drawing or the application is for a bonus point only. As a result, the Commission does not believe that persons should be able to give their bonus points to another person.

The following comments were received in response to the Notice of Proposed Rulemaking, see 21 A.A.R. 1001 July 10, 2015:

Written Comment: November 18, 2014. I am writing in regards to information I received stating the Commission is cutting half of the allotted deer tags from maximum bonus point holders to as low as first year applicants. It would not be fair to hunters like me who have been loyal to Arizona and bought tags and applied for 17 or 18 years, drove 15 hours to take the hunter safety class, spending thousands of dollars and not getting a deer tag to be outdrawn by someone who applied one or two times. Please rethink this as maximum bonus point holders should not be treated like this.

Written Comment: December 13, 2014. I have been a loyal customer for many years. My father and I have spent a tremendous amount of money over the years to become a maximum bonus point holders for the deer draw. My father and I bought a license every year so we could build up our points toward what was supposed to

be our dream hunt. We traveled to Arizona and took the hunter safety course to accrue extra points to keep us in the maximum bonus point pool. It is my understanding that the Commission is decreasing the number of tags that go to maximum bonus point holders. I understand why the Commission may want to do this, to keep people buying the licenses who are not in the maximum pool, but this seems unfair to the loyal customers who have paid year in and year out for the opportunity to get into the tag pool. My father and I are not wealthy men. We have dreamed for many years of hunting on the famous "Arizona Strip." We have played by the Commission's rules and now our dream is slipping away from us. My father is now 73 years old and I do not know how many years he has left that he can really enjoy a hunt like this. I beg you to stand with us as we have stood by you. Please consider limiting the tags to the maximum bonus point holders or putting together some program so we can have the same opportunity to hunt that we thought we had when we spent so many years and so much money applying for.

Written Comment: December 23, 2014. I am a nonresident with 20 elk bonus points and maximum deer bonus points for Arizona. I hope Arizona does not change the draw system for nonresidents. All nonresidents have a chance to deer hunt the Strip if they buy raffle tickets for the state-wide mule deer tag. I do not know if a similar tag for elk exists, but they could be created to give all nonresidents a chance at the best elk hunts. I hope the rules are not radically changed for me, after 18 years of applying in Arizona.

Written Comment: December 27, 2014. I am writing to voice my displeasure with the new changes to the big game draw system. I have been applying for a 12AW late tag since 1994. The Kaibab was my first out-of-state hunt as a kid with my dad and grandpa, and my last hunt with my grandpa. I realize I will have only one more chance to hunt it in my lifetime, but because of the changes, it is likely I will never draw a tag. I have applied every year and bought a nonresident license that sits in a drawer, just to be able to someday go back and hunt where I have such fond memories. My dad and brother gave up on the Arizona draw system, but have been rooting for me to draw a tag so that we can all go. I apply for mule deer in most western states and have drawn some great tags, but the one tag that I have dreamt of, the one tag I would choose over any other, has been just beyond my reach. And now, with the changes, drawing that tag is close to impossible. I feel like the Department has pulled the rug out from under me and I am sure I am not alone in that thinking. If anything, I thought the Department would have found a way to increase the chances for those loyal applicants who have applied for so many years, but the Department has done the opposite. I am asking the Department to reconsider the changes. It is not a perfect system and there is no perfect solution, but please do not make it worse.

Written Comment: January 8, 2015. As a nonresident my hunting opportunities in Arizona are reduced when compared to many other western states. The current system employed only allows "up to 10%" of big game tags to the nonresident. There is no set quota of tags for the nonresident hunter. This means that it is possible that zero nonresidents could obtain a tag, it could also be possible that nonresidents could obtain the full 10% of tags allocated for any hunt unit. Arizona allows "at least 5%" of tags be available to the youth hunter. Similarly it

should change its nonresident rules to a set a finite number of tags for nonresidents. I have applied to hunt in Arizona for the past 15 years. At the cost of \$151.50 each year to first purchase a hunting license prior to being able to apply for a hunt. That amounts to over \$2,272 I have spent in the state of Arizona over that 15 years and yet I am still not in a position to successfully draw a big game tag. It could be argued that Arizona has been successful in generating almost \$2,300 from one individual with absolutely no cost to the state. It could also be argued that the state of Arizona is losing out on potentially greater revenues if it issued more nonresident tags that generate more funds than that of the resident hunter. In any event this system is very discouraging to the young hunter or the hunter that cannot play the waiting game both in years or funds. I would like to see a change to the nonresident tag allocation to a set number of "at least 10%" of those tags available be set aside for the nonresident. I realize that I am a tiny percentage of hunters. That is because I have played by the Department's rules for 15 years. I know that others will have no chance of ever drawing a "strip tag." I will never have a chance to draw an antelope, buffalo, bighorn, or elk tag. That is my fault and I live with it. That still does not justify others cutting to the front of the line.

Written Comment: January 11, 2015. As a nonresident big game hunter, I have 18 bonus points in Arizona for deer, elk, bighorn sheep, and pronghorn. Despite my good fortune, I believe all preference point and bonus point systems should be abolished. These systems disadvantage young hunters and individuals without the means to afford nonresident hunting licenses and applications. I have applied for 16 years and have not drawn one permit but continue to religiously pursue the dream at considerable expense. Abolishing the Arizona bonus point system would greatly reduce my opportunity to draw but I would be okay with that. Realizing that abandoning the current system in Arizona is not probable, I accept it for what it is. The Misconceptions: 1) To kill a trophy mule deer in Arizona, one has to hunt the Arizona Strip. More typical mule deer grace the record book from Coconino County than any other county in Arizona. This is the home of the Kaibab where arguably the best genetics in the country for mule deer reside. 2) Only maximum point holders can draw an Arizona Strip tag. This is false. There are archery tags available for hunting units 13A and 13B, and these permits have gone to applicants with less than maximum points. There is also a mule deer raffle that enables a hunter to hunt any unit in the state for 365 days. 3) Changing the point system to a 5% instead of 10% maximum point draw on the first pass will greatly improve the odds for non-maximum point holders. At first blush this change sounds like a great improvement over the current draw process. In reality the chance to draw one of these coveted tags will still be abysmal. If the change is enacted in Unit 13A, there will be potentially three deer permits available for 1,750 applicants in the second pass. That "improves" the odds for any applicant to .0017 percent or one in 583. In Unit 13B the odds are even bleaker with 3,645 applicants "improving" the odds to .0008 or one in 1,215. This is all a best case scenario as there is a high likelihood that some of these tags, if not all, will not get into the hands of nonresidents. With a dearth of resident applicants these tags will likely be issued to residents, effectively not improving the draw odds at all for non-maximum point holders. The resultant change will also penalize maximum point holders who have invested thousands of dollars in hunting license fees and travel expenses to and from Arizona for a hunter education course. This is not the right thing to do. It would be

interesting to know if the vocal few requesting this change are doing it for the greater good or for selfish reasons. Have they already drawn one of these coveted tags and now want to change the system for the benefit of themselves? Do the requestors truly have a worthy mission in making a change to the current system?

Agency Response: The bonus point system was established to reward loyal applicants while providing new applicants an opportunity to successfully participate in the computer draw; the intent has always been to allow every applicant a chance of drawing a tag, even when the odds are very low. The bonus point system has been successful in meeting its objective to improve odds for long-term participants, but not successfully enough for everyone. Over the years, the Department received numerous comments from the public suggesting the Department modify the draw process to ensure all nonresidents, even those with no or low bonus points, are afforded an opportunity to draw a tag - even for the high demand hunts. As it is now, there are some hunts for which a nonresident applicant with no or low bonus points will never have a chance of drawing a tag due to the number of nonresident applicants with maximum bonus points. Therefore, the Commission proposes to amend the rule to bring the draw process back in line with the original intent of ensuring all applicants, regardless of residency and number of bonus points, will have an opportunity to draw a tag in any given hunt. While the Department is sensitive to your frustration and appreciates the time and effort put into building bonus points, the Department believes providing opportunity to all applicants is the right thing to do. The Department appreciates your support for the tag surrender program.

The following comments suggest establishing a special bonus point of some type:

Written Comment: July 1, 2015. I believe in the bonus point system. I have been putting in for desert bighorn sheep for over 40 years and I am in the maximum bonus point pool. The problem is, the mountains are getting taller and I am getting older. There should be some way to give an advantage to people in my situation. I know I am not the only one. I think there are around 120 people left in the maximum bonus point pool; at 20 per year that would make me 71. I cannot even transfer it to my son or grandsons as they are too old. A suggestion would be to give anyone 65 or older another bonus point. Do it only for the once in a lifetime hunts.

Written Comment: January 6, 2017. I am a 73 year old guy with not that many more hunts left to enjoy. I have been a hunter since I was 12 years old. Each year when the hunt draw is completed I wonder if it will be my last hunt. Not getting drawn is a huge disappointment. I have a pioneer hunting license. My proposal would be to give a pioneer license holder an extra bonus point. This would give the person one additional chance to get drawn for their possible final hunt.

Agency Response: In 1990 through an extensive public process and a random survey of hunters, the bonus point system was established to reward loyal applicants while providing new applicants an opportunity to successfully participate in the draw; a bonus point system was preferred by the regulated public. The

Commission's draw process is designed to provide equal opportunity to all classes of individuals and not to provide an advantage to certain classes. As a result, the Department does not believe that any class of individuals should be awarded bonus points for which others are not eligible.

Written Comment: December 20, 2014. I believe the Department should consider making a person's hunter education bonus points effective on a new hunter's first draw application, rather than on his or her tenth birthday. As it stands now, a child is allowed to take the course at nine years old, but they do not get the point until their tenth birthday. Often, children are nine years old when they apply for hunts that will take place after their tenth birthday. These kids are at a disadvantage as compared to other kids who have already completed the course but happen to turn ten before the draw deadline. Given the difficulty in scheduling the hunter education courses, the Department should encourage early completion, before a tag is drawn. One way to do that is to ensure that the youngest hunters get the benefit of the permanent bonus point from the very start of their application history.

Agency Response: A youth under the age of 10 may take wildlife, except big game species, without a license when accompanied by a person 18 years of age or older and who has a valid hunting license during an open season. A license and the appropriate tag are required to take big game. No one under age 10 may hunt big game in Arizona; this is consistent with other states practices (the average age is 12). The Commission, through a public process, determined that bonus points should be awarded to eligible, not future, Arizona hunters. If a youth is nine at the time of application and selects the bonus point-only hunt number, they are electing not to hunt during that season; therefore they are not eligible to apply. In addition, the Department offers a wide variety of youth-only hunting and shooting programs. These programs are designed to get children in the field with a parent, guardian, or mentor who can focus completely on the child and provide the guidance needed to teach the next generation of hunters and stewards how to be responsible and ethical conservationists.

Written Comment: July 8, 2015. Other states only deduct bonus points when first choice big game draw selections are successful; not any other successful choices. Arizona is losing money because people will only hunt if their first choice is successful; not putting in any other hunt choices because they do not want to lose their points. So, they end up not hunting and the state loses money. The state loses licensing and tag fees as well as gas taxes. The people lose revenue generated from needed hunting expenditures. Only reduce bonus points if first choice draw is successful, so people will want to apply and/or add additional hunt choices.

Written Comment: June 7, 2017. Please consider squaring the bonus points instead of adding a bonus point with each unsuccessful draw. I have seen friends year after year, draw the same tags I apply for with less bonus points. A squared bonus point system would eliminate this problem.

Agency Response: Doubling, tripling, or squaring each person's bonus points benefits hunters only when applied at the beginning of a system. With as many hunters with a high number of bonus points as Arizona has, squaring bonus points does not have a significant effect on decreasing the number of hunters with maximum bonus points. It is important to note, having the greatest number of points does not guarantee a tag; however, it does provide a better chance of being assigned a low random number in the computer draw.

Written Comment: October 26, 2017. Department should award a loyalty point to a youth putting in for a certain unit. Then, at age 15, if they have not been drawn, they get a tag for that unit.

Agency Response: In 1990 through an extensive public process and a random survey of hunters, the bonus point system was established to reward loyal applicants while providing new applicants an opportunity to successfully participate in the draw; a bonus point system was preferred by the regulated public. The Commission's draw process is designed to provide equal opportunity to all classes of individuals and not to provide an advantage to certain classes. As a result, the Department does not believe that any class of individuals should be awarded bonus points for which others are not eligible.

Written Comment: February 13, 2018. I was a resident of Arizona until seven years ago and accrued elk bonus points. Now, I am a nonresident and do not want to lose my bonus points, but the computer draw system is a scam. Why am I forced to buy a combination license when I will only visit the state if I am drawn? Why am I forced to buy a combination license when I am only buying a bonus point? I hunt in other states with draw systems that do not require a license and do not charge these insane fees for a point. Arizona is charging ten times as much as other states. Arizona has made itself a state to avoid for big game hunting.

Agency Response: The requirement to purchase a license with a big game draw application was put in place for hunt year 2005. The Commission, through an extensive public process, amended the rule to require both residents and nonresidents to purchase a hunting license in order to be considered during the hunt draw process. This requirement was put in place with the understanding that the ultimate beneficiaries are Arizona's wildlife resources and hunters (both resident and nonresident), since license fees go directly into wildlife conservation, development, and management. The Commission and Department hold that over time, the increased costs will create a benefit to all hunters who enjoy Arizona's wildlife opportunities by providing greater revenue for Department wildlife management objectives. Ultimately, this will enable the Department to maintain the nationally-recognized wildlife populations for which Arizona is known. In addition, several other western states require draw applicants to purchase a hunting license in order to participate in their limited draws: Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming. Furthermore, while unsuccessful applicants may not have the opportunity to hunt the big game animal of their choice in Arizona, the license they purchase will allow them to participate in many other hunting opportunities within the state including over-the-counter archery deer hunts, population management hunts, and multiple small game and waterfowl hunting opportunities, to include

cottontail rabbits, tree squirrels, upland game birds (quails, chukar, grouse, and pheasants), and migratory game birds (ducks, geese, swan, sandhill, cranes, coot, gallinule, common snipe, mourning and white-winged doves, and band-tailed pigeon).

Written Comment: March 5, 2018. The youth hunt bonus point drawing needs to be cleaned up. The 30-day hold on bonus points is <expletive redacted>. My sons successfully completed their hunter education course in January 2017. We applied for the elk hunt in February, but they were not allowed to use their bonus point because it had not been 30 days yet. It is 2017, the Department should be able to input the information for 200 children in three hours. In March, I asked if my sons would get to use their bonus point for the computer draw and was told "the rule is 30 days before the application;" even though it was still two months before the draw. This means children who meet the requirements to put in for the draw, do not get to use their bonus point due to administrative bureaucracy. Let me supervise the "input department" for just one day and I will have all 200 children who passed hunter education course in last 60 days input into the system and award their bonus point for their first hunt. Better yet, give me four hours and access to the Department's system and I will have all the kids in the system.

Agency Response: Upon successful completion of a qualifying hunter education course, the Department awards the person who completed the course one permanent bonus point for each big game species. It is difficult to quantify the value one places on bonus points; however, the Department believes it can be significant. The Hunter Education Course consists of a classroom course and a field day. Both the classroom and field day courses are taught by a team of certified Arizona Game and Fish Department Volunteer Instructors. A volunteer is a person who, of their own free will, provides goods or services (time and experience) without the expectation of financial gain. Once a class is completed, in addition to certifying a specific person has completed the course, volunteer instructors are required to submit information regarding the course they taught: the hunter education course itself (curriculum), the time and resources spent conducting the course, etc. The instructors are required to submit this information within ten days; when reviewing the information errors may be found that need to be corrected before proceeding or one of the volunteer's information may be missing. While these situations do not occur every time, they occur often enough for the Commission to establish the requirement that the class be completed no less than thirty days prior to the computer draw. While your sons were not able to use their permanent hunter education bonus points for the 2017 elk hunt, those points will be available to them for their use for their entire lifetime.

The following comments address loyalty bonus points:

Written Comment: January 7, 2015. About four years ago, I made an error on the paper application and was rejected for the computer draw. I could live with that; I bought a leftover tag. The real problem was that my three buddies and I lost our loyalty point for the next five years. My objection was that it was not a matter of

loyalty, but of perfection. I was loyal, but imperfect. I strongly urge the Commission to make a rule change such that if an applicant is rejected in the draw for a technical reason, they do not lose their loyalty point. In my own case, I am due to receive my loyalty point again in a year or two, but I just believe it is fundamentally fair to all the other applicants to make this change in the rules going forward.

Written Comment: January 7, 2017. A loyalty bonus point is given after 5 years of putting in for a species. Why not give an additional loyalty point at 10 years, 15, and 20? Or just an additional point at 10 years? Reward those who continue to support and put in for the draw especially for bighorn and antelope. Keep it strictly for Arizona residents.

Written Comment: April 16, 2018. I have a question and comment about nonresident loyalty points. Why do nonresidents only get awarded a loyalty point after five years of continuous applications for elk draws or points? Would not 10 years continuous applications be just as, if not more loyal than five? What about fifteen and twenty? Just for your information I have applied for the past twelve years and will continue to apply until I am drawn.

Agency Response: The current draw process is designed to provide equal opportunity to all hunters. Reserving a percentage of tags for loyal applicants will only take opportunity away from others. The Department currently awards a loyalty bonus point to those persons who have submitted an application for a genus at least once annually for five consecutive years. The Department's draw process is designed to provide equal opportunities to all classes of persons and not provide an advantage to certain classes of hunters.

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 November 3, 2015. The rule was amended to specify a person shall expend any accrued bonus points for that genus when purchasing a surrendered hunt permit-tag by any method other than first-come, first-served; establish the Department shall restore expended bonus points when a person donates or surrenders an unused, original hunt permit-tag in compliance with R12-4-118 or R12-4-121; clarify that a hunter education bonus point is awarded to a person who completes the Arizona Hunter Education Course and remove language relative to hunter education instructors; specify which hunter education course qualifies a person for the hunter education bonus points; allow a customer to retain any accrued loyalty bonus points when the payment submitted is less than the required fees, but is sufficient to cover the application and license fees; simplify the process by which a military member may request the reinstatement of a bonus point;

specify that the tag surrender requirements established under the proposed R12-4-118 do not apply to a person who is requesting the reinstatement of expended bonus points due to mobilization, activation or required duty in response to a declared national or state emergency, or required duty in response to an action by the President, Congress, or a governor of the United States or its territories; clarify the Department will not refund any fees paid for a license or hunt permit-tag when the person applies for reinstatement of their bonus points; and specify that any bonus point fraudulently obtained shall be removed from the person's Department record. The Commission anticipated the rulemaking would benefit persons regulated by the rule and the Department due to increased customer-service and from the amendments that allow a person to retain their loyalty point and accrue a bonus point for that draw when the payment submitted by the applicant is less than the total sum of all required fees, but is sufficient to cover the application and license fees.

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 report was approved by G.R.R.C. at the April 1, 2014 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 2016. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 21 A.A.R. 1409, July 10, 2015.
- Notice of Proposed Rulemaking: 21 A.A.R. 1001, July 10, 2015.
- Public Comment Period: July 10, 2015 through August 10, 2015.
- G.R.R.C. approved the Notice of Final Rulemaking at the November 3, 2015 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 3025, December 4, 2015.

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 for applying for and maintaining bonus points, which may improve an applicant's draw odds for big game computer draws. In 1990 through an extensive public process and a random survey of hunters, the bonus point system was established to reward loyal applicants while providing new

applicants an opportunity to successfully participate in the draw; a bonus point system was preferred by the regulated public. It is difficult to quantify the value one places on bonus points; however, the Department believes it can be significant. The public benefits from a rule that establishes requirements for applying for and maintaining bonus points, which may improve an applicant's draw odds for big game draws. The bonus point system was chosen over other systems because, while it rewards those persons who have supported wildlife management and have submitted applications regularly; it does not deny others the opportunity to be drawn. 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 requires 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 R12-4-107 as follows:

- Replace references to "buffalo" with "bison" to reflect terminology used by the scientific community.
- Replace references to "antelope" with "pronghorn antelope" to reflect language used in Commission Order and public outreach materials.
- Clarify that a person who is nine years of age or older may take the hunter education course and, upon successful completion of the course, the person's hunter education completion card and certificate shall become valid on the minor's 10 birthday.
- Remove references to "Department-sanctioned" to reflect changes made to the Department's Hunter Education Program.
- Specify any bonus point fraudulently obtained, whether purchased or accrued, shall be removed from the person's Department record.

The Department anticipates submitting the Notice of Final Rulemaking to the Council by July 2020, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking.

R12-4-108. MANAGEMENT UNIT BOUNDARIES

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(B)(2) 17-234, 17-241, 17-452, 17-453, 17-454, and 17-455

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish Game Management Unit boundaries for the preservation and management of wildlife. The Commission divides the state into 76 units for the purpose of managing wildlife. These units are known as Game Management Units and are composed of state, federal, military, and private land. These units define legally huntable areas and are essential to the Department's licensing, hunt permit-tag and law enforcement operations. Department biologists and Regional offices responsible for the management of a specific unit submit data concerning wildlife and wildlife habitat to the Department's Terrestrial Wildlife Program. The Terrestrial Wildlife Program then uses this data to formulate hunting seasons. Hunters purchase tags that authorize the person to participate in a specific hunting season in a Game Management Unit, portion of a unit, or group of units that are open to hunting. It is illegal for a person to take wildlife, specified on the tag, in any area other than the unit specified on the tag and hunters rely on the unit boundary descriptions provided in R12-4-108 to ensure that they are in compliance.

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, etc. 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. Statutes and rules used in determining

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 this rule through proper administration. The rule is currently being enforced as written and the Department is not aware of any problems with the enforcement of the rule.

However, because landmarks change over time due to environmental factors, as local opinion changes regarding its destination, or the names of places and things change due to political or historical factors, the Department proposes to amend the rule to address boundary description changes and update Game Management Unit boundaries to provide additional clarity and maintain recreational opportunities for the public (both hunters and outdoor recreationists).

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 any written criticism of the rule received by the agency within the five years immediately preceding the five-year review report.

Written Comment: February 15, 2015. Make permanent that the yearly designation for Region 3, Unit 20A that "Within the following described area, those portions of Unit 20A within one-fourth mile of an occupied residence or building are closed to archery-hunting of all animals during hunting season: beginning at the eastern junction of Hwy 69 and Central Ave in Mayer; west on Central Ave to Miami St, to Main St, to First St; south to Fair Mist Ave; east to Jefferson St; southwest on Jefferson St which becomes Goodwin Rd (County Rd 177); continue south and west to Senator Hwy (FR52); to Wolf Creek Rd; west on Wolf Creek to Indian Creek Rd; north in Indian Creek to Hwy 89; south on 89 to Copper Basin Rd; West to Iron Springs Rd (County Rd 10); north and east to Miller Valley Rd; south on to Grove Ave; south on Grove; south to Gurley St; east to Hwy 69; east and south to the eastern junction of Hwy 69 and Central Ave in Mayer" as describe in the Arizona Game and Fish Department 2014-15 Arizona Hunting Regulations.

Agency Response: This rule addresses game management unit boundary descriptions; because rules are intended to be subject specific, this rule is not an appropriate place to prohibit the use archery equipment. However, the Commission is currently amending rules within Article 3 to prohibit the discharge of an arrow or bolt while taking wildlife within one-fourth mile of an occupied farmhouse or other residence, cabin, lodge or

building without permission of the owner or resident, to increase consistency between statute and rules. This restriction will apply to the entire state, once it becomes effective.

Written Comment: February 18, 2016. Think about changing the 5A South boarder to Rim rd 300 versus the Mogollon Rim 2 reasons 1-Hunters will know exactly where the boarder is, there are several spots on the Rim that transition into unit 22. 2-The late Archery hunt in unit 22 is very weather dependent and it will give hunters a chance to hunt High elevation or low elevation depending on the weather and make that late hunt more appealing.

Agency Response: The Department develops game management units to properly manage wildlife in specific areas based on biological factors. In this case, the Mogollon Rim marks the boundary line between the elk's summer and winter ranges; elk migrate down from the rim during the winter, from unit 5A into unit 22. The Department manages these two units for different opportunities based on their geographical locations. Amending the rule as suggested would be counterproductive to the Department's efforts.

- 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 November 3, 2015. The rule was amended to update Management Unit boundaries. The Commission anticipated the rulemaking would benefit the Department and persons regulated by the rule.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

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

The report was approved by G.R.R.C. at the April 1, 2014 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 2016. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 21 A.A.R. 1409, July 10, 2015.
- Notice of Proposed Rulemaking: 21 A.A.R. 1001, July 10, 2015.
- Public Comment Period: July 10, 2015 through August 10, 2015.
- G.R.R.C. approved the Notice of Final Rulemaking at the November 3, 2015 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 3025, December 4, 2015.

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 Game Management Unit boundaries for the preservation and management of wildlife. The Commission divides the state into 76 units for the purpose of managing wildlife. These units are known as Game Management Units and are composed of state, federal, military, and private land. These units define legally huntable areas and are essential to the Department's licensing, hunt permit-tag and law enforcement operations. Hunters purchase tags that authorize the person to participate in a specific hunting season in a Game Management Unit, portion of a unit, or group of units that are open to hunting; hunters rely on the unit boundary descriptions provided in R12-4-108 to ensure that they are in compliance. A person who purchases a tag for a particular game management unit, portion of a unit, or group of units; will benefit from a rule that clearly described unit boundary descriptions. The public and Department benefit from a rule that is understandable. 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 requires 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 R12-4-108 to address boundary description changes and update Game Management Unit boundaries to provide additional clarity and maintain recreational opportunities for the public (both hunters and outdoor recreationists).

The Department anticipates submitting the Notice of Final Rulemaking to the Council by July 2020, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking.

R12-4-109. APPROVED TRAPPING EDUCATION COURSE

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. § 17-333.02

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish the maximum fee a person may charge for a trapping education course. The trapping education course fee limitation was previously prescribed under A.R.S. § 17-333.02. The rule was adopted to ensure compliance with statutory amendments resulting from the Fifty-first Legislature, 1st Regular Session, which amended statutes within Title 17 to authorize the Commission to establish license, permit, tag, and stamp fees by rule. The rule was adopted to establish the maximum trapping education course fee in 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, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and 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 any written criticism of the rule received by the agency within the five years immediately preceding the five-year review report.

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 exempt rulemaking filed with the Secretary of State's office and published in the *Arizona Administrative Register* on October 18, 2013. The rule was adopted to establish the maximum trapping education course fee in rule. The trapping education course fee limitation was previously prescribed under A.R.S. § 17-333.02. The Commission anticipated the rulemaking would have no impact on persons regulated by the rule because the rulemaking did not propose a change to the statutory maximum trapping education course fee. Discussions with Trapper Education Instructor's determined there was no need to change the fee because many instructors often offer the course for free to encourage student participation.

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 January 1, 2014.

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The rule establishes the maximum fee a person may charge for a trapping education course. It is important to note, only businesses that provide an approved trapper education course bear any costs or burdens as a result of the rulemaking; these costs are assumed voluntarily by the business because it has determined the benefits of providing the course outweigh any costs. The public and Department benefit from a rule that is understandable. The Department has determined 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 necessary to achieve the underlying regulatory objective. The outcome of discussions with Trapper Education Instructors is that most instructors do not teach the course for the money and often offer the course for free; they do not believe that increasing or reducing the course fee would serve as an incentive for instructors or students.

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 requires 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

R12-4-110. POSTING AND ACCESS TO STATE LAND

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(B)(2) and 17-304

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to prescribe the required conduct on State Trust Lands by licensed sportsmen and also ensure access by such sportsmen is not unlawfully blocked. The rule also sets forth the Commission's criteria for allowing the closure of roads that lead to hunting and fishing areas. The rule was adopted to prevent a person from denying access to or use of any existing road located on state lands by persons lawfully scouting for, taking, or retrieving wildlife and to ensure continued use of state lands while protecting public health and property.

- 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, etc. Responses indicate the rule is understandable and applicable. Approximately 265,000 licensed hunters go afield each year in Arizona and, annually, approximately 25 persons are cited for hunting or taking wildlife in the wrong Game Management Unit and 5 persons are cited for hunting or taking wildlife in areas that were closed to hunting. The Department believes this data indicates the rule is effective.

- 4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and 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.**

Overall, 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 during routine patrols. Officers may issue a warning order or a citation.

The Department is aware of ongoing issues with illegally locked gates in certain areas of the state. The Department works with the State Land Department to correct these situations on a case-by-case basis. The Department proposes to amend the rule to clarify that, although a person may close State Land to hunting, fishing, and trapping; a person may not deny lawful access to State Land.

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 any written criticism of the rule received by the agency within the five years immediately preceding the five-year review report.

The Department received the following written criticism of the rule:

Written Comment: January 7, 2017. Units with ranch leased government land should not be allowed to post no hunting signs. They do not own the land or it could be mixed with their privately owned land. It is not right that 10,000 acres of mixed (private and government) land can be posted no hunting by the ranch owner.

Agency Response: While the Department cannot dictate what a private landowner does with their own property, the Department proactively seeks ways to increase access to and through private lands. The Department's Landowner Relations Program focuses on partnering with private landowners and agricultural producers to secure public recreational access to private land. In addition, the Department's Landowner-Lessee/Sportsman Relations Committee works to reduce access issues and improve relations between landowners and the public. The committee is made up of livestock growers, private landowners, sportsmen, recreationists, Department employees, and representatives from state and federal land management agencies.

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 November 3, 2015.

The rule was amended to provide additional clarity; clearly indicate that an existing road is a road that has not been closed by the Commission; specify that a person must comply with the requirements of A.R.S. 17-304(C) when the Commission has authorized a closure of access to state lands; clarify the Commission's interpretation of the recreational permit exemption provided by the State Land Department; and establish a license holder shall not operate a motor vehicle off-road or on roads that are closed to the public, except to pick up lawfully taken big game animals. The Commission anticipated persons regulated by the rule and the Department would benefit from the rulemaking that clarified the rule and increased consistency between Commission rules.

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 report was approved by G.R.R.C. at the April 1, 2014 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 2016. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 21 A.A.R. 1409, July 10, 2015.
- Notice of Proposed Rulemaking: 21 A.A.R. 1001, July 10, 2015.
- Public Comment Period: July 10, 2015 through August 10, 2015.
- G.R.R.C. approved the Notice of Final Rulemaking at the November 3, 2015 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 3025, December 4, 2015.

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 required conduct on State Trust Lands by licensed sportsmen and helps ensure access by such sportsmen is not unlawfully blocked. The rule also sets forth the Commission's criteria for allowing the closure of roads that lead to hunting and fishing areas. The public benefits from a rule that enables them to

access state land for the purpose of hunting and fishing. Landowners benefit from a rule that establishes the required conduct for hunters and anglers who are entering, using, and leaving private land; as well as the ability to close access to their land under certain circumstances with and without the Commission's permission. 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 requires 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 R12-4-110 to clarify that a person may not deny lawful access to State Land.

The Department anticipates submitting the Notice of Final Rulemaking to the Council by July 2020, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking.

R12-4-111. IDENTIFICATION NUMBER

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-231(A)(2), 25-320(P), 25-502(K), and 25-518

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to prescribe the procedures necessary to obtain the number assigned to each applicant or licensee by the Department. The rule was adopted to implement a system that enables the Department to properly identify applicants in the Department's computer draw for hunt permit-tags and various license holders.

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, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and 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 any written criticism of the rule received by the agency within the five years immediately preceding the five-year review report.

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 November 3, 2015. The rule was amended to remove the option that allowed a person to use their Social Security Number as the Department Identification Number and replace references to "alias" with "any additional names the person has lawfully used in the past or is known by." The Commission anticipated that no longer allowing a person to use their Social Security Number as their Department identifier would reduce the possibility of someone using the person's Department-issued license to commit identity theft.

- 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 report was approved by G.R.R.C. at the April 1, 2014 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 2016. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 21 A.A.R. 1409, July 10, 2015.
- Notice of Proposed Rulemaking: 21 A.A.R. 1001, July 10, 2015.
- Public Comment Period: July 10, 2015 through August 10, 2015.
- G.R.R.C. approved the Notice of Final Rulemaking at the November 3, 2015 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 3025, December 4, 2015.

- 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 the procedures necessary to obtain the number assigned to each applicant or licensee by the Department. The public and Department benefit from a rule that is understandable. 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 requires 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.

R12-4-112. DISEASED, INJURED, OR CHEMICALLY-IMMOBILIZED WILDLIFE

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(8), and 17-250(A)(3)

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish the Director's authority to authorize Department employees to condemn a lawfully taken animal that is unfit for consumption and issue a duplicate tag, thus allowing the hunter the opportunity to take another permitted animal. The rule also clarifies that this condition must not be created by the actions of the person who took the animal, and prescribes the procedure for obtaining a tag for the purpose of maximizing hunt opportunities of the state's wildlife resources.

- 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, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and 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 during routine patrols. Officers may issue a warning order or a citation.

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 any written criticism of the rule received by the agency within the five years immediately preceding the five-year review report.

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 was amended to 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 report was approved by G.R.R.C. at the April 1, 2014 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 2016. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 21 A.A.R. 1409, July 10, 2015.
- Notice of Proposed Rulemaking: 21 A.A.R. 1001, July 10, 2015.
- Public Comment Period: July 10, 2015 through August 10, 2015.
- G.R.R.C. approved the Notice of Final Rulemaking at the November 3, 2015 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 3025, December 4, 2015.

- 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 Director's authority to authorize Department employees to condemn a lawfully taken animal that is unfit for consumption and issue a duplicate tag. The public benefits from a rule that prescribes the procedure necessary to obtain a replacement tag for the purpose of maximizing hunt opportunities of the state's wildlife resources. The public and Department benefit from a rule that is understandable. 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 requires 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.

R12-4-113. SMALL GAME DEPREDATION PERMIT

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102 and 17-239

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish authorized activities and application requirements for the complimentary small game depredation permit authorized under A.R.S. § 17-239(D). Depredation includes agricultural damage, private property damage, threats to human health and safety, and threats to recovery of protected wildlife. The permit is intended to provide short-term relief for small game damage until long-term, non-lethal measures can be implemented to eliminate or significantly reduce the problem. The rule was adopted to establish the person suffering property damage from small game must exhaust all remedies under statute prior to requesting the depredation permit.

- 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, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

- 4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and 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 during routine patrols. Officers may issue a warning order or a citation.

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 Department proposes to amend the rule to remove the Department website Uniform Resource Location (url) and simply reference "Department's website" to ensure the rule remains concise in the event the Department's url should change.

7. Summary of any written criticism of the rule received by the agency within the five years immediately preceding the five-year review report.

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 November 3, 2015. The rule was amended to clarify deprecation permit application requirements and establish the Department shall specify the allowable methods of take that may be used by the permit holder. The Commission anticipated the proposed rulemaking would not have a significant impact on the Department or persons regulated by the rule.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

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

The report was approved by G.R.R.C. at the April 1, 2014 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 2016. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 21 A.A.R. 1409, July 10, 2015.
- Notice of Proposed Rulemaking: 21 A.A.R. 1001, July 10, 2015.
- Public Comment Period: July 10, 2015 through August 10, 2015.
- G.R.R.C. approved the Notice of Final Rulemaking at the November 3, 2015 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 3025, December 4, 2015.

- 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 authorized activities and application requirements for the complimentary small game depredation permit authorized under A.R.S. § 17-239(D). The permit is intended to provide short-term relief for small game damage until long-term, non-lethal measures can be implemented to eliminate or significantly reduce the problem. The public benefits from a rule that allows a person suffering property damage from small game to obtain a depredation permit for taking that wildlife. The public and Department benefit from a rule that is understandable. 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 requires 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 small game depredation permit 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 R12-4-113 to replace references to the Department website url with "Department's website" to ensure the rule remains concise in the event the Department's url should change.

The Department anticipates submitting the Notice of Final Rulemaking to the Council by July 2020, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking.

R12-4-114. ISSUANCE OF NONPERMIT-TAGS AND HUNT PERMIT-TAGS

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-331(A), 17-332(A), and 17-371

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to prescribe the hunt permit-tag structure, conditions under which the Commission may issue tags, application procedures, and distribution and use of hunt permit- and nonpermit-tags. The rule was adopted to provide the regulated community with the information necessary to apply for a hunt permit-tag and obtain a nonpermit-tag and describe the computer draw process. Hunt permit-tags are issued by computer draw and nonpermit-tags are available at any Department office or license dealer. Certain percentages are made available to persons with bonus points and nonresidents. Any tags remaining after the computer draw are made available to the public on a first-come, first-served basis. The information provided in rule also makes the computer draw process more transparent to the public.

- 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, etc. 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. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

The Department proposes to amend the rule to replace references to "antelope" with "pronghorn antelope" to reflect language used in Commission Order and public outreach materials.

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 during routine patrols. Officers may issue a warning order or a citation.

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 any written criticism of the rule received by the agency within the five years immediately preceding the five-year review report.

The Department received the following written criticism of the rule:

Written Comment: September 17, 2014. This letter is to notify the Department of my intent to longer hunt or fish in the state of Arizona after 2014. I have contributed countless hard earned money towards the Department and I am at a loss of words due to the lack of effort or intent to help me in any way - other than to tell me I can give my tag away and wait another 10 years for a tag. I cannot walk on my own. I chose not to pursue an animal in my condition because I felt it would be criminal to do so because I cannot pack it out in my condition. I Drew

my 1st elk tag at 35 years old (took 10 years) and I just calculated my odds. I will not draw another tag until I am 50 years old. Meanwhile, I know a gentleman who drew 19 in a row. I also know of another gentleman who the Department did allow to surrender a tag. This process is neither fair nor consistent, I am disgusted. The Department has neglected to show support to its biggest contributors, the Arizona sportsmen and women, by not providing a service to us in the event of a tragedy. This is a disservice to all of the sportsmen in Arizona and it is discrimination to allow one group to surrender a tag, but not another. I realize the rules are set in place by the legislature, but it is discriminatory. I realize my dollars and volunteer time mean nothing to the Department. However, I do teach the youth of Arizona (via Scouts) and I have always incorporated wildlife and hunting when I mentor. Moving forward, I will tell my story to the scouts and advise them not to support a Department that will not support you. This weekend I will be on an outing with 15 of them and they have all been witness to the events that led to my being confined to a wheel chair. I do not find this to be an unreasonable request as I am not asking for a handout or for the Department to bend over backwards for me, instead support my efforts and at least acknowledge or validate all that I have done for Arizona wildlife.

Agency Response: The Department understands your frustration at not being able to use the tag you drew and the loss of your bonus points for that species. However, at that time the Commission hands were tied, there were only two very specific circumstances that allowed a person to surrender an unused hunt permit-tag and restore expended bonus points under: when a Department-error occurs or when a member of the U.S. Armed Forces or a public agency emergency response employee is mobilized, activated, or experienced a change in duty status that precluded the applicant from using the hunt permit-tag. In response to situations like this one, the Commission adopted R12-4-118 (hunt permit-tag surrender) which allows any hunter to surrender their unused, original hunt permit-tag and have their bonus points restored provided the person has a valid and active membership in a Department membership program; "valid and active membership" means a paid and unexpired membership in any level of the Department's membership program.

Written Comment: December 5, 2014. Current Environment: Reduced hunting opportunities and participation continue to reduce revenues and overall participation in hunting sports. Increased revenues could be used to purchase land and land use rights increasing opportunities and quality for all sportsman in Arizona. Solution: Modified Resident Status (MRS) increase revenue through expanding nonresident participation in the Arizona computer draw. This is accomplished by including MRS candidates in the resident draw pool, but subjects them to nonresident fees which results in a modest increase in participation and a significant increase in revenue. MRS Criteria Minimum Land Ownership and Tax Base: Develop a program to establish a minimum value and tax base for the modified resident status, application process, and terms. The criteria would represent participants with a significant vested interest in the state of Arizona and worthy of the modified resident status: land owning, tax paying persons. Example: MRS candidates will submit an application consisting of an application fee and copies of property tax bills. They would pay the nonresident fees. Benefits: Increased participation and collection of nonresident fees through the MRS program will result in a significant increase in

revenue for the Department. Conclusion: Significant additional revenue could be generated through implementation of the MRS program. With only 5% additional participation revenues could increase in excess of one millions dollars annually, based on tag quota. The increased revenue could be used to increase quality and opportunity. Program Overview: 1. Increase the tax revenue potential for state of Arizona; 2. Could increase land ownership and tax base; 3. Increased fees for the Department; 4. Fair for land owning, taxpaying Arizona partners; 5. Could be managed through quotas with a set maximum participation level; and 6. No cost to the Department as it is paid for by the application fee.

Agency Response: The Department appreciates the time and effort put into the commenter's suggestion, but the Department believes every citizen, regardless of economic or social status, has the opportunity to hunt, fish, and trap. The Commission, through a public process, determined the current draw application process best serves our constituency. The Commission's draw process is designed to provide equal opportunity to all classes of persons and not to provide an advantage to certain classes (landowners). In addition, the suggestion to allow a nonresident who owns land in Arizona to be eligible for resident hunt permit-tags would be unenforceable and problematic to implement; it would also complicate the definition of what constitutes a resident and provide an unfair advantage to a select group of people.

Written Comment: January 7, 2015. This is science based. The Department should exempt seniors over the age of 70 from the computer draw. Proven by science, we are not going to live many more years therefor, give us a chance to hunt.

Agency Response: The Commission's draw process is designed to provide equal opportunity to all classes of individuals and not to provide an advantage to certain classes.

Written Comment: January 19, 2015. I am writing to you as a long time applicant to your state with 16 points for four different species and having never drawn a single tag. I see a trend among states to cut nonresident tags in general. I understand the need of hunter recruitment for the future of hunting but, I think the proposal to take the 10% cap, split it and give 5% in the random draw might be okay if the Department was starting out with a new system, but it is not. This is making a major change to the draw system and giving the shaft to the many who signed up on one set of rules, having patiently waited their turn in line, persons who are on the verge of drawing the tag of their dreams. I understand this is proposed because some low point holders are complaining that they cannot seem to draw a tag. I think the real problem is a lack of understanding on their part on how the draw system works. I think the Department could do a few things to help. The Department should be more transparent with the computer draw and show the difference in resident and nonresident drawing odds. The Department should put more effort into educating people how the draw works. The Department should make this change in steps over a period of three to five years and give the people who have been waiting for many

years the option of using their points on something. If the Department is going to follow through with this proposal, look at Nevada's system, which is the fairest I know of.

Agency Response: The first phase of the current draw system issues available tags to those persons with the maximum number of bonus points. The computer draw system monitors the number of nonresidents drawn for tags and once the 10% nonresident cap, required under A.R.S. § 17-332, is reached it will eliminate all other nonresidents from the draw pool. Because nonresidents typically carry higher bonus point totals than residents, the 10% nonresident cap is sometimes reached in the first phase of the computer draw, which means a nonresident with no or few bonus points may never have the opportunity to draw a tag (this is especially true for high demand hunts). The bonus point system was established to reward loyal applicants while providing new applicants an opportunity to successfully participate in the computer draw; the intent has always been to allow every applicant a chance of drawing a tag, even when the odds are very low. The bonus point system has been successful in meeting its objective to improve odds for long-term participants, but not successfully enough for everyone. Over the years, the Department received numerous comments from the public suggesting the Department modify the draw process to ensure all nonresidents, even those with no or low bonus points, are afforded an opportunity to draw a tag; even for the high demand hunts. As it is now, there are some hunts for which a nonresident applicant with no or low bonus points will never have a chance of drawing a tag due to the number of nonresident applicants with maximum bonus points. Therefore, the Commission amended the rule to bring the draw process back in line with the original intent and ensure all applicants, regardless of residency and number of bonus points, will have an opportunity to draw a tag in any given hunt.

Written Comment: January 19, 2015. I have 16 bonus points for deer; I have been applying for late Kaibab rifle hunts. I used to apply for the Strip hunts until I learned I would never draw one of those tags with the current draw system and rules in place. I am sure the Department is aware of Nevada's bonus point system of squaring points. What I like about this system is anyone can draw a tag in any given year; regardless of points; yet those near the maximum point pool have an advantage over those who are just starting out. This is the way it should be. Those with more skin in the game should be favored over those just starting out, while still providing a chance for those with low or no bonus points. This system would give newcomers hope for drawing a tag in the future, thus providing a continual stream of revenue for the Department. The current system leaves does not leave newcomers applying for Arizona tags much hope. Here is an example of how the Nevada system worked for me: I drew a tag the very first time I applied in Nevada for a top mule deer unit. I drew two more tags one 11 years later and the other 2 years later after that. Nevada and my home state are the only states I have drawn more than 1 tag in. Would it be possible for Arizona to scrap the current "bonus pass" altogether and start squaring points? I apply for tags in 7 to 8 different states every year, and have come to the conclusion that Nevada's system is the fairest and most equitable.

Agency Response: In Nevada, bonus points are squared when an application is submitted. For an application with 5 bonus points, the computer will generate 25 random numbers. It is important to note, having the greatest number of points does not guarantee a tag; however, it does provide a better chance of being assigned a low random number in the computer draw. While the Department has received a number of written criticisms in regards to the current bonus point system, the Commission determined through an extensive public process and a random survey of hunters that a bonus point system was preferred by the regulated public. Implementing a squared point system that awards hunt permit-tags based solely on accumulated points would have a negative impact on the recruitment of new hunters. The Department's "bonus point" system is used in lieu of other point systems, because it rewards loyal applicants and provides new applicants an opportunity to successfully participate in the draw.

Written Comment: February 10, 2015. I live in Utah and have been applying for tags in Arizona for 17 years. I would like to propose a few ideas: Keep the full 10% of tags going to nonresidents in the bonus point pass. This will keep those persons who have invested thousands of dollars happy about their investment. Take 5% of the remaining tags and give them to the rest of the nonresident applicants to give them a chance at a premium tag. This should have minimal effect on the resident permits. Implement a muzzleloader hunt on many of your premium units. Utah has a muzzleloader hunt on all most all the premium elk and deer units. This will give more opportunity to hunt Premium units and unclog the system for nonresidents. Plus the success of the muzzleloader hunt is far less than the rifle hunt. So the Department can still maintain a premium hunt for everyone.

Agency Response: The first phase of the current draw system issues available tags to those persons with the maximum number of bonus points. The computer draw system monitors the number of nonresidents drawn for tags and once the 10% nonresident cap, required under A.R.S. § 17-332, is reached it will eliminate all other nonresidents from the draw pool. Because nonresidents typically carry higher bonus point totals than residents, the 10% nonresident cap is sometimes reached in the first phase of the computer draw, which means a nonresident with no or few bonus points may never have the opportunity to draw a tag (this is especially true for high demand hunts). The bonus point system was established to reward loyal applicants while providing new applicants an opportunity to successfully participate in the computer draw; the intent has always been to allow every applicant a chance of drawing a tag, even when the odds are very low. The bonus point system has been successful in meeting its objective to improve odds for long-term participants, but not successfully enough for everyone. Over the years, the Department received numerous comments from the public suggesting the Department modify the draw process to ensure all nonresidents, even those with no or low bonus points, are afforded an opportunity to draw a tag; even for the high demand hunts. As it is now, there are some hunts for which a nonresident applicant with no or low bonus points will never have a chance of drawing a tag due to the number of nonresident applicants with maximum bonus points. Therefore, the Commission amended the rule to bring the draw process back in line with the original intent and ensure all applicants, regardless of residency and

number of bonus points, will have an opportunity to draw a tag in any given hunt. Department biologists and Regional offices responsible for the management of a specific unit submit data concerning wildlife and wildlife habitat to the Department's Terrestrial Wildlife Program. The Terrestrial Wildlife Program then uses this data to formulate hunting seasons, which are included in the hunt recommendations provided to the Commission. Commission Orders establishing hunt structures are based on hunt recommendations resulting from an extensive public process. Your comment regarding muzzleloading hunts (black powder) was forwarded to the Department's Terrestrial Wildlife Branch for consideration during the next hunt guidelines review process.

Written Comment: July 1, 2015. Increase the bonus pass from 20% to 40%.

Agency Response: In 1990 through an extensive public process and a random survey of hunters, the bonus point system was established to reward loyal applicants while providing new applicants an opportunity to successfully participate in the draw; a bonus point system was preferred by the regulated public.

Written Comment: July 7, 2015. The Department's hunt draws are not set up properly. A person with 11 bonus points should be drawn before someone with lesser points. I do not care about luck of the draw.

Agency Response: In 1990 through an extensive public process and a random survey of hunters, the bonus point system was established to reward loyal applicants while providing new applicants an opportunity to successfully participate in the draw; a bonus point system was preferred by the regulated public.

Written Comment: January 13, 2016. I made a mistake and failed to apply before the last day of the application deadline last year. I had 12 bonus points and would have had 13 points right now, but because I missed the deadline I also lost my loyalty bonus point. I have been loyal to the Department for 12 years, paid around \$2,000, and have never even hunted in Arizona. I made an honest mistake and let the drawing deadline pass. Is there any way I can pay last year's license fee and get my elk bonus points for this last year? If not, I understand, but why does the Department have a rule that lets the Department take a person's loyalty point away? I earned that loyalty point five years ago. Does anyone in the Department advocate for nonresidents? It does not seem like it. Nonresidents pay a large portion of the Department's salaries. What if someone had been putting in for your elk draw for 20 years? They have never been drawn and they missed the deadline of the draw? Do you take away their four loyalty points? How does that make any sense at all? Loyalty goes both ways. Why did the Department change the rules in the bonus pass draw for nonresidents? It already took more points for nonresidents to get drawn than residents. Many nonresident hunters with 10 to 20 bonus points were getting close to being drawn for their specific hunt choices. Why take away five% of the tags in the bonus pass draw for nonresidents and put them in the random draw for residents and nonresidents to draw? Nonresident hunters, who have waited for years, and paid good money for years, should get drawn before hunters who have only been waiting for a few years, or less. The overwhelming percentage of hunters will understand this. The

hunters who have been waiting the longest should be the hunters who get drawn. If the Department really wants to improve the computer draw, it should copy Colorado. Colorado has a preference point system. They understand hunters who have waited the longest should get drawn earlier. Also, once their drawing closes it does not take three months to get the drawing results. Because Arizona takes so long to do their drawing I cannot put in for a couple other states I may want to.

Agency Response: Bonus points and loyalty bonus points may only be gained or lost through the computerized draw system. The Department understands your frustration; however, if a person fails to apply they cannot be entered into the draw. If an application is not entered into the system, the system cannot award a bonus point. It is the applicant's responsibility to ensure the application is submitted timely. The Department equally considers the desires and needs of both residents and nonresidents. Only one loyalty point is accrued after five consecutive years; the Department does not award additional bonus points every five years. In 2005, Congress enacted Public Law Number 109-13, section 6036, which reaffirmed each state's right to regulate hunting. The purpose of section 6036 was to prohibit courts from declaring nonresident hunting regulations unconstitutional based on the Dormant Commerce Clause. In addition, the statute governing tag allocation to nonresidents (A.R.S. § 17-332), is very specific and states, "The commission shall limit the number of big game permits issued to nonresidents in a random drawing to *ten per cent or fewer* of the total hunt permits..." The bonus point system was established to reward loyal applicants while providing new applicants an opportunity to successfully participate in the computer draw; the intent has always been to allow every applicant a chance of drawing a tag, even when the odds are very low. The bonus point system has been successful in meeting its objective to improve odds for long-term participants, but not successfully enough for everyone. Over the years, the Department received numerous comments from the public suggesting the Department modify the draw process to ensure all nonresidents, even those with no or low bonus points, are afforded an opportunity to draw a tag - even for the high demand hunts. As it is now, there are some hunts for which a nonresident applicant with no or low bonus points will never have a chance of drawing a tag due to the number of nonresident applicants with maximum bonus points. Therefore, the Commission proposes to amend the rule to bring the draw process back in line with the original intent of ensuring all applicants, regardless of residency and number of bonus points, will have an opportunity to draw a tag in any given hunt. While the Department is sensitive to your frustration and appreciates the time and effort put into building bonus points, the Department believes providing opportunity to all applicants is the right thing to do. The Commission directed the Department to reduce the number of days it takes to run the computer draw and post the results. To date, the Department has shortened the time between the end of the draw and the posting of the results from 64 days (the average at the time) to 25 days. The Department posted the results from the last computer draw in only 34 days. The Department will continue to evaluate the computer draw system in an effort to meet the 25 day goal.

Written Comment: October 11, 2016. I think the leftover process is unfair to everyone in rural Arizona. I have to depend on the post office to get my app there on time and it never does when I send it on the Friday

before the deadline date. But, if I lived in Phoenix, it would go directly to the Department - on time. My mail has to go to three or four post offices before it gets there. There should be an extra computer draw or the Department should take applications for a week and then randomly pick applications for those left over tags. Even better, do not take away bonus points for a person's third, fourth, and fifth hunt choices.

Agency Response: The Department understands your frustration; however, if a person fails to apply they cannot be entered into the draw. If an application is not entered into the system, the system cannot award a bonus point. It is the applicant's responsibility to ensure the application is submitted timely. In 1990 through an extensive public process and a random survey of hunters, the bonus point system was established to reward loyal applicants while providing new applicants an opportunity to successfully participate in the draw; a bonus point system was preferred by the regulated public. When a person is drawn for a hunt permit-tag, the bonus points for that species are lost through the computerized draw system. Running two separate computer draws for the same hunts would be problematic to the Department and confusing to the public.

Written Comment: December 3, 2016. I am watching the live stream broadcast of the Commission meeting. As a 53 year old native born Arizonan, I am happy that the Department did not pass the recommendation as presented. However, I think there is some opportunity for the people that fit into this group. I recommend offering one permanent bonus point to anyone over the age of 69 who holds a pioneer license. The Department should also offer one bonus point for anyone over 69 who holds a pioneer license and was born in the state of Arizona; must prove age with a birth certificate. This would allow each person to enter the draw with up to four points assuming they have their hunter safety permit and loyalty point. I think people who choose this route should not be able to transfer their tag to a minor grandchild or child. If they want the opportunity to transfer tag they can opt out of the recommendations I propose. This could be done at the application process. I believe my recommendations would be much easier to administer and not near as expensive to Department.

Agency Response: In 1990 through an extensive public process and a random survey of hunters, the bonus point system was established to reward loyal applicants while providing new applicants an opportunity to successfully participate in the draw; a bonus point system was preferred by the regulated public. The Commission's draw process is designed to provide equal opportunity to all classes of individuals and not to provide an advantage to certain classes.

Written Comment: February 9, 2017. I am a nonresident who has accumulated 20 points for elk and mule deer; one of the points involved a trip to Arizona to complete the hunter education course. I have a great deal of time and money invested in your state. The latest rule change reduces the maximum bonus point pool draw from 100% of the available nonresident tags to 50% is a major setback to people like me, who have followed the rules and spent their time and money to draw a coveted Arizona tag. To make matters even worse, I was told by Department staff that there was a mistake made in the rule change that says when only one nonresident tag is

available in a particular unit; it will not go in the bonus point pass. My question is, since this was not the intent of the Department, why has it not been corrected? Reducing the chances of your most loyal participants by 50% is one thing, but to not afford them a stronger chance because of an unintended error is another matter.

Agency Response: The Department believes the commenter was misinformed. In the computer draw, when only one tag available to nonresidents, it is awarded in the bonus point pass of the computer draw. The bonus point system was established to reward loyal applicants while providing new applicants an opportunity to successfully participate in the computer draw; the intent has always been to allow every applicant a chance of drawing a tag, even when the odds are very low. The bonus point system has been successful in meeting its objective to improve odds for long-term participants, but not successfully enough for everyone. Over the years, the Department received numerous comments from the public suggesting the Department modify the draw process to ensure all nonresidents, even those with no or low bonus points, are afforded an opportunity to draw a tag - even for the high demand hunts. As it is now, there are some hunts for which a nonresident applicant with no or low bonus points will never have a chance of drawing a tag due to the number of nonresident applicants with maximum bonus points. Therefore, the Commission proposes to amend the rule to bring the draw process back in line with the original intent of ensuring all applicants, regardless of residency and number of bonus points, will have an opportunity to draw a tag in any given hunt. While the Department is sensitive to your frustration and appreciates the time and effort put into building bonus points, the Department believes providing opportunity to all applicants is the right thing to do.

Written Comment: June 14, 2017. This is the second time I have appealed to the Department requesting a family tag (deer, elk, etc.) be made available to hunters. I never received a response. When asking for input from the public, please include an email address on the announcement where we can respond in the event we are unable to attend the public hearings.

Agency Response: The Commission does not support this suggestion as it eliminated the family license classifications in 2014 because they were underutilized. At that same time, the Commission established an exemption to the hunting and fishing license requirement for youth under the age of 10 and a \$5 combination hunting and fishing license for youth ages 10 to 17. This change was made to promote hunting and fishing in families and youth. It is important to note, while the Department does not issue a "family tag," a person may submit one or more group applications and have the opportunity to draw a tag for each person listed on the application(s).

The following comments suggest the Commission establish antler point restrictions.

Written Comment: January 12, 2015. This comment was received during the Department's Hunt Guidelines public comment period. The portions of the comments relating specifically to hunt guidelines are not included

below (signified by ellipses). The number of hunters is increasing along with the amount of tags that are being issued for the decreasing number of animals to be hunted. The Department needs to regulate the deer population more stringently. There should be a point minimum for deer; spikes and young fork horns should not be harvested. Too many young deer are being harvested here and not giving the herds a chance to grow. I hunted in several different states that have a higher population of deer and those states have minimum point requirements for harvesting. ... As far as the left over deer tags are concerned, a person who does not get drawn in the regular draw and chooses to purchase a left over tag should not be awarded a bonus point for that year. It is getting harder to be drawn for the prime hunts due to more applicants and the left over tag strategy. ...

Written Comment: January 20, 2015. It seems the Department is more worried about making money. I have never seen as many tags sold and areas over hunted. Too many people are shooting the little spikes and small two point bucks. Soon the old ones will begin to die off or be shot or taken by predators and there will not be enough small ones to replace them. I have personally passed up many small bucks because I feel it is the right thing to do. I would like to see a point restriction of maybe three point or better except for the youth hunts.

Agency Response: Antler point restrictions are another approach that is often described by hunters as a good method by which to regulate take. The idea seems straightforward and promising; if we just don't allow hunters to harvest young bucks, they will grow older and bigger and be available for harvest later. Most western states and provinces have, at one point in time, employed some type of antler point restriction attempting to increase the number of "trophy" bucks in their herds. After decades of use and many evaluations reporting disappointing results, most western states and provinces have discontinued statewide antler point restrictions. The two main reasons for abandoning widespread antler point restrictions are: (1) unacceptable accidental-illegal kill, and (2) harvest mortality was increased (focused) on the very age classes they intended to promote. Available data and experience suggest antler point restrictions result in no long-term increase in either the proportion or number of mature bucks, or the total deer population. A few jurisdictions still have limited areas with antler point restrictions, due to hunter preference not a biological need. The use of antler point restrictions in a combined strategy with general open seasons is used in at least one case to maximize hunting opportunity. Most western states and provinces have concluded that sustainable improvements in buck:doe ratios and the number of mature bucks can only be realized by reducing harvest through: 1) a limited quota license system that decreases overall total buck harvest (as we do here), or by 2) setting a very short hunting season in early fall when mature bucks are less vulnerable. While antler point restrictions may increase the proportion of bucks in certain populations with low buck:doe ratios, there is no evidence they substantially increase the total number of adult (mature) bucks. The Department does not recommend any change to guidelines based on this comment.

The following comments suggest variations of a waiting period after being drawn for a hunt.

Written Comment: January 8, 2015. If a person is drawn for elk, that person should not be able to put in for elk the next year. This would give other people the opportunity to hunt instead of the same people being drawn all the time. I like the idea of improving my chances and other hunters and if I were drawn, waiting one year to put in again would not bother me.

Written Comment: March 22, 2015. We all know the specific species in hunting big game that are in high demand, which is why a bonus point system has been put in place. Some may wonder if the draw is fair because some have incredible luck. For big game species like elk, antelope, and bighorn sheep it can be incredibly hard to get drawn. Those that have been putting in for a long time feel cheated when someone with fewer points or no points is drawn. Why not set a limit for species points that are required in order for a person to receive a tag? Perhaps, requiring a person to have one species point at the time of application would prevent people from getting drawn back to back, especially for elk. This would also give those with more points a better chance of being drawn. I am suggesting a method that would help balance the draw system for high demand species and specific hunts. For the person waiting five or more years to get drawn, they may have a better chance due to the number of people who are not eligible. Revenues for the Department would stay the same and more people who have been waiting to get drawn will have a better chance.

Written Comment: September 05, 2015. The Department should develop a draw system where if I am drawn for elk, deer, antelope, etc. this year, I will not be eligible to draw a tag next year unless there were leftover tags. This would be a more fair system than the one currently in place. There are some hunters in this state that never get drawn while others get drawn almost every year. With the computer systems that are available, I feel that this could be easily done.

Written Comment: October 27, 2015. When I lived in Alaska, there was a rule that if you were successful hunter for a brown bear you could not apply for four years and in addition, in certain areas, if you were drawn you could not apply to that same area the following year. These regulations are still intact for Alaska brown bear and grizzly bear hunts today. Perhaps some combination of these ideas may improve the odds for the pronghorn draw.

Written Comment: April 7, 2016. As more people want to hunt the limited resource, it is harder than ever to draw an elk tag, unless you are willing to settle for a poor unit or cow hunt. I am getting old and may never get a bull tag again no matter how many points I have. Has the Department ever considered implementing a waiting period where if a person who is lucky enough to draw a bull tag cannot apply for another one for three years? This would not apply to cow hunts, just the early hunts that are high demand.

Written Comment: July 3, 2017. It is absurd how long it takes for a person to draw an antelope or bull elk tag. One solution to this issue may be only opening those two species to nonresidents every other year. I understand

there may be a loss in revenue; however, Arizona seems to be in great fiscal shape right now and that should be taken into consideration as well.

Agency Response: The Department reviewed a variety of waiting period options in response to customer comment; such as one-, three-, and eight-year waiting periods for general and specific hunts. The analysis indicated that, except for youth hunts, implementing a waiting period would not substantially improve the odds of being drawn for those species that currently have low draw odds. For example, the projected increase in draw odds of .26 % (elk) to 6.3 % (late season deer) per applicant. The Commission determined implementing a waiting period would not be beneficial to persons who hunt in Arizona.

The following comments suggest various changes be made to the computer draw system:

Written Comment: February 10, 2015. I have 10 elk, 8 deer, and over 20 antelope bonus points. My brother-in-law has only been in Arizona 18 years and he was drawn for unit 19B twice? My other brother-in-law was drawn three times in the past 20 years. The Department should ensure all hunters get the opportunity to hunt. I apply in the same areas as my friends and family; and they draw a tag multiple times and even consecutively. When the bonus point system was introduced, we were led to believe that once a person accrued seven bonus points they were guaranteed a tag, but that has proven otherwise. Looking back, the old three year system was much better.

Written Comment: January 6, 2017. I would like the Department to make more tags available via age preference points or special seasons dedicated to those resident hunters age 65 or even 70 years of age and up. More than likely, those hunters have supported Arizona wildlife for many years and the years they have left to hunt are very limited. Having to acquire numerous bonus points to draw a deer or elk tag puts the elderly at a disadvantage of not being physically capable or dying before getting a tag for their last cow elk or deer hunt.

Written Comment: January 6, 2017. I find it frustrating how the preference point system works. I put in for specific species and hunts every year, but fail to draw a tag even with numerous preference points while others with no points draw a tag for the same hunt. There has to be a better system that gives more preference to those with preference points. It just does not seem right that many people fail to draw tags, year after year, while others applying for the same hunt with few or no preference points draw the tags ahead of them. I know many other hunters who feel the same way.

Written Comment: January 7, 2017. Arizona residents of 55 years cannot draw one Desert Bighorn Sheep Tag. I am 57 years old with 23 bonus points and there is a good chance I will not draw one sheep tag in my lifetime. I have a possible fix: Hold 40% of the tags for hunters with 20 or more bonus points. Hold 10% of the tags for hunters with 15 or more bonus points. Hunters age 14 to 21 are not eligible to apply for a tag, but can

purchase bonus points each year. By the time they reach their 21st birthday they could have 7 bonus points to use when they apply for a tag.

Written Comment: May 12, 2017. I am not in favor of the draw changes being brought to vote on by the Commission. I might favor them if at least 10% were be allocated to nonresidents, not up to 10%. I feel that 10% should be the minimum going to nonresidents considering the millions of dollars made each year off of the nonresident application fees.

Written Comment: June 1, 2017. I am 77 years old and was born and raised in Arizona. Other than during my military service, I have lived here most of my life. I have a pioneer license and the only thing it has been good for is fishing, why can't I get drawn for elk? I ask the Department change the draw and place pioneer license holders first to be considered. I don't have many years left for hunting; I would like to kill an elk before I leave this wonderful State.

Written Comment: July 4, 2017. This fall I will turn 75 years old and I do not have another 5 to 20 years to wait for another big game tag. I propose the Commission set aside an allotment of big game tags dedicated for the pioneer residents only; similar to the designated allotment for nonresident tags. This tag would be issued only to a pioneer license holder and would not transferable.

Written Comment: July 18, 2017. As I understand it, 10% of all tags got to nonresident hunters and 20% of those go into the bonus point round. I believe there should be a higher percentage of tags going into the bonus point round. I do like the way the bonus point system is set up because it gives everyone a chance at a tag, whether a person has a bonus points or not. The problem I see is that the bonus point holders are not issued their fair share. There are many hunters that have 15, 20, or more bonus points. They may be holding out for one of those coveted tags they have always wanted but it should never have taken 20 years to get. I believe it is fair to allocate at least 50% of the tags to the bonus point round. This would reduce the amount of bonus points a person has to carry to earn a coveted tag, but still give a fair amount of tags to the general draw. If you wait 15 to 25 years to draw a coveted tag, by the time you get it you may not be able to enjoy it due to age and health issues. I do not believe there should be anyone with more than 10 bonus points for any animal, except for bighorn sheep because there are only a tags allotted each year.

Written Comment: November 28, 2017. I propose the nonresident tag allocation be application specific and match the fraction of resident and nonresident hunters on any given application when the application has resident hunters applying with nonresident hunters who are immediate family members.

Written Comment: November 30, 2017. I understand how the draw works, but realize that many hunters do not. I seek to change the draw limitations for nonresidents who hunt with immediate family members living in

Arizona. Is there a forum or mechanism for proposing my change so that it can be heard and voted on? Do Arizona hunters get to have a say in whether suggestions put forth by other hunters can be given consideration by the Department? (This commenter was provided a Rule Petition Packet)

Agency Response: The Department is unable to increase the percentage of tags allocated to nonresidents as the statute governing tag allocation to nonresidents (A.R.S. § 17-332), is very specific and states, "The commission shall limit the number of big game permits issued to nonresidents in a random drawing to ten per cent or fewer of the total hunt permits,..." A legislative amendment is required before the Department may amend the rule as suggested. In 1990, the public through a public process rejected a waiting period system in favor of the bonus point system the Department currently uses. Few hunters are lucky enough to be drawn more often than others and it is understandable that those who are not drawn want to improve their chances. However, because the draw is based on probabilities, there is no way to eliminate this possibility without undue complication to the draw process. Generally, hunts that take place in high quality Game Management Units or that occur close to the rut have poor draw odds. For example, a summary of 2016 draw odds seems to indicate little advantage to having many bonus points. Further analysis, however, reveals that applicants with the largest number of bonus points are applying for hunts with the poorest draw odds, which obscures the benefits of having multiple bonus points. For example, elk applicants without any bonus points applied for hunts with draw odds that averaged 17.9 percent, while those with 23 bonus points applied for hunts with draw odds averaging less than 0.60 percent. This tendency held true for their second choices as well. If a person only wants one of these hunts, here are a few tips that may help: Never apply for any unwanted hunts; if a person is drawn, they lose their non-permanent bonus points. Realize it may be years before a person is drawn, be patient and persistent. Do not submit an invalid application. One way of minimizing mistakes is to apply online. A hunt with good draw odds often means it is considered by some hunters to be a "less desirable" hunt. On the other hand, many other hunters have the philosophy that any opportunity to hunt, get outdoors, and spend time with friends and family is highly desirable. So, if a person just wants to go hunting and is not as concerned about where or when, here are two tips: Pick a higher-demand hunt for the first choice, but choose a hunt with better draw odds as the second choice. For the best chances of being drawn, pick hunts with good draw odds for both first- and second-choices.

The following comments pertain to the Notice of Proposed Rulemaking, see 21 A.A.R. 1001, July 10, 2015:

Written Comment: January 20, 2015. I am a proponent for an adjustment to the draw system due to the fact that nonresidents without high bonus point totals have no chance to draw a high quality deer or elk tag in Arizona. I understand the 20% bonus point pass that was added to the draw system added an element of fairness and an element of randomness that we have with the first and second choice pass of the draw. But this ended up creating a "preference point" draw system for nonresidents for all of the sought after hunts. I was in favor of a fifty-fifty split with half of the available tags being issued in the bonus point pass with the second half being set

aside for the first and second choice pass of the draw. But now I have changed my opinion: I feel nonresidents who have paid their dues and accumulated bonus points for years, maybe decades, should be treated fairly and the fifty-fifty split would not be fair. A fifty-fifty split may cause a bottleneck of high bonus point holders, resulting in a much longer wait for tags. Nonresidents without lots of bonus points would still be encouraged to apply with a reasonable split of the tags. Maybe something like eighty-twenty would be more equitable when taking into account the dedication and money nonresidents with high point totals have invested in the computer draw.

Written Comment: January 27, 2015. I am writing to voice my support for the proposed change where half of the 10% of tags allocated to nonresidents will go to nonresidents with maximum bonus points and the other half to all nonresidents with low or no bonus points. I have been applying for the draw in Arizona intermittently for the last 7 years; knowing that I have no chance at drawing a tag for some of the more desirable units made it difficult to decide whether to apply or not. As a result, I have not acquired a loyalty point. This rule change will guarantee my application goes in every year, even with the knowledge that it is still a long shot. While I can understand that other nonresidents who are close to reaching the maximum bonus point pool will not be thrilled by this proposal, it seems to me that they are missing the main point, which is they are all one tag away from being a zero bonus point holder. Once that happens, this rule change allows them to jump right back into the game and not feel that they are condemned to applying for another 10, 15, or 20 years before their bell rings again. I do not play Utah, Nevada, or any other elk-state draws with the exception of New Mexico (they have a true lottery system, so I always feel like I have a chance). The Department needs to address the "up to 10%" stipulation in the draw. If the draw is changed, I believe it is important that nonresidents receive that 10% instead of residents. I think the absolute best scenario would be issuing residents 85% of the total tags for any given hunt, with the remainder going to nonresidents. The first 10% would be issued during the 20% bonus point pass phase of the draw and the other 5% would be issued during the first and second choice pass of the draw. I believe this is the best solution because it addresses the problem of point creep for the nonresidents and the draw would truly have the element of fairness and randomness it was intended to have. I believe we are on the verge of having the best draw system out there and with a couple of slight adjustments - it can be accomplished.

Written Comment: February 2, 2015. I will start off by saying I understand the Department's situation and believe changes are necessary. However, the effect of the proposed changes to a long-time applicant, such as myself, are penalizing and certainly not rewarding. I am a nonresident who has been applying for Arizona tags for 25 years. During this time, I drew two elk tags which resulted in two guided hunts - one resulted in the harvest of an elk and both thoroughly enjoyable. I traveled to Arizona to take the Hunter Education Course to increase my chances of being drawn. Even though license fees have gone up, I thought it was still a good investment. I also apply to other states and come from a province where the 'resident vs nonresident' debate is a

very hot debate. If the proposed changes are put in place, I will eventually give up the desert bighorn dream and continue to enjoy the wonderful opportunities I have in British Columbia.

Written Comment: February 2, 2015. The reality that none of the nonresident tags make it out of the bonus point pass in a growing number of units is becoming common knowledge. Where this is a reality, it can be said that Arizona is running a pure preference point system with all of the tags for high demand hunts being issued in the bonus point pass. Calling it a bonus point system implies there is a chance to draw a tag and I think that is misleading to the general public. I agree this issue needs to be corrected. I appreciate the way the Department has treated nonresidents during my 15 years of applying there. During this time, many other states have chosen to dilute nonresident points by diverting tags to outfitters and auction or raffle tags. The Department maintained the “up to 10%” nonresident quota and I think the nature of the Department bringing this proposal to the table speaks volumes of the Commissioner's goodwill and sense of fairness. Although the proposal would hurt me personally (I have 13 elk points), I do not think this is a bad idea. However, I have two major suggestions: I think it is critical to have the change postponed to begin in the 2018-2019 hunting season rather than the 2016-2017 season to allow current high point holders a fair opportunity to spend their points prior to the change taking place. It would also provide some consolation to those people who are vested in the current system and have patiently played the game by existing rules. I do have a problem with the idea of distributing the newly available 5% of the nonresident tags via the totally random draw. This is a disservice to those vested hunters, as it would immensely devalue their hard earned points. These two changes to the original proposal would result in immediate interest from new nonresidents buying into the system, knowing points bought next year would enhance their chances of drawing when the rule kicks in, but it would do so in a more gradual transition. To me, this would be a fair compromise and good long term solution to this tag allocation situation. I hope you will consider my opinion during final decision making process. If these changes to the draw system are made, I strongly suggest scrapping the entire concept of a confusing 20% pass in favor of a very simple 10% nonresident set aside; straight 50% preference and 50% bonus.

Written Comment: February 5, 2015. I support Utah's draws system because it gives everyone a chance to draw, a person does not have to have the maximum bonus points to draw a tag. I do not have maximum bonus points in Arizona, but I want to have the same chance to draw a tag as the people with maximum points. There has to be a way the Department can make the draw system work like Utah does.

Written Comment: February 5, 2015. I would support a system similar to Utah's where half of the nonresident tags are awarded to maximum bonus point holders and the other half is put into a draw where all nonresidents have an opportunity to draw a tag.

Written Comment: February 7, 2015. I am writing about the proposal to split nonresident tags fifty-fifty in the draw. I believe this will reduce nonresident opportunity as many tags will be drawn by residents by simply

removing them from the maximum bonus point draw. A better solution would be to allocate 10% tags to nonresident and draw nonresident separately, allocating tags fifty-fifty. This would guarantee nonresidents a chance in both draws.

Written Comment: February 8, 2015. I am writing to express my opinion on the current status quo that is the nonresident bonus point allocation issue; specifically how nonresident tags might be distributed in and after the bonus pass portion of the computer draw. I am sure the Department will agree that for the sake of Department's budget and continued hunter recruitment efforts, it is critical to maintain the interest of those persons who apply for elk and deer permits but have low or no bonus points. The reality that none of the nonresident permits make it out of the bonus pass in a growing number of units is becoming common knowledge. Where this is a reality, it can be said that Arizona is effectively running a pure preference point system with 100% of the nonresident tag assignment within the bonus pass. Calling it a bonus point system implies that there is a chance to draw when in fact there is no chance. I think this is misleading to the general public. I think the nature of the Department wanting to bring this to the table speaks volumes of the Commissioner's goodwill and sense of fairness. But, with regard to the proposed fifty-fifty split allocation, I disagree with the concept. The same sense of fairness should be maintained when considering the people who are vested in the current system. By mandating a full half of the available permits to the lower draw passes, the Department essentially diluted the value of those persons with higher point totals. This will elongate the draw timetable for those who have patiently played the game under the existing rules. The proposal will reduce the overall number of tags going to nonresident hunters. I ask the Commission to consider keeping the current bonus pass allocation system and allow up to an additional 5 to 10% of remaining tags (or one tag) to go to nonresident hunters. This would keep current nonresident maximum bonus point holders happy and provide hope to nonresidents with low or no bonus points. It would reduce the number of tags available to residents, but because of the "up to" wording, overall resident tag reduction would be less than the additional 5 to 10% granted.

Written Comment: February 23, 2015. I have the maximum bonus points for nonresident deer in Arizona. I disagree with the proposed bonus point draw change. For all practical purposes, this change reduces the nonresident tag allotment by half. Please consider the following: I have followed the Department's regulations since 1998. I have driven to Phoenix to attend the hunter education course for that bonus point. I have purchased a nonresident hunting license and paid the application fee every year. The cost for those licenses to date is \$2,470. Any proposal to reduce my opportunity by half and allow three individuals with no history of commitment or loyalty to cut to the front of the line would be unethical and immoral. However, changing the regulations because of sound game management or a biological reason is acceptable to me.

Written Comment: December 24, 2015. I want to believe that average Joe nonresidents were the engine behind changing the first pass of the draw, but I continue to read that politics were involved. Did the review occur because of one or a few noteworthy nonresident persons who wanted it changed? The Department stated

the change had to happen because bonus point holders in the top pools were the only ones reaping the benefits in the Units 13A and 13B. Then why was the change instituted for elk? In the 2015 draw, the maximum point holders had 25 points. If there was a bias, why would applicants with 20 points draw tags for the early muzzy hunt in Unit 9 and the early rifle hunt in Unit 10? These have been and still are regarded as two of the most highly coveted elk hunts in the U.S. There is no bias toward maximum bonus point holders in the elk draw like what we see in the Strip deer hunts. Why would the Department reduce the opportunity for the nonresident elk upper point holders? To me this is unconscionable when you consider that these are the same persons that have provided loyalty and support to the Department for twenty years.

Agency Response: The first phase of the current draw system issues available tags to those persons with the maximum number of bonus points. The computer draw system monitors the number of nonresidents drawn for tags and once the 10% nonresident cap, required under A.R.S. § 17-332, is reached it will eliminate all other nonresidents from the draw pool. Because nonresidents typically carry higher bonus point totals than residents, the 10% nonresident cap is sometimes reached in the first phase of the computer draw, which means a nonresident with no or few bonus points may never have the opportunity to draw a tag (this is especially true for high demand hunts). The bonus point system was established to reward loyal applicants while providing new applicants an opportunity to successfully participate in the computer draw; the intent has always been to allow every applicant a chance of drawing a tag, even when the odds are very low. The bonus point system has been successful in meeting its objective to improve odds for long-term participants, but not successfully enough for everyone. Over the years, the Department received numerous comments from the public suggesting the Department modify the draw process to ensure all nonresidents, even those with no or low bonus points, are afforded an opportunity to draw a tag; even for the high demand hunts. As it is now, there are some hunts for which a nonresident applicant with no or low bonus points will never have a chance of drawing a tag due to the number of nonresident applicants with maximum bonus points. Therefore, the Commission amended the rule to bring the draw process back in line with the original intent and ensure all applicants, regardless of residency and number of bonus points, will have an opportunity to draw a tag in any given hunt.

Written Comment: January 18, 2015. I am a nonresident who supports the proposal of only issuing half of the nonresident tags in the maximum point holders. I believe this is a better way to provide all nonresidents who apply the opportunity to draw while still giving those that have been in the system some advantage. I know several younger individuals who feel they have no hope of ever drawing a premium tag in Arizona simply because they were not old enough or did not have the opportunity to apply at the beginning of the point system. The proposal seems to address both as well as allowing those who are yet to be old enough to participate in the draw process the opportunity to draw a premium tag sometime in their future.

Written Comment: February 4, 2015. I support changing the draw system to allow half the tags to max point holders and half to applicants that do not have maximum points.

Written Comment: February 4, 2015. As a nonresident I support the proposed changes to the nonresident pool. Most nonresidents I know have quit applying for anything in Arizona because of the current system. All of them would begin applying again if there was a chance, even though slim, they would draw a tag. As a side note, the only other idea would be to consider a square root system like the state of Nevada does.

Written Comment: February 5, 2015. I support the change for the nonresident tag allocation system to better the chances of ever drawing a strip tag.

Agency Response: The Department appreciates your support.

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 November 3, 2015. The rule is amended to remove descriptive language relating to tag features; increase consistency between Commission rules by updating application requirements; remove javelina from the list of game subject to the 10% nonresident cap; establish the Department shall make available one hunt permit-tag when a hunt number has less than five, but more than one available hunt permit-tag; describe all phases of the computer draw process to provide a more complete description of the computer draw system; clarify that a person may possess the same number of hunt permit-tags equal to the applicable bag limit; prohibit a person who has reached the bag limit for a specific genus from applying for another hunt permit-tag for that genus during the same calendar year; establish in rule that the Commission may, at a public meeting, increase the number of hunt permit-tags issued to nonresidents in a computer draw when necessary to meet management objectives; and establish the Department shall not issue more than 50% of the hunt permit-tags available to nonresidents with the highest number of bonus points through the initial bonus point pass of the computer draw. The Commission anticipated the regulated community and the Department would benefit from a rule that establishes hunt permit- and nonpermit-tag requirements; prospective vendors would benefit by being able to submit a proposal and possibly be awarded a bid; the regulated community and the Department would benefit from the amendment that allows a person to possess the same number of permit- and nonpermit-tags as allowed for the bag limit of that genus; and the Department will benefit from increased tag sales.

- 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 report was approved by G.R.R.C. at the April 1, 2014 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 2016. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 21 A.A.R. 1409, July 10, 2015.
- Notice of Proposed Rulemaking: 21 A.A.R. 1001, July 10, 2015.
- Public Comment Period: July 10, 2015 through August 10, 2015.
- G.R.R.C. approved the Notice of Final Rulemaking at the November 3, 2015 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 3025, December 4, 2015.

- 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 typical response is, "The Department has determined 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 necessary to achieve the underlying regulatory objective." State how the rule benefits the public, persons regulated by the rule, Department, and other agencies (as applicable). If the rule imposes unnecessary burdens, state how the rule will be amended to make it less burdensome and finish with, "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." IF the rule is amended to place additional burdens on the public, persons regulated by the rule, Department, and other agencies, explain the reason and anticipated benefits resulting from the proposed amendments.

- 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 requires 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 R12-4-114 to replace references to "antelope" with "pronghorn antelope" to reflect language used in Commission Order and public outreach materials.

The Department anticipates submitting the Notice of Final Rulemaking to the Council by July 2020, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking.

R12-4-115. RESTRICTED NONPERMIT-TAGS; SUPPLEMENTAL HUNTS AND HUNTER POOL

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-239, 17-331(A), and 17-332(A)

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish the Commission's authority to implement a supplemental hunt when necessary to achieve management objectives when those objectives are not being reached through the regular season structures, take depreddating wildlife, or address an immediate threat to the health, safety, or management of wildlife or its habitat, or to public health or safety. The rule also establishes the requirements for the supplemental hunter pool, comprised of persons who may be called upon to receive restricted nonpermit-tags when a supplemental hunt is authorized by the Commission. Under A.R.S. 17-239(D), the Commission may establish special seasons, special bag limits, and reduce or waive license and tag fees to crop that wildlife. The rule was adopted to establish an application process and hunter pool to enable the Department conduct those authorized 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, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and 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 during routine patrols. Officers may issue a warning order or a citation.

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 Department proposes to amend the rule to remove the Department website Uniform Resource Location (url) and simply reference "Department's website" to ensure the rule remains concise in the event the Department's url should change.

7. Summary of any written criticism of the rule received by the agency within the five years immediately preceding the five-year review report.

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 November 3, 2015. The rule was amended to define "companion tag" and "emergency season;" replace the term "supplemental hunt" with "restricted non-permit tag;" enable the Commission to approve a supplemental hunt by Commission Order; separate the processes and requirements specific to restricted nonpermit-tags and companion tags; update application requirements; clarify who is eligible to receive companion tag; and clarify that a person purchasing a restricted nonpermit-tag must either possess or purchase a license that is valid at the time of the supplemental hunt. The Commission anticipated the rulemaking would benefit persons regulated by the rule by creating more opportunities for the use of wildlife resources, with few costs, and maintaining hunting opportunity.

- 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 report was approved by G.R.R.C. at the April 1, 2014 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 2016. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 21 A.A.R. 1409, July 10, 2015.
- Notice of Proposed Rulemaking: 21 A.A.R. 1001, July 10, 2015.
- Public Comment Period: July 10, 2015 through August 10, 2015.
- G.R.R.C. approved the Notice of Final Rulemaking at the November 3, 2015 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 3025, December 4, 2015.

- 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 establishes the Commission's authority to implement a supplemental hunt when necessary to achieve management objectives when those objectives are not being reached through the regular season structures as well as the requirements for the supplemental hunter pool, comprised of persons who may be called upon to receive restricted nonpermit-tags when a supplemental hunt is authorized by the Commission. Under A.R.S. 17-239(D), the Commission may establish special seasons, special bag limits, and reduce or waive license and tag fees to crop that wildlife. The public benefits from a rule that provides additional opportunity to hunters outside of the established seasonal structure. The Department benefits from a rule that establishes a fair process to offer additional permit-tags when the Commission determines a supplemental hunt is necessary. The public and Department benefit from a rule that is understandable. 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 requires 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 R12-4-115 to replace references to the Department website url with "Department's website" to ensure the rule remains concise in the event the Department's url should change.

The Department anticipates submitting the Notice of Final Rulemaking to the Council by July 2020, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking.

R12-4-116. REWARD PAYMENTS

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-231(A)(7) and 17-315(B)(1)

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish the requirements necessary for reward payments to include the schedule of reward payments. The reward program is established to motivate persons to report violations and provide information that will result in the arrest of a perpetrator when a case cannot otherwise be resolved. The rule was adopted to protect future populations and keep the state's wildlife resources available and abundant for the long-term. Reward payments have successfully been distributed on wildlife law enforcement cases that meet certain criteria since the inception of the OGT in 1979. Through OGT, a person can receive a reward when a tip they provided results in an arrest. The illegal take of game or fish is known as poaching; poaching reduces opportunities to hunt and fish in Arizona. Game laws are in place to restrict hunting limits and protect the numbers of animals available year after year. When poachers take wildlife out of season or kill more than state bag limits, they can jeopardize the health and longevity of the herd and interrupt breeding seasons. If the information provided is enough to warrant a citation or physical arrest, reward payments are paid immediately. Reward payments of \$50 to \$1,000 are offered in certain cases for information leading to the arrest of wildlife violators. Many states require a conviction before a reward payment may be offered. However, in Arizona, if the information provided is enough to warrant a citation or physical arrest, reward payments are made immediately. If desired, the reward is offered confidentially. Funding for reward payments comes from fines and civil penalties assessed to the poachers.

The Department typically offers cash reward payments between \$6,000 and \$20,000 (or more) annually to individuals who report wild life crimes. Under Arizona law, a caller can remain anonymous and their confidentiality is protected. Operation Game Thief reward payments are funded by fines collected for criminal and civil violations of Title 17. Because the program is funded in this manner, there is no specific annual amount of funding made available by the Department to the program.

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, etc. 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. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

The Department proposes to amend the rule to replace references to "antelope" with "pronghorn antelope" to reflect language used in Commission Order and public outreach materials.

Under A.R.S. § 17-315(B)(1), reward payments may also be to persons who report attendant acts of vandalism. The Department proposes to amend the rule to establish the reward payments to be paid for information received regarding attendant acts of vandalism.

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 consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

7. Summary of any written criticism of the rule received by the agency within the five years immediately preceding the five-year review report.

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 November 3, 2015. The rule was amended to increase the reward value to \$500 for big game, eagles, and threatened and endangered species. The Commission anticipated the

rulemaking would benefit the regulated community by creating more opportunities for the use of wildlife resources, with few costs, and maintaining resident hunting opportunity.

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 report was approved by G.R.R.C. at the April 1, 2014 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 2016. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 21 A.A.R. 1409, July 10, 2015.
- Notice of Proposed Rulemaking: 21 A.A.R. 1001, July 10, 2015.
- Public Comment Period: July 10, 2015 through August 10, 2015.
- G.R.R.C. approved the Notice of Final Rulemaking at the November 3, 2015 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 3025, December 4, 2015.

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 necessary for reward payments to include the schedule of reward payments, which is intended to motivate persons to report violations and provide information leading to the arrest of a perpetrator. The illegal take of game or fish is known as poaching; poaching reduces opportunities to hunt and fish in Arizona. Game laws are in place to restrict hunting limits and protect the numbers of animals available year after year. When poachers take wildlife out of season or kill more than state bag limits, they can jeopardize the health and longevity of the herd and interrupt breeding seasons. If the information provided is enough to warrant a citation or physical arrest, reward payments are paid immediately. If desired, the reward is offered confidentially. Funding for reward payments comes from fines and civil penalties assessed to poachers. The public benefits from a rule that future populations and keep the state's wildlife resources available and abundant for the long-term. The Department benefits from a rule that encourages the public to report information regarding wildlife violations. The public and Department benefit from a rule that is understandable.

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 requires 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 R12-4-116 as follows:

- Replace references to "antelope" with "pronghorn antelope" to reflect language used in Commission Order and public outreach materials.
- Establish the reward payments to be paid for information received regarding attendant acts of vandalism.

The Department anticipates submitting the Notice of Final Rulemaking to the Council by July 2020, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking.

R12-4-117. INDIAN RESERVATIONS

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-211(E)(4) and 17-309(A)(19)

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to specify that a state license, permit, or tag is not required to hunt or fish on any

Indian reservation, that any lawfully taken game or fish may be transported and/or processed anywhere in the state if it can be identified as to species and legality pursuant to statute, and that all wildlife transported in this state is subject to inspection. Under A.R.S. § 17-102, wildlife found in this state are property of the state. Under A.R.S. § 17-211(E), a Game Ranger or Wildlife Manager may inspect all wildlife taken or transported in this state. Wildlife pose a unique "property" issue as it does not recognize land boundaries and frequently moves onto and off of state and tribal lands. When found on an Indian reservation, the wildlife are property of that reservation. When found on state land (includes private land), the wildlife are property of the state. The Department recognizes wildlife found on an Indian reservation belong to the tribal government and are under tribal jurisdiction. While the tribal government may require a tribal license, permit, or tag for the take of wildlife; the state may not impose any requirements on a hunter or angler who is taking wildlife on an Indian reservation. The rule was adopted to provide notice to members of the public that, even though wildlife may have been lawfully taken on an Indian reservation, all wildlife transported anywhere in this state is subject to inspection.

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, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and 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 during routine patrols. Officers may issue a warning order or a citation.

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 any written criticism of the rule received by the agency within the five years immediately preceding the five-year review report.

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 November 3, 2015. The rule was amended to correct a statutory reference and clarify that an inspection may be required when a person transports wildlife taken on an Indian reservation anywhere in this State. The Commission anticipated the rulemaking would benefit the regulated community by creating more opportunities for the use of wildlife resources, with few costs, and maintaining resident hunting opportunity.

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 report was approved by G.R.R.C. at the April 1, 2014 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 2016. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 21 A.A.R. 1409, July 10, 2015.
- Notice of Proposed Rulemaking: 21 A.A.R. 1001, July 10, 2015.
- Public Comment Period: July 10, 2015 through August 10, 2015.
- G.R.R.C. approved the Notice of Final Rulemaking at the November 3, 2015 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 3025, December 4, 2015.

- 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 a state license, permit, or tag is not required to hunt or fish on any Indian reservation, that any lawfully taken game or fish may be transported and/or processed anywhere in the state if it can be identified as to species and legality pursuant to statute, and that all wildlife transported in this state is subject to inspection. The Department recognizes wildlife found on an Indian reservation belong to the tribal government and are under tribal jurisdiction. While the tribal government may require a tribal license, permit, or tag for the take of wildlife; the state may not impose any requirements on a hunter or angler who is taking wildlife on an Indian reservation. The public benefits from a rule that provides notice to members of the public that all wildlife transported anywhere in this state is subject to inspection. The public and Department benefit from a rule that is understandable. 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 requires 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.

R12-4-118. HUNT PERMIT-TAG SURRENDER

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to**

make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(8), and 41-2752

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to enable the Department to implement a tag surrender program, to include the establishment of a membership program and the requirements and limitations for the surrender of an unused hunt permit-tag. The rule was adopted in response to Commission direction to as a means to encourage participation in recreational activities and generate additional revenue for the Game and Fish Fund as well as provide the public with a way to stay up-to-date on the latest hunting, angling, volunteer, and Department activities. In addition, the Commission also directed the Department to establish a satisfactory remedy to address the scenario where a person who applied for the wrong hunt (e.g., hunter meant to apply for a bull elk hunt, but entered a cow elk hunt number on the application) or is unable to use the hunt permit-tag due to unforeseen circumstances and is requesting the restoration of those bonus points expended for the hunt permit-tag. At that time, the current statutes and administrative rules did not provide a remedy when a person is unable to use the hunt permit-tag for any reason.

Since the membership program was implemented in January 2016, approximately:

- 57,470 memberships were purchased.
- 445 hunt permit-tags were surrendered to the Department in compliance with the rule.
- 90 hunt permit-tags were donated to nonprofit organizations in compliance with the 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, etc. 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. Statutes and rules used in determining consistency include A.R.S. 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 during routine patrols. Officers may issue a warning order or a citation.

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 Department proposes to amend the rule to remove the Department website Uniform Resource Location (url) and simply reference "Department's website" to ensure the rule remains concise in the event the Department's url should change.

7. Summary of any written criticism of the rule received by the agency within the five years immediately preceding the five-year review report.

The Department received the following written criticism of the rule:

Written Comment: July 7, 2014. Could the program that allows a person to surrender their unused hunt permit-tag be changed to also allow a person who participates in a work project directed toward wildlife enhancement surrender their hunt permit-tag? Projects like maintaining fences for the recently captured and transplanted Bison when they are turned loose onto the House Rock Buffalo Ranch. This could help to fill the volunteer "gap" in projects that need to be completed but the Department does not have the workforce to complete them.

Agency Response: The tag surrender program is specific to hunt permit-tags issued through the computer draw. The Commission's draw process is designed to provide equal opportunity to all classes of individuals and not to provide an advantage to certain classes; this intent is also applied to the membership program's tag surrender benefit. As a result, the Department does not believe that any class of individuals (including volunteers) should be able to surrender an unused hunt permit-tag without having purchased a membership.

Written Comment: April 7, 2015. I have thought a lot about the rule not allowing the return of a drawn tag. How do you feel when you try to return something you have bought and the return is accepted? How about if

you are turned down? Even if the item is in perfect condition and easily sold to someone else. It is the American way; good will toward all. I do not understand why I cannot donate my tag to a disabled veteran, forfeit my money, and get my points back. **Follow-up comment: April 8, 2015.** I support the a new rule that allows a tag holder to surrender their tag and have their points reinstated. I think that if someone would like to donate a tag they have drawn to a disabled veteran or handicapped youth they should be able to get their points back. This creates a win/win situation. Everyone is happy and the system works for the people it is set up for, hunters. Everyone has tried to return something they have purchased for some reason. How do you feel when you are allowed to return? How do you feel when you are turned down, even if the returned item is easily sold to someone else? It is a matter of courtesy and contributes to the American way; goodwill towards all.

Agency Response: The Department appreciates your support.

Written Comment: June 27, 2016. Here are my concerns: Was the Department aware that someone offered their bonus points for sale on E-bay? The idea being the seller had the maximum bonus points and would apply for a hunt with the highest bidder to increase their bonus point average. This has created a lucrative “points market.” I have found nothing in the literature that says selling points is unlawful. Although I do not agree with it, a person would be stupid not to sell their points once before they draw. Some of the guides have indicated they have maximum point holders who plan to draw a hunt permit-tag, wait to see what caliber bucks the guides find; and then, if they do not find a large enough buck, they would simply surrender their hunt permit-tag. This is unfair to the average hunter who cannot afford the additional funds needed to pay for someone else's bonus points. People with money can simply pay to apply with maximum bonus point holders and hunt their favorite units every year. Is this fair? This will also create noticeable point creep. I know a person can only surrender a hunt permit-tag once, but I cannot believe this is what the program was intended for. The fact that a person can turn a hunt permit-tag back in for any reason combined with the fact that the person will also get an additional bonus point as if they were unsuccessful. The last part is what I believe is most disturbing and just makes this new program ripe for abuse. I recommend the Commission take another look at this and at least stop adding that additional point. In essence, the Department is letting people change their application after the draw. When a person in a group application wants to return their tag and removing that person from the group lowers the groups bonus point average, everyone in the group should have to surrender their tag. What will the Department do about this abuse? If the Department does nothing, it will be clear this program is based on revenue alone. This would be very easy to fix, let folks retain their bonus points, but do not give them that additional point. The group averaging is easy to fix as well.

Agency Response: The Department is not aware of any situation where bonus points being auctioned to the highest bidder. Under the proposed rule, a person is limited to a single surrender with a reinstatement of bonus points. Once the person surrenders their tag and their bonus points are restored, they must expend those bonus points before surrendering another hunt permit-tag. The Department believes this sufficient to prevent abuse of

the tag surrender program. While a fee is associated with the membership program, membership in the program is voluntary and enrollment will have no impact on the persons odds in any computer draw held by the Department. The tag surrender program has been in effect for two full cycles of the computer draw and there is little evidence that abuse is occurring. Since the tag surrender program was implemented in January 2016, the participation rate in the membership program has averaged 3% across all species, with the highest level of participation occurring for the elk, deer, sheep, and pronghorn computer draws and lowest level of participation occurring for the fall seasons. Participation in the program is increasing each year with the expectation that participation will increase as more persons learn about the tag surrender program. Of the four maximum bonus point holders who purchased a membership and subsequently surrendered their unused hunt permit-tag, none of them applied for their hunt with another person. Applying for a hunt with someone who has fewer bonus points lowers the maximum bonus point holder's odds of being drawn, especially in hunts with low permit numbers. In addition, because the Department uses a bonus point system instead of a preference point system, the intent has always been to allow every applicant a chance of drawing a hunt permit-tag, regardless of residency and number of bonus points.

Written Comment: June 28, 2016. When the Department solicited comments on the amendments that would include options for tag surrender, there was discussion about potentially allowing for the surrender of a tag in order to allow for the transfer of another tag for the same genus in the same year. The example proposed was when a child draws a tag, but a parent or grandparent draws a premium tag that they would like child to have the opportunity to use. I believe there was discussion about allowing a child in that situation to surrender her tag (either before or after their own hunt) in order to allow for such transfers to take place. Did that proposal ever get any traction?

Agency Response: Once you surrender a tag, you receive your bonus points back and your record is changed to a not drawn status. A youth hunter can surrender their tag and be eligible to have a parent or grandparent transfer a tag to them, but only if they surrender the youth's before the first day of their hunt. The concept the commenter described was discussed with the Commission, but the Commission chose to keep the rule as simple as possible, implement the rule, and then re-evaluate at a later date. At this time, the Department does not recommend making any changes to the program.

Written Comment: June 7, 2017. Do not allow a group application to use of the tag surrender program. This will prevent abuse such as using other person's bonus points to get tags and then allowing the person to turn their tag back in and keep their bonus points. Only single person applications can use the tag surrender program. I would like to see any person to be able to turn in a tag they cannot use every year, not once per lifetime per species.

Agency Response: Under the proposed rule, a person is limited to a single surrender with a reinstatement of bonus points. Once the person surrenders their tag and their bonus points are restored, they must expend those bonus points before surrendering another hunt permit-tag. The Department believes this sufficient to prevent abuse of the tag surrender program. The tag surrender program has been in effect for two full cycles of the computer draw and there is little evidence that abuse is occurring. Since the tag surrender program was implemented in January 2016, the participation rate in the membership program has averaged 3% across all species, with the highest level of participation occurring for the elk, deer, sheep, and pronghorn computer draws and lowest level of participation occurring for the fall seasons. Of the four maximum bonus point holders who purchased a membership and subsequently surrendered their unused hunt permit-tag, none of them applied for their hunt with another person. Under the rule, a person is not limited to only using the tag surrender program once per lifetime per species. A person must expend any bonus points that have been restored before they may surrender another hunt permit-tag for that specific species, but once expended a person may begin accruing bonus points for that species and use the hunt permit-tag surrender program again.

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 November 3, 2015. The rule was adopted to establish a membership program and the requirements and limitations for the surrender of an unused, original hunt permit-tag as well as the criteria for the re-issuance of a surrendered hunt permit-tag. Basically, the tag surrender program provides hunters with peace of mind in knowing they can surrender their tag for any reason without losing their bonus points. The Commission anticipated the rulemaking would benefit persons regulated by the rule and the Department by establishing a membership program, to include the limitations and requirements for surrendering a tag and restoring the bonus points expended for the surrendered tag. It is difficult to quantify the value a person places on their bonus points; however, it can be significant. The Commission did not anticipate the membership fee would significantly affect a person's ability to participate in an activity or have a significant impact on a person's income, revenue, or employment in this State related to that activity. While a fee is associated with the membership program, membership is voluntary and enrollment would have no impact on a person's odds in any computer draw held by the Department.

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 on January 2, 2016.

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The rule establishes the Department's tag surrender program, to include the establishment of a membership program and the requirements and limitations for the surrender of an unused hunt permit-tag. The public benefits from a rule that encourages participation in recreational activities and establishes a satisfactory remedy that addresses scenarios where a person is able to surrender an unused hunt permit-tag and request the restoration of those bonus points expended for the hunt permit-tag. While it is difficult to quantify the value a person places on their bonus points, it can be significant. Becoming a member of the Department membership program is voluntary and only those persons who choose to participate in the program will pay a membership fee. The Department benefits from a rule that encourages participation in recreational activities and generates additional revenue for the Game and Fish Fund and engages the public in volunteer, and Department activities. 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 requires 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 R12-4-118 to replace references to the Department website url with "Department's website" to ensure the rule remains concise in the event the Department's url should change.

The Department anticipates submitting the Notice of Final Rulemaking to the Council by July 2020, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking.

R12-4-119. ARIZONA GAME AND FISH DEPARTMENT RESERVE

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-231(A)(1) and 17-214

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to prescribe requirements and duties for commissioned reserve officers and noncommissioned reserve volunteers for the purposes stated under A.R.S. § 17-214(B). The rule was adopted to further the Department's resources by allowing qualified individual's to assist in conducting Department enforcement and non-enforcement activities, as applicable.

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, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and 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 during routine patrols. Officers may issue a warning order or a citation.

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 any written criticism of the rule received by the agency within the five years immediately preceding the five-year review report.

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 November 3, 2015. The rule was amended to 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 report was approved by G.R.R.C. at the April 1, 2014 Council Meeting, which stated the Department

anticipated submitting the final rules to the Council by June 2016. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 21 A.A.R. 1409, July 10, 2015.
- Notice of Proposed Rulemaking: 21 A.A.R. 1001, July 10, 2015.
- Public Comment Period: July 10, 2015 through August 10, 2015.
- G.R.R.C. approved the Notice of Final Rulemaking at the November 3, 2015 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 3025, December 4, 2015.

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 and duties for commissioned reserve officers and noncommissioned reserve volunteers for the purposes stated under A.R.S. § 17-214(B). The public and the Department benefit from a rule that furthers the Department's resources by allowing qualified individual's to assist in conducting Department enforcement and non-enforcement activities. The public and Department benefit from a rule that is understandable. 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 requires 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.

R12-4-120. ISSUANCE, SALE, AND TRANSFER OF SPECIAL BIG GAME LICENSE-TAGS

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(A)(8), 17-331(A), 17-332(A), and 17-346

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish procedures for the application and issuance of special big game license-tags, including the selection criteria for choosing applicants who are awarded such tags as authorized under A.R.S. § 17-346. The rule was adopted to ensure compliance with the requirements of A.R.S. § 17-346.

The Commission is authorized to issue three special big game license-tags each year for each species of big game to 501(c)(3) organizations. The Commission reviews applications submitted by eligible wildlife conservation organizations and, through a public process, awards those tags to selected organizations to raise funds for wildlife. Tags are awarded to eligible wildlife conservation organizations in June and are valid from August 15 of the year in which they were purchased until August 14 the following year; a separate hunting license is not required.

The year round season allows a special big game license-tags winner the time to pursue a big game animal, many of which can only be found in the southwest and some only in Arizona: Gould's wild turkey, desert and Rocky Mountain bighorn sheep, Coues white-tailed deer, and Kaibab mule deer.

The selected organizations market and sell the special big game license-tags. These tags are typically made available to the public through auctions or raffles. Every dollar raised from each species tag goes directly to the management of that species through wildlife and habitat management in coordination with the Arizona Habitat Partnership Committee. Projects range from water improvements, wildlife friendly fencing, wildlife studies, game surveys, translocations, habitat restorations, land acquisitions and more. Many of these projects are matched and further leveraged with other funding sources, labor, or supplied materials, stretching every dollar spent even further. Administrative and marketing costs are covered by the wildlife conservation organization.

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

Overall, 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, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

However, there are concerns over the length of time it takes for the auctioning organization to provide the winning bidders license information. This causes problems because the licenses are valid from August 15 of the year the special big game license-tags was won until August 14 the following year. When the organization waits to provide the required information to the Department, the winning bidder loses hunting days. The Department proposes to amend the rule to specify the organization shall submit the winning bidder's license information to the Department within 90 days of the close of the raffle or auction.

In addition, there are concerns over events that take place after the raffle or auction is completed: when the winning bidder decides not to purchase the special big game license-tags; when the winning bidder wants to re-sell the tag to another person; and when the winning bidder is a guide who is unsuccessful in obtaining a client and wants to continue to be able to offer the tag and guided hunt for sale. In an effort to maintain the integrity of the auction and raffle and make the auction and raffle process more transparent the Department proposes to amend the rule to establish measures designed to prevent the abuse of tags sales and transfers. The Department intends to coordinate with wildlife conservation organizations who have received tags in the past in determining appropriate measures, which may include but is not limited to allowing the winning bidder to transfer the tag to a member of their family (i.e., spouse, natural child, adopted child, foster child, stepchild, natural parent, stepparent, adoptive parent, grandparent, grandchild, brother, sister, aunt, uncle, nephew or niece); prohibiting a guide or outfitter from buying a tag in the name of their business; requiring a commercial entity bidding on behalf of a private person to designate that person in advance of the auction.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4.

The Department proposes to amend the rule to reference the hunt permit-tag transfer established under R12-4-121.

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 during routine patrols. Officers may issue a warning order or a citation.

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 any written criticism of the rule received by the agency within the five years immediately preceding the five-year review report.

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 November 3, 2015. The rule was amended to establish that an organization cannot resubmit a corrected proposal but may submit a proposal again the following year because proposals are reviewed after the May 31 proposal deadline. The Commission anticipated the rulemaking would not have a significant impact on persons regulated by the rule.

9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.

The Department did not receive any analyses.

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

The report was approved by G.R.R.C. at the April 1, 2014 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 2016. The Department completed the course of

action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 21 A.A.R. 1409, July 10, 2015.
- Notice of Proposed Rulemaking: 21 A.A.R. 1001, July 10, 2015.
- Public Comment Period: July 10, 2015 through August 10, 2015.
- G.R.R.C. approved the Notice of Final Rulemaking at the November 3, 2015 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 3025, December 4, 2015.

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 procedures for the application and issuance of special big game license-tags, including the selection criteria for choosing applicants who are awarded such tags as authorized under A.R.S. § 17-346.

The public benefits from a rule that Arizona's wildlife; dollars raised through the public auction or raffle of tags goes directly to the management of that species through wildlife and habitat management in coordination with the Arizona Habitat Partnership Committee. Projects range from water improvements, wildlife friendly fencing, wildlife studies, game surveys, translocations, habitat restorations, land acquisitions and more. The Department benefits from a rule that enables the Department to further leverage other funding sources to benefit wildlife and wildlife habitat. The public and Department benefit from a rule that is understandable. 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 requires 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 R12-4-120 as follows:

- Specify the organization shall submit the winning bidder's license information to the Department within 90 days of the close of the raffle or auction.
- Reference the hunt permit-tag transfer established under R12-4-121.
- Establish measures designed to prevent the abuse of special license tags sales and transfers that occur after the auction or raffle ends, which may include but is not limited to:
 - Allowing the winning bidder to transfer the tag to a member of their family (i.e., spouse, natural child, adopted child, foster child, stepchild, natural parent, stepparent, adoptive parent, grandparent, grandchild, brother, sister, aunt, uncle, nephew or niece).
 - Prohibiting a guide or outfitter from buying a tag in the name of their business.

The Department anticipates submitting the Notice of Final Rulemaking to the Council by July 2020, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking.

R12-4-121. BIG GAME TAG TRANSFER

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(A)(8), 17-331(A), 17-332(A), and 17-346(D)

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish the requirements for an unused big game tag transfer as authorized under A.R.S. § 17-332, which allows a parent, guardian, or grandparent to transfer their unused big game tag to a minor child or grandchild; or a person to transfer their unused big game tag to a 501(c)(3) organization that provides hunting opportunities and experiences to a minor child with life-threatening medical conditions or physical disabilities or a veteran of the U.S. Armed Forces who has a service-connected disability. The rule was adopted to ensure compliance with A.R.S. § 17-332.

The Department processes approximately 700 transfers on an annual basis, this figure includes transfers to a minor child or grandchild and transfers to a 501(c)(3) organization.

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, etc. 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. Statutes and rules used in determining consistency include A.R.S. 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 during routine patrols. Officers may issue a warning order or a citation.

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 any written criticism of the rule received by the agency within the five years immediately preceding the five-year review report.

Written Comment: April 4 and August 1, 2013. There is a growing segment of people that do not have children who live in Arizona, children under the age of 18, or grandchildren old enough to hunt. I suggest the Department allow a person to transfer a tag to family member; verified through birth records and/or a signed statement. In the past, I offered a HAM season tag to a charity but was turned down due to short notice. I would enjoy taking my adult children, nieces, and nephews hunting. I really do not need to kill an animal, just getting out is reward enough. Seeing my son, daughter, nephew, or niece get buck fever would be a memory that would last two lifetimes (the rest of mine and the rest of theirs). This would expand hunting experience and opportunities and help to pass on the hunting tradition to family and friends. It would also increase revenue due to the additional license sales (for the one getting the tag). This would allow a grandfather to use his Pioneer

license to make applications and hunt with his family so he can still enjoy the thrill of the hunt. Rather than waste a tag, one could transfer it to a family member who either did not get drawn or could not afford the tag at the time of application.

Written Comment: July 30, 2014. My son, brother-in-law, and I were all drawn for an elk hunt. My brother-in-law was unable to go on the hunt because he has to undergo dialysis. My other son wanted to go on the hunt in his place, but we were told that he could not transfer the tag to another adult family member. If my son buys a license, why can't he have the tag transferred to him? My brother-in-law already paid for it. This should be allowed as long as all other legal requirements are met. **Follow-up Comment: August 13, 2014.** The tag we want to transfer would be given to my son, who has a 10% disability due to hearing loss resulting from two tours in Iraq. I would hope the Commission would be more open minded. If my other son has a hunting license, he should be allowed to hunt using the tag my brother-in-law cannot. What should matter is there is 100% legality. This is an example of why citizens get disgusted with government overregulation, instead of understanding legal people? How can this narrow-minded over regulated matter be changed?

Agency Response: The requirements for tag transfers are prescribed under A.R.S. § 17-332(D)(2), which states, "A parent, grandparent, or legal guardian may allow the parent's, grandparent's or guardian's minor child or minor grandchild to use the parent's, grandparent's or guardian's big game permit or tag to take big game pursuant to the following requirements..." . A legislative amendment is required before the Department may amend the rule to allow a person to transfer their tag to an adult child or other family member.

Written Comment: August 10, 2015. The Department should allow a tag holder to surrender a tag during or after a hunt, but in those instances, bonus points should not be restored. This would allow a person to transfer their tag to a minor during the same calendar year if the minor failed to harvest an animal with their own tag. The Department should allow an unsuccessful archery javelina hunter to obtain a remaining leftover draw permit tag. The Department should allow a youth hunter who obtained a youth deer tag, but was unable to fill it, to receive a deer tag for a later hunt and give the youth hunter another opportunity in the same calendar year.

Agency Response: Under A.R.S. § 17-332(D), "No license or permit is transferable, nor shall such license or permit be used by anyone except the person to whom such license or permit was issued, except that . . ." allow a person to transfer the person's big game permit or tag to a qualified organization for use by . . ." A legislative amendment is required before the Department may amend the rule to allow a person to transfer their tag to an adult child or other family member. In 2013, R12-4-114, was amended to allow a person to purchase hunt tags equal to the bag limit; the current bag limit for javelina is two. The Department believes providing youth with hunting opportunities is a valuable tool to recruit new hunters; however, the Department believes the youth hunters should be subject to the same regulations that are applicable to all hunters.

Written Comment: October 14, 2015. It is a very nice thing for the Department to help youth get involved in hunting, fishing, and the outdoors. One area of concern is the process of allowing parents and grandparents to pass their permits on to youth for highly sought after permits. There are people who have no intention of hunting, but have family members place them in the computer draw just to pass on their permit. With the high volume of hunt applications, this rule should be changed because it is the "right thing to do," not for additional monies due to added applications. I have witnessed many young children obtain sheep permits and other highly valued permits through this process.

Agency Response: The requirements for tag transfers are prescribed under A.R.S. § 17-332(D)(2), which states, "A parent, grandparent, or legal guardian may allow the parent's, grandparent's or guardian's minor child or minor grandchild to use the parent's, grandparent's or guardian's big game permit or tag to take big game". . . Because the statute does not limit which tags may be transferred, a legislative amendment is required before the Department may amend the rule to prohibit the transfer of transfer highly sought after permits to a minor child or minor grandchild.

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 November 3, 2015. The rule was amended to to allow a person to donate a tag to a veteran of the U.S. Armed Forces with a service connected disability; establish an application process for a qualified nonprofit organization; define "authorized nonprofit organization;" replace "Department-approved" with "Department-sanctioned;" clarify a tag may not be transferred to a person who has reached the applicable annual or lifetime bag limit for that genus; allow a person to request the reinstatement of bonus points after donating an unused, original tag to a qualified 501(c)(3) organization; and establish application requirements for a nonprofit organization. The Commission anticipated a nonprofit organization that provides outdoor experiences to children with life-threatening medical conditions or with permanent physical disabilities or to veterans with service-connected disabilities and a person who donates an unused big game tag will benefit from a fair and equitable application process that authorizes a nonprofit organization to accept donated tags. The Commission anticipated persons who donate their tag to a nonprofit organization and claim their donation as a deduction for tax purposes will benefit from the rulemaking. The Department would benefit from a rulemaking that aligned the rule with recent legislative changes. The Commission anticipated persons who donate an unused big game tag to a 501(c)(3) organization that provides hunting opportunities and experiences to minors with life-threatening medical conditions or permanent physical disabilities or a veteran of the U.S. Armed Forces with a service connected disability would benefit from the amendment that allows a person who

donates a tag to be able to have the bonus points expended for that tag restored. The Commission anticipated persons regulated by the rule would benefit from the amendment that establishes an application process for a qualified nonprofit organization.

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 report was approved by G.R.R.C. at the April 1, 2014 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 2016. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 21 A.A.R. 1409, July 10, 2015.
- Notice of Proposed Rulemaking: 21 A.A.R. 1001, July 10, 2015.
- Public Comment Period: July 10, 2015 through August 10, 2015.
- G.R.R.C. approved the Notice of Final Rulemaking at the November 3, 2015 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 3025, December 4, 2015.

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 for an unused big game tag transfer as authorized under A.R.S. § 17-332, which allows a parent, guardian, or grandparent to transfer their unused hunt permit-tag to a minor child or grandchild; or a person to transfer their unused big game tag to a 501(c)(3) organization that provides hunting opportunities and experiences to a minor child with life-threatening medical conditions or physical disabilities or a veteran of the U.S. Armed Forces who has a service-connected disability. Eligible nonprofit organizations benefit from a fair and equitable application process. Persons who donate their tag to an eligible nonprofit organization benefit from the rulemaking by being able to claim their donation as a tax deduction and the ability to have the bonus points expended for that tag restored. A person who chooses to transfer their tag to their minor child or grandchild benefit from the ability to transfer a tag they cannot or do not want to use to their family member. A person who receives a tag through the tag transfer program benefits from the additional

opportunity to hunt. The Department and public benefit from a rule that is understandable. In the last rulemaking for this rule, the Department established an application process to implement recent legislative amendments resulting from Laws 2014, 2nd Regular Session, Ch. 55, Section 1; which allowed the Commission to establish an application process for a qualified nonprofit organization. The rule was amended to establish an annual application process. The Department has determined an annual process to ensure a nonprofit organization meets the qualifications prescribed under A.R.S. § 17-332(D)(1)(b)(ii) is unnecessary because a review of applications indicate the information provided on consecutive applications and the documentation presented with the applications has not changed from year to year. The Department proposes to amend the rule to establish that once it is determined the nonprofit meets the statutory qualifications, the authorization to receive donated unused tags will remain in effect until revoked by the Department. 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 requires 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 R12-4-121 to establish that once it is determined the nonprofit meets the statutory qualifications, the authorization to receive donated unused tags will remain in effect until revoked by the Department.

The Department anticipates submitting the Notice of Final Rulemaking to the Council by July 2020, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking.

**R12-4-122. HANDLING, TRANSPORTING, PROCESSING AND STORING OF GAME MEAT
GIVEN TO PUBLIC INSTITUTIONS AND CHARITABLE ORGANIZATIONS**

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-211(E)(4), 17-233, 17-239(D), and 17-240(A)

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish requirements for game meat that can or cannot be donated to a public institution or charitable organization, to include who is authorized to determine when game meat is safe and appropriate for donation. The rule was adopted to provide a mechanism that prevents game meat from going to waste by allowing the Department to donate game meat to public institutions and charitable organizations, which includes but is not limited to soup kitchens and prisons.

Instead of discarding or wasting game meat harvested, the Department donation program was developed with the purpose of distributing surplus meat to put healthy meals onto the tables of those in need, which help to maintain the historical role of hunters as food providers and ensure game meat is not wasted.

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, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

The Department proposes to amend the rule to allow the donation of bear and mountain lion meat to public institutions and charitable organizations in compliance with A.R.S. § 17-240 and to ensure edible game meat is not wasted.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and 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 during routine patrols. Officers may issue a warning order or a citation.

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 any written criticism of the rule received by the agency within the five years immediately preceding the five-year review report.

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.

Not applicable, the rule was last amended in March 2006 and has undergone the review required under A.R.S. § 41-1056 since then.

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, no action was proposed for this 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 the requirements for game meat that can or cannot be donated to a public institution or charitable organization, to include who is authorized to determine when game meat is safe and appropriate for donation. The public benefits from a rule that provides a mechanism that allows the donation of game meat to public institutions and charitable organizations. The Department and public benefit from a rule that prevents the wasting of game meat harvested through depredation permits and surplus harvests. The Department and public benefit from a rule that enables the distribution of surplus game meat to put healthy meals onto the tables of those in need. Hunters benefit from a rule that help to maintain the historical role of hunters as food providers and ensure game meat is not wasted. The public and Department benefit from a rule that is understandable. 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 requires 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 R12-4-122 to allow the donation of bear and mountain lion meat to public institutions and charitable organizations in compliance with A.R.S. § 17-240 and to ensure edible game meat is not wasted.

R12-4-123. EXPENDITURE OF FUNDS

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-231(A)(6) and 17-231(A)(8)

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish the Director's authority to expend funds from specific sources within prescribed guidelines, and to require that the Director ensure that Department infrastructure complies with those guidelines. The rule was adopted to formalize the processes used by the Commission for the expenditure of funds arising from appropriations, licenses, gifts, and other sources in a manner that is consistent with the goals and objectives 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 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, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

- 4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and 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 during routine patrols. Officers may issue a warning order or a citation.

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 any written criticism of the rule received by the agency within the five years immediately preceding the five-year review report.

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.

Not applicable, the rule was last amended in March 2006 and has undergone the review required under A.R.S. § 41-1056 since then.

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, no action was proposed for this 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 objective of the rule is to establish the Director's authority to expend funds from specific sources within prescribed guidelines, and to require that the Director ensure that Department infrastructure complies with those guidelines. The Department and the public benefit from a rule that formalizes the processes used by the

Commission for the expenditure of funds arising from appropriations, licenses, gifts, and other sources in a manner that is consistent with the goals and objectives of the Commission. The public and Department benefit from a rule that is understandable. 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 requires 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.

R12-4-124. Proof of Domicile

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. § 17-101

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish the documents a person may be used to provide acceptable "proof of domicile." In law, "domicile" is the status or attribution of being a lawful permanent resident in a particular jurisdiction. In creating this list, the Department reviewed lists of documents considered to prove residency for the purposes of registering a motor vehicle, attending state college, and applying for a hunting or fishing license in other states. The rule was adopted to comply with statute.

According to the Department's records, since 1999 - 335 citations were issued for license fraud, which resulted in a minimum of \$36,000 in lost revenue for license purchases. This amount does not include the amount of revenue lost for the big game tags that were purchased fraudulently. The dollar amount for the lost revenue pales in comparison to the amount of resources spent investigating these violations due to the labor-intensive process needed to follow the paper trail.

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

Overall, 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, etc. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

The Department is aware of instances where a person has attempted to use outdated documents to prove residency. For example, because the rule does not specify the document needs to be current and contain a valid address, an expired driver license with an old address may be used as proof of domicile. This makes residency requirements more difficult to enforce. The Department proposes to amend the rule to require a person to present a valid document that contains a current address.

In addition, there are times where more than one document is needed to fully establish a person's domicile. The Department proposes to amend the rule to clarify that more than one document may be required to fully establish the persons domicile.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and 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.

Overall, 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 during routine patrols. Officers may issue a warning order or a citation.

When a person is cited by a member of law enforcement, the officer writes down the address given by the person. There is no follow-up action taken to ensure the address is valid and this address may continue to be used throughout the court process. For this reason, the Department proposes to remove a certified copy of a court order from the list of acceptable proof of domicile.

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.

While there are persons who seek to take advantage of the system by claiming residency in Arizona in order to purchase a resident license instead of the nonresident license (offered at a higher cost), there are more persons who are simply confused as to what constitutes residency. For purposes of jurisdiction, “domicile” means a legal residence which is the place where a person has fixed dwelling with an intention of making it their permanent home. As the term domicile includes residence, the scope and significance of the term domicile is larger than the term residence. Generally residence is referred to as a place where a person lives; it is also a building that is used as home. Residence is of a more temporary nature compared to domicile; a person’s present physical location of stay. It can even be one among several places where a person may be present (such as a person who owns a home in two states). A person may have several residences, but only one domicile.

There is also some confusion between a military service member's "home of record" and "state of legal residence." The military considers the military service member's home of residence to be the place from which they entered the military; it is not necessarily their domicile. For example, a person was born in Maryland and lived there until then went to college in Florida; then they entered the military in Florida. Florida is that person's home of record. Military spouses do not have a home of record. The military considers the person's state of legal residence to be the place where the service member thinks of as home; the state where military service member's intends to make their permanent home after leaving the military.

For these reasons, the Department proposes to amend the rule to define "current address" and clarify rule language to make the rule more concise.

7. Summary of any written criticism of the rule received by the agency within the five years immediately preceding the five-year review report.

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 rulemaking filed with the Secretary of State's office and published in the *Arizona Administrative Register* on December 4, 2015. The rule was adopted to establish acceptable proof of residency. The Commission anticipated the rulemaking would benefit persons who are unsure of their domicile.

- 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 January 2, 2016.

- 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 documents a person may use to provide acceptable "proof of domicile." In creating this list, the Department reviewed lists of documents considered to prove residency for the purposes of registering a motor vehicle, attending state college, and applying for a hunting or fishing license in other states.

The public benefits from a rule that helps increase understanding as to how the Department determines a person's true domicile for the purposes of establishing residency. The Department benefits from a rule that clearly indicates acceptable proof of domicile. The public and Department benefit from a rule that is understandable. 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 requires 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 R12-4-124 as follows:

- Define current address to make the rule more concise.
- Clarify rule language to make the rule more concise.
- Require a person to present a valid document that contains a current address.
- Remove a certified copy of a court order from the list of acceptable proof of domicile. Clarify that more than one document may be required to fully establish the persons domicile.

The Department anticipates submitting the Notice of Final Rulemaking to the Council by July 2020, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking.

R12-4-125. PUBLIC SOLICITATION OR EVENT ON DEPARTMENT PROPERTY

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-231(A)(1), 17-231(B)(13), 17-231(B)(14), and 41-2752

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish the requirements and procedures the public shall use to request permission to conduct a solicitation or event on Department property, and to provide guidance to the Department for the review and management of public solicitations and events on Department property. The Department has received requests from organized groups for the use of Department facilities for the benefit of

private interests or for solicitation purposes. The rule was adopted to ensure all solicitations and events are subject to the same regulatory measures that are intended to protect Commission-owned and/or -managed property.

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, etc. Responses indicate the rule is understandable and applicable. No external public comments or complaints regarding the rule have been received. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and 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 during routine patrols. Officers may issue a warning order or a citation.

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 any written criticism of the rule received by the agency within the five years immediately preceding the five-year review report.

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 November 3, 2015. The rule was amended to renumber R12-4-804 to R12-4-125; allow mid-level managers to approve minor, incidental solicitations on Department properties; replaces the term "applicant" with "sponsor;" allow the consumption of alcohol at a solicitation or event and require a person who intends to serve alcohol to provide the Department with a copy of a current and valid license issued by the Arizona Department of Liquor Licenses and Control to the sponsor and vendor, as applicable, and a liquor liability rider, included with the insurance certificate; require an applicant to provide proof of insurance no less than ten business days before the solicitation or event; remove the ability for the Department to waive a requirement due to an applicant's inability to pay a deposit, an insurance premium, or a service provider; establish the Department shall deny an application when the sponsor is unable to demonstrate adequate compliance with local, state, or federal ordinances, codes, or regulations; remove "rights of appeal" language; require a vendor who is working under a sponsor to provide certificates of insurance to the Department, when applicable; and establish a sponsor shall not allow the unlawful possession or use of drugs at the solicitation or event site. The Commission anticipated the rulemaking would benefit persons regulated by the rule and the Department would benefit from the rulemaking because it allowed mid-level managers to approve minor, incidental solicitations on Department properties result in a more efficient approval process. Most of the amendments made in the last rulemaking were intended to better protect the Commission's, Department's, and states assets. The Commission anticipated the rulemaking could impact small businesses looking to conduct a solicitation or special event on state property in cases where a special event had to be cancelled due to small business's inability to pay costs for deposits, insurance coverage, medical support, security, and sanitary services. However, the Commission anticipated these requirements would not result in an increased burden on the small businesses because the amendments implemented standard requirements applicable to most facility rentals.

- 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 Article 8 report was approved by G.R.R.C. at the May 5, 2015 Council Meeting, which stated the

Department anticipated submitting the final rules to the Council by April 2016. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 21 A.A.R. 1409, July 10, 2015.
- Notice of Proposed Rulemaking: 21 A.A.R. 1001, July 10, 2015.
- Public Comment Period: July 10, 2015 through August 10, 2015.
- G.R.R.C. approved the Notice of Final Rulemaking at the November 3, 2015 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 3025, December 4, 2015.

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 and procedures the public must follow in order to request permission to conduct a solicitation or event on Department property, and to provide guidance to the Department for the review and management of public solicitations and events on Department property. The Department has received requests from organized groups for the use of Department facilities for the benefit of private interests or for solicitation purposes. All Department property is designated as non-public and is closed to solicitations and events unless opened by the Director. However, the Department recognizes Department properties provide a benefit to the general public by providing quality space for solicitation and event purposes, which can draw visitors into local communities and businesses. The rule provides balance to protect and ensure public access to and use of these properties, while also affording protection to the properties, the public, and the Department. The public benefits from a rule that affords them the opportunity to hold a solicitation or event on Commission-owned and/or -managed property. The public benefits from a rule that protects and ensures public access to and use of Commission-owned and/or -managed property. The Department benefits from a rule that ensures all solicitations and events are subject to the same regulatory measures intended to protect Commission-owned and/or -managed property. The public and Department benefit from a rule that is understandable. 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 requires 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.

Game and Fish Commission

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS**R12-4-101. Definitions**

A. In addition to the definitions provided under A.R.S. § 17-101, R12-4-301, R12-4-401, and R12-4-501, the following definitions apply to this Chapter, unless otherwise specified:

“Bobcat seal” means the tag a person is required to attach to the raw pelt or unskinned carcass of any bobcat taken by trapping in Arizona or exported out of Arizona regardless of the method of take.

“Bonus point” means a credit that authorizes the Department to issue an applicant an additional computer-generated random number.

“Certificate of insurance” means an official document issued by the sponsor’s and sponsor’s vendors or subcontractors insurance carrier providing insurance against claims for injury to persons or damage to property which may arise from or in connection with the solicitation or event as determined by the Department.

“Commission Order” means a document adopted by the Commission that does one or more of the following:

- Open, close, or alter seasons,
- Open areas for taking wildlife,
- Set bag or possession limits for wildlife,
- Set the number of permits available for limited hunts, or
- Specify wildlife that may or may not be taken.

“Day-long” means the 24-hour period from one midnight to the following midnight.

“Department property” means those buildings or real property and wildlife areas under the jurisdiction of the Arizona Game and Fish Commission.

“Firearm” means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun, or other weapon that will discharge, is designed to discharge, or may readily be converted to discharge a projectile by the action of an explosion caused by the burning of smokeless powder, black powder, or black powder substitute.

“Hunt area” means a management unit, portion of a management unit, or group of management units, or any portion of Arizona described in a Commission Order and not included in a management unit, opened to hunting.

“Hunt number” means the number assigned by Commission Order to any hunt area where a limited number of hunt permits are available.

“Hunt permits” means the number of hunt permit-tags made available to the public as a result of a Commission Order.

“Hunt permit-tag” means a tag for a hunt for which a Commission Order has assigned a hunt number.

“Identification number” means the number assigned to each applicant or license holder by the Department, as established under R12-4-111.

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

“Live baitfish” means any species of live freshwater fish designated by Commission Order as lawful for use in taking aquatic wildlife under R12-4-317.

“Management unit” means an area established by the Commission for management purposes.

“Nonpermit-tag” means a tag for a hunt for which a Commission Order does not assign a hunt number and the number of tags is not limited.

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

“Proof of purchase,” for the purposes of A.R.S. § 17-331, means an original, or any authentic and verifiable form of the original, of any Department-issued license, permit, or stamp that establishes proof of actual purchase.

“Restricted nonpermit-tag” means a tag issued for a supplemental hunt as established under R12-4-115.

“Solicitation” means any activity that may be considered or interpreted as promoting, selling, or transferring products, services, memberships, or causes, or participation in an event or activity of any kind, including organizational, educational, public affairs, or protest activities, including the distribution or posting of advertising, handbills, leaflets, circulars, posters, or other printed materials for these purposes.

“Solicitation material” means advertising, circulars, flyers, handbills, leaflets, posters, or other printed information.

“Sponsor” means the person or persons conducting a solicitation or event.

“Stamp” means a form of authorization in addition to a license that authorizes the license holder to take wildlife specified by the stamp.

“Tag” means the Department authorization a person is required to obtain before taking certain wildlife as established under A.R.S. Title 17 and 12 A.A.C. 4.

“Waterdog” means the larval or metamorphosing stage of a salamander.

“Wildlife area” means an area established under 12 A.A.C. 4, Article 8.

B. If the following terms are used in a Commission Order, the following definitions apply:

“Antlered” means having an antler fully erupted through the skin and capable of being shed.

“Antlerless” means not having an antler, antlers, or any part of an antler erupted through the skin.

“Bearded turkey” means a turkey with a beard that extends beyond the contour feathers of the breast.

“Buck antelope” means a male pronghorn antelope.

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

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

“Bull elk” means an antlered elk.

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

“Ram” means any male bighorn sheep.

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“Rooster” means a male pheasant.

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

Historical Note

Amended effective May 3, 1976 (Supp. 76-3). Amended effective October 22, 1976 (Supp. 76-5). Amended effective June 29, 1978 (Supp. 78-3). Amended effective April 22, 1980 (Supp. 80-2). Former Section R12-4-01 renumbered as Section R12-4-101 without change effective August 13, 1981 (Supp. 81-4). Amended effective April 22, 1982 (Supp. 82-2). Amended subsection (A), paragraph (10) effective April 7, 1983 (Supp. 83-2). Amended effective June 4, 1987 (Supp. 87-2). Amended subsection (A) effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read “Amended subsection (A) effective January 1, 1989, filed December 30, 1988” (Supp. 89-2). Amended effective May 27, 1992 (Supp. 92-2). Amended effective January 1, 1993; filed December 18, 1992 (Supp. 92-4). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended by final rulemaking at 6 A.A.R. 211, effective January 1, 2000 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 610, effective April 6, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 845, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 11 A.A.R. 991, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 19 A.A.R. 826, effective July 1, 2013 (Supp. 13-2). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

R12-4-102. License, Permit, Stamp, and Tag Fees

- A. A person who purchases a license, tag, stamp, or permit listed in this Section shall pay at the time of purchase all applicable fees prescribed under this Section or the fees the Director authorizes under R12-4-115.
- B. A person who applies to purchase a hunt permit-tag shall submit with the application all applicable fees using acceptable forms of payment as required under R12-4-104(F) and (G).
- C. As authorized under A.R.S. § 17-345, the license fees in this section include a \$3 surcharge, except Youth and High Achievement Scout licenses.

Hunting and Fishing License Fees	Resident	Nonresident
General Fishing License	\$37	\$55
Community Fishing License	\$24	\$24
General Hunting License	\$37	Not available
Combination Hunting and Fishing License	\$57	\$160
Youth Combination Hunting and Fishing License, fee applies until the applicant’s 18th birthday.	\$5	\$5
High Achievement Scout License, as authorized under A.R.S. § 17-336(B). Fee applies until the applicant’s 21st birthday.	\$5	Not available
Short-term Combination Hunting and Fishing License	\$15	\$20

Youth Group Two-day Fishing License	\$25	Not available
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Hunt Permit-tag Fees	Resident	Nonresident
Antelope	\$90	\$550
Bear	\$25	\$150
Bighorn Sheep	\$300	\$1,800
Buffalo		
Adult Bulls or Any Buffalo	\$1,100	\$5,400
Adult Cows	\$650	\$3,250
Yearling	\$350	\$1,750
Cow or Yearling	\$650	\$3,250
Deer and Archery Deer	\$45	\$300
Youth	\$25	\$25
Elk	\$135	\$650
Youth	\$50	\$50
Javelina	\$25	\$100
Youth	\$15	\$15
Pheasant non-archery, non-falconry	Application fee only	Application fee only
Turkey and Archery Turkey	\$25	\$90
Youth	\$10	\$10
Sandhill Crane	\$10	\$10

Nonpermit-tag and Restricted Non-permit-tag Fees	Resident	Nonresident
Antelope	\$90	\$550
Bear	\$25	\$150
Buffalo		
Adult Bulls or Any Buffalo	\$1,100	\$5,400
Adult Cows	\$650	\$3,250
Yearling	\$350	\$1,750
Cow or Yearling	\$650	\$3,250
Deer	\$45	\$300
Youth	\$25	\$25
Elk	\$135	\$650
Youth	\$50	\$50
Javelina	\$25	\$100
Youth	\$15	\$15
Mountain Lion	\$15	\$75
Turkey	\$25	\$90
Youth	\$10	\$10
Sandhill Crane	\$10	\$10

Stamps and Special Use Fees	Resident	Nonresident
Arizona Colorado River Special Use Permit Stamp. For use by California and Nevada licensees	Not available	\$3
Bobcat Seal	\$3	\$3
State Migratory Bird Stamp	\$5	\$5

Other License Fees	Resident	Nonresident
Fur Dealer’s License	\$115	\$115
Guide License	\$300	\$300

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License Dealer's License	\$100	\$100
License Dealer's Outlet License	\$25	\$25
Taxidermist License	\$150	\$150
Trapping License	\$30	\$275
Youth	\$10	\$10
Administrative Fees		
Duplicate License Fee	\$4	\$4
Application Fee	\$13	\$15

- D. A person desiring a replacement of a Migratory Bird or Arizona Colorado River Special Use Permit Stamp shall repurchase the stamp.

Historical Note

Amended effective May 3, 1976 (Supp. 76-3). Amended effective March 31, 1977 (Supp. 77-2). Amended effective June 28, 1977 (Supp. 77-3). Amended effective October 20, 1977 (Supp. 77-5). Amended effective January 1, 1979 (Supp. 78-6). Amended effective June 4, 1979 (Supp. 79-3). Amended effective January 1, 1980 (Supp. 79-6). Amended paragraphs (1), (7) through (11), (13), (15), (29), (30), and (32) effective January 1, 1981 (Supp. 80-5). Former Section R12-4-30 renumbered as Section R12-4-102 without change effective August 13, 1981. Amended effective August 31, 1981 (Supp. 81-4). Amended effective September 15, 1982 unless otherwise noted in subsection (D) (Supp. 82-5). Amended effective January 1, 1984 (Supp. 83-4). Amended subsections (A) and (C) effective January 1, 1985 (Supp. 84-5). Amended effective January 1, 1986 (Supp. 85-5). Amended subsection (A), paragraphs (1), (2), (8) and (9) effective January 1, 1987; Amended by adding a new subsection (A), paragraph (31) and renumbering accordingly effective July 1, 1987. Both amendments filed November 5, 1986 (Supp. 86-6). Amended subsections (A) and (C) effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Amended subsections (A) and (C) filed December 30, 1988, effective January 1, 1989"; Amended subsection (C) effective April 28, 1989 (Supp. 89-2). Section R12-4-102 repealed, new Section R12-4-102 filed as adopted November 26, 1990, effective January 1, 1991 (Supp. 90-4). Amended effective September 1, 1992; filed August 7, 1992 (Supp. 92-3). Amended effective January 1, 1993; filed December 18, 1993 (Supp. 92-4). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended effective December 16, 1995 (Supp. 94-4). Amended effective January 1, 1997; filed in the Office of the Secretary of State November 14, 1995 (Supp. 95-4). Amended subsection (D), paragraph (4), and subsection (E), paragraph (10), effective October 1, 1996; filed in the Office of the Secretary of State July 12, 1996 (Supp. 96-3). Amended subsection (B), paragraph (6) and subsection (E) paragraph (4), effective January 1, 1997; filed with the Office of the Secretary of State November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 6 A.A.R. 211, effective January 1, 2000 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 1146, effective July 1, 2000 or January 1, 2001, as designated within the text of the Section (Supp. 00-1). Amended by final rulemaking at 9 A.A.R. 610, effective April 6, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 1157, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 10 A.A.R. 2823, effective

August 13, 2004 (Supp. 04-2). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 12 A.A.R. 1391, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking at 13 A.A.R. 462, effective February 6, 2007 (Supp. 07-1). Amended by final rulemaking at 17 A.A.R. 1472, effective July 12, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

R12-4-103. Duplicate Tags and Licenses

- A. Under A.R.S. § 17-332(C), the Department and its license dealers may issue a duplicate license or tag to an applicant who:
1. Pays the applicable fee prescribed under R12-4-102, and
 2. Signs an affidavit. The affidavit is furnished by the Department and is available at any Department office or license dealer.
- B. The applicant shall provide the following information on the affidavit:
1. The applicant's personal information:
 - a. Name;
 - b. Department identification number, when applicable;
 - c. Residency status and number of years of residency immediately preceding application, when applicable;
 2. The original license or tag information:
 - a. Type of license or tag;
 - b. Place of purchase;
 - c. Purchase date, when available; and
 3. Disposition of the original tag for which a duplicate is being purchased:
 - a. The tag was not used and is lost, destroyed, mutilated, or otherwise unusable; or
 - b. The tag was placed on a harvested animal that was subsequently condemned and the carcass and all parts of the animal were surrendered to a Department employee as required under R12-4-112(B) and (C). An applicant applying for a duplicate tag under this subsection shall also submit the condemned meat duplicate tag authorization form issued by the Department.
- C. In the event the Department is unable to verify the expiration date of the original license, the duplicate license shall expire on December 31 of the current year.

Historical Note

Amended effective June 7, 1976 (Supp. 76-3). Amended effective October 20, 1977 (Supp. 77-5). Former Section R12-4-07 renumbered as Section R12-4-103 without change effective August 13, 1981 (Supp. 81-4). Amended effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

R12-4-104. Application Procedures for Issuance of Hunt Permit-tags by Computer Draw and Purchase of Bonus Points

- A. For the purposes of this Section, "group" means all applicants who placed their names on a single application as part of the same application.
- B. A person is eligible to apply:
1. For a hunt permit-tag if the person:
 - a. Is at least 10 years of age at the start of the hunt for which the person is applying;
 - b. Has successfully completed a Department-sanctioned hunter education course by the start date of

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- the hunt for which the person is applying, when the person is under the age of 14;
- c. Has not reached the bag limit established under subsection (J) for that genus; and
 - d. Is not suspended or revoked in this state as a result of an action under A.R.S. §§ 17-340 or 17-502 at the time the person submits an application.
2. For a bonus point if the person:
 - a. Is at least 10 years of age by the application deadline; and
 - b. Is not suspended or revoked in this state as a result of an action under A.R.S. §§ 17-340 or 17-502 at the time the person submits an application.
- C.** An applicant shall apply at the times, locations, and in the manner and method established by the hunt permit-tag application schedule published by the Department and available at any Department office, online at www.azgfd.gov, or a license dealer.
1. The Commission shall set application deadline dates for hunt permit-tag computer draw applications through the hunt permit-tag application schedule.
 2. The Director has the authority to extend any application deadline date if a problem occurs that prevents the public from submitting a hunt permit-tag application within the deadlines set by the Commission.
 3. The Commission, through the hunt permit-tag application schedule, shall designate the manner and method of submitting an application, which may require an applicant to apply online only. If the Commission requires applicant's to use the online method, the Department shall accept paper applications only in the event of a Department systems failure.
- D.** An applicant for a hunt permit-tag or a bonus point shall complete and submit a Hunt Permit-tag Application. The application form is available from any Department office, a license dealer, or online at www.azgfd.gov.
- E.** An applicant shall provide the following information on the Hunt Permit-tag Application:
1. The applicant's personal information:
 - a. Name;
 - b. Date of birth;
 - c. Social security number, as required under A.R.S. §§ 25-320(P) and 25-502(K);
 - d. Department identification number, when applicable;
 - e. Residency status and number of years of residency immediately preceding application, when applicable;
 - f. Mailing address, when applicable;
 - g. Physical address;
 - h. Telephone number, when available; and
 - i. E-mail address, when available;
 2. If the applicant possesses a valid license authorizing the take of wildlife in this state, the number of the applicant's license;
 3. If the applicant does not possess a valid license at the time of the application, the applicant shall purchase a license as established under subsection (L). The applicant shall provide all of the following information on the license application portion of the Hunt Permit-tag Application:
 - a. Physical description, to include the applicant's eye color, hair color, height, and weight;
 - b. Residency status and number of years of residency immediately preceding application, when applicable;
 - c. Type of license for which the person is applying; and
 4. Certify the information provided on the application is true and accurate;
 5. An applicant who is:
 - a. Under the age of 10 and is submitting an application for a hunt other than big game is not required to have a license under this Chapter. The applicant shall indicate "youth" in the space provided for the license number on the Hunt Permit-tag Application.
 - b. Age nine or older and is submitting an application for a big game hunt is required to purchase an appropriate license as required under this Section. The applicant shall either enter the appropriate license number in the space provided for the license number on the Hunt Permit-tag Application or purchase a license at the time of application, as applicable.
- F.** In addition to the information required under subsection (E), an applicant shall also submit all applicable fees established under R12-4-102, as follows:
1. When applying electronically:
 - a. The permit application fee; and
 - b. The license fee, when the applicant does not possess a valid license at the time of application. The applicant shall submit payment in U.S. currency using valid credit or debit card.
 - c. If an applicant is successful in the computer draw, the Department shall charge the hunt permit-tag fee using the credit or debit card furnished by the applicant.
 2. When applying manually:
 - a. The fee for the applicable hunt permit-tag;
 - b. The permit application fee; and
 - c. The license fee if the applicant does not possess a valid license at the time of application. The applicant shall submit payment by certified check, cashier's check, or money order made payable in U.S. currency to the Arizona Game and Fish Department.
- G.** An applicant shall apply for a specific hunt or a bonus point by the current hunt number. If all hunts selected by the applicant are filled at the time the application is processed in the computer draw, the Department shall deem the application unsuccessful, unless the application is for a bonus point.
1. An applicant shall make all hunt choices for the same genus within one application.
 2. An applicant shall not include applications for different genera of wildlife in the same envelope.
- H.** An applicant shall submit only one valid application per genus of wildlife for any calendar year, except:
1. If the bag limit is one per calendar year, an unsuccessful applicant may re-apply for remaining hunt permit-tags in unfilled hunt areas, as specified in the hunt permit-tag application schedule.
 2. For genera that have multiple draws within a single calendar year, a person who successfully draws a hunt permit-tag during an earlier season may apply for a later season for the same genus if the person has not taken the bag limit for that genus during a preceding hunt in the same calendar year.
 3. If the bag limit is more than one per calendar year, a person may apply for remaining hunt permit-tags in unfilled hunt areas as specified in the hunt permit-tag application schedule.
- I.** All members of a group shall apply for the same hunt numbers and in the same order of preference.
1. No more than four persons may apply as a group.

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2. The Department shall not issue a hunt permit-tag to any group member unless sufficient hunt permit-tags are available for all group members.
- J.** A person shall not apply for a hunt permit-tag for:
1. Rocky Mountain or desert bighorn sheep if the person has met the lifetime bag limit for that sub-species.
 2. Buffalo if the person has met the lifetime bag limit for that species.
 3. Any species when the person has reached the bag limit for that species during the same calendar year for which the hunt permit-tag applies.
- K.** To participate in:
1. The computer draw system, an applicant shall possess an appropriate hunting license that shall be valid, either:
 - i. On the last day of the application deadline for that computer draw, as established by the hunt permit-tag application schedule published by the Department, or
 - ii. On the last day of an extended deadline date, as authorized under subsection (C)(2).
 - iii. If an applicant does not possess an appropriate hunting license that meets the requirements of this subsection, the applicant shall purchase the license at the time of application.
 2. The bonus point system, an applicant shall comply with the requirements established under R12-4-107.
- L.** The Department shall reject as invalid a Hunt Permit-Tag Application not prepared or submitted in accordance with this Section or not prepared in a legible manner.
- M.** Any hunt permit-tag issued for an application that is subsequently found not to be in accordance with this Section is invalid.
- N.** The Department or its authorized agent shall mail hunt permit-tags to successful applicants. The Department shall return application overpayments to the applicant designated "A" on the Hunt Permit-tag Application. The Department shall not refund:
1. A permit application fee.
 2. A license fee submitted with a valid application for a hunt permit-tag or bonus point.
 3. An overpayment of five dollars or less. The Department shall consider the overpayment to be a donation to the Arizona Game and Fish Fund.
- O.** The Department shall award a bonus point for the appropriate species to an applicant when the payment submitted is less than the required fees, but is sufficient to cover the application fee and, when applicable, license fee.
- P.** When the Department determines a Department error, as defined under subsection (3), caused the rejection or denial of a valid application:
1. The Director may authorize either:
 - a. The issuance of an additional hunt permit-tag, provided the issuance of an additional hunt permit-tag will have no significant impact on the wildlife population to be hunted and the application for the hunt permit-tag would have otherwise been successful based on its random number, or
 - b. The awarding of a bonus point when a hunt permit-tag is not issued.
 2. A person who is denied a hunt permit-tag or a bonus point under this subsection may appeal to the Commission as provided under A.R.S. Title 41, Chapter 6, Article 10.
 3. For the purposes of this subsection, "Department error" means an internal processing error that:
 - a. Prevented a person from lawfully submitting an application for a hunt permit-tag,
 - b. Caused a person to submit an invalid application for a hunt permit-tag,
 - c. Caused the rejection of an application for a hunt permit-tag,
 - d. Failed to apply an applicant's bonus points to a valid application for a hunt permit-tag, or
 - e. Caused the denial of a hunt permit-tag.

Historical Note

Amended effective May 3, 1976 (Supp. 76-3). Amended effective June 28, 1977 (Supp. 77-3). Amended effective July 24, 1978 (Supp. 78-4). Former Section R12-4-06 renumbered as Section R12-4-104 without change effective August 13, 1981. Amended subsections (N), (O), and (P) effective August 31, 1981 (Supp. 81-4). Former Section R12-4-104 repealed, new Section R12-4-104 adopted effective May 12, 1982 (Supp. 82-3). Amended subsection (D) as an emergency effective December 27, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-6). Emergency expired. Amended effective June 20, 1983 (Supp. 83-3). Amended subsection (F)(3) effective September 12, 1984. Amended subsection (F)(9) and added subsections (F)(10) and (G)(3) effective October 31, 1984 (Supp. 84-5). Amended effective May 5, 1986 (Supp. 86-3). Amended effective June 4, 1987 (Supp. 87-2). Section R12-4-104 repealed, new Section R12-4-104 adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended by final rulemaking at 6 A.A.R. 211, effective January 1, 2000 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 610, effective April 6, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 845, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 11 A.A.R. 991, effective April 2, 2005; amended by final rulemaking at 11 A.A.R. 1177, effective May 2, 2005 (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

R12-4-105. License Dealer's License

- A.** For the purposes of this Section, unless the context otherwise requires:

"Dealer number" means the unique number assigned by the Department to a dealer outlet.

"Dealer outlet" means a specified location authorized to sell licenses under a license dealer's license.

"License" means any hunting or fishing license, permit, stamp, or tag that may be sold by a dealer or dealer outlet under this Section.

"License dealer" means a business licensed by the Department to sell licenses from one or more dealer outlets.

"License Dealer Portal" means the secure website provided by the Department for issuing licenses and permits and accessing a license dealer's account.

- B.** A person is eligible to apply for a license dealer's license, provided all of the following criteria are met:
1. The person's privilege to sell licenses for the Department has not been revoked or canceled under A.R.S. §§ 17-

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- 334, 17-338, or 17-339 within the two calendar years immediately preceding the date of application;
2. The person's credit record or assets assure the Department that the value of the licenses shall be adequately protected;
 3. The person agrees to assume financial responsibility for licenses provided by the Department at the maximum value established under R12-4-102, less the dealer commission prescribed under A.R.S. § 17-338(B).
- C.** A person shall apply for a license dealer's license by submitting an application to any Department office. The application is furnished by the Department and is available at any Department office. A license dealer license applicant shall provide all of the following information on the application:
1. The principal business or corporation information:
 - a. Name,
 - b. Physical address, and
 - c. Telephone number;
 - d. If not a corporation, the applicant shall provide the information required under subsections (a), (b), and (c) for each owner;
 2. The contact information for the person responsible for ensuring compliance with this Section:
 - a. Name,
 - b. Business address, and
 - c. Business telephone number;
 3. Whether the applicant has previously sold licenses under A.R.S. § 17-334;
 4. Whether the applicant is seeking renewal of an existing license dealer's license;
 5. Credit references and a statement of assets and liabilities; and
 6. Dealer outlet information:
 - a. Name,
 - b. Physical address,
 - c. Telephone number, and
 - d. Name of the person responsible for ensuring compliance with this Section at each dealer outlet.
- D.** A license dealer may request to add dealer outlets to the license dealer's license, at any time during the license year, by submitting the application form containing the information required under subsection (C) to the Department.
- E.** An applicant who is denied a license dealer's license under this Section may appeal to the Commission as provided under A.R.S. Title 41, Chapter 6, Article 10.
- F.** The Department shall:
1. Provide to the license dealer all licenses that the license dealer will make available to the public for sale,
 2. Authorize the license dealer to use the dealer's own license stock, or
 3. Authorize the license dealer to issue licenses and permits online via the Department's License Dealer Portal.
- G.** Upon receipt of licenses provided by the Department, the license dealer shall verify the licenses received are the licenses identified on the shipment inventory provided by the Department with the shipment.
1. Within five working days from receipt of shipment, the person performing the verification shall:
 - a. Clearly designate any discrepancies on the shipment inventory,
 - b. Sign and date the shipping inventory, and
 - c. Return the signed shipping inventory to the Department.
 2. The Department shall verify any discrepancies identified by the license dealer and credit or debit the license dealer's inventory accordingly.
- H.** A license dealer shall maintain an inventory of licenses for sale to the public at each outlet.
- I.** A license dealer may request additional licenses in writing or verbally.
1. The request shall include:
 - a. The name of the license dealer,
 - b. The assigned dealer number,
 - c. A list of the licenses needed, and
 - d. The name of the person making the request.
 2. Within 10 calendar days from receipt of a request, the Department shall provide the licenses requested, unless:
 - a. The license dealer failed to acknowledge licenses previously provided to the license dealer, as required under subsection (G);
 - b. The license dealer failed to transmit license fees, as required under subsection (J); or
 - c. The license dealer is not in compliance with this Section and all applicable statutes and rules.
- J.** A license dealer shall transmit to the Department all license fees collected by the tenth day of each month, less the dealer commission prescribed under A.R.S. § 17-338(B). Failure to comply with the requirements of this subsection shall result in the cancellation of the license dealer's license, as authorized under A.R.S. § 17-338(A).
- K.** A license dealer shall submit a monthly report to the Department by the tenth day of each month, as prescribed under A.R.S. § 17-339.
1. The monthly report form is furnished by the Department.
 2. A monthly report is required regardless of whether or not activities were performed.
 3. Failure to submit the monthly report in compliance with this subsection shall be cause to cancel the license dealer's license.
 4. The license dealer shall include in the monthly report all of the following information for each outlet:
 - a. Name of the dealer;
 - b. The assigned dealer number;
 - c. Reporting period;
 - d. Number of sales and dollar amount of sales for reporting period, by type of license sold;
 - e. Dollar amount of commission authorized under A.R.S. § 17-338(B);
 - f. Debit and credit adjustments for previous reporting periods, if any;
 - g. Number of affidavits received for which a duplicate license was issued under R12-4-103;
 - h. List of lost or missing licenses; and
 - i. Printed name and signature of the preparer.
 5. In addition to the information required under subsection (K), the license dealer shall also provide the affidavit for each duplicate license issued by the dealer during the reporting period.
 - a. The affidavit is furnished by the Department and is included in the license book.
 - b. A license dealer who fails to submit the affidavit for a duplicate license issued by the license dealer shall remit to the Department the actual cash value of the original license replaced.
- L.** The Department shall provide written notice of suspension and demand the return of all inventory within five calendar days from any license dealer who:
1. Fails to transmit monies due the Department under A.R.S. § 17-338 by the deadline established under subsection (J);
 2. Issues to the Department more than one check with insufficient funds during a calendar year; or

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3. Otherwise fails to comply with this Section and all applicable statutes and rules.
- M.** As prescribed under A.R.S. § 17-338, the actual cash value of licenses not returned to the Department is due and payable to the Department within 15 working days from the date the Department provides written notice to the license dealer. This includes, but is not limited to:
1. Licenses not returned upon termination of business by a license dealer; or
 2. Licenses reported by a dealer outlet or discovered by the Department to be lost, missing, stolen, or destroyed for any reason.
- N.** In addition to those violations that may result in revocation, suspension, or cancellation of a license dealer's license as prescribed under A.R.S. §§ 17-334, 17-338, and 17-339, the Commission may revoke a license dealer's license if the license dealer or an employee of the license dealer is convicted of counseling, aiding, or attempting to aid any person in obtaining a fraudulent license.
- Historical Note**
- Amended effective June 7, 1976 (Supp. 77-3). Former Section R12-4-08 renumbered as Section R12-4-105 without change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-105 repealed, new Section R12-4-105 adopted effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Former Section R12-4-105 repealed, new Section R12-4-105 adopted effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). Amended effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).
- R12-4-106. Special Licenses Licensing Time-frames**
- A.** For the purposes of this Section, the following definitions apply:
- "Administrative review time-frame" has the same meaning as prescribed under A.R.S. § 41-1072(1).
- "License" means any permit or authorization issued by the Department and listed under subsection (H).
- "Overall time-frame" has the same meaning as prescribed under A.R.S. § 41-1072(2).
- "Substantive review time-frame" has the same meaning as prescribed under A.R.S. § 41-1072(3).
- B.** As required under A.R.S. § 41-1072 et seq., within the overall time-frames listed in the table below, the Department shall either:
1. Grant a license to an applicant after determining the applicant meets all of the criteria required by statute and the governing rule; or
 2. Deny a license to an applicant when the Department determines the applicant does not meet all of the criteria required by statute and the governing rule.
 - a. The Department may deny a license at any point during the review process if the information provided by the applicant demonstrates the applicant is not eligible for the license as prescribed under statute or the governing rule.
 - b. The Department shall issue a written denial notice when it is determined that an applicant does not meet all of the criteria for the license.
 - c. The written denial notice shall provide:
 - i. The Department's justification for the denial, and
 - ii. When a hearing or appeal is authorized, an explanation of the applicant's right to a hearing or appeal.
- C.** During the overall time-frame:
1. The applicant and the Department may agree in writing to extend the overall time-frame.
 2. The substantive review time-frame shall not be extended by more than 25% of the overall time-frame.
- D.** An applicant may withdraw an application at any time.
- E.** The administrative review time-frame shall begin upon the Department's receipt of an application.
1. During the administrative review time-frame, the Department may return to the applicant, without denial, an application that is missing any of the information required under R12-4-409 and the rule governing the specific license. The Department shall issue to the applicant a written notice that identifies all missing information and indicates the applicant has 30 days in which to return the missing information.
 2. The administrative review time-frame and the overall time-frame listed for the applicable license under this Section are suspended from the date on the notice until the date the Department receives the missing information.
 3. If an applicant fails to respond to a request for missing information within 30 days, the Department shall consider the application withdrawn.
- F.** The substantive review time-frame shall begin when the Department determines an application is complete.
1. During the substantive review time-frame, the Department may make one comprehensive written request for additional information. The written notice shall:
 - a. Identify the additional information, and
 - b. Indicate the applicant has 30 days in which to submit the additional information.
 - c. The Department and the applicant may mutually agree in writing to allow the agency to submit supplemental requests for additional information.
 - d. If an applicant fails to respond to a request for additional information within 30 days, the Department shall consider the application withdrawn.
 2. The substantive review time-frame and the overall time-frame listed for the applicable license under this Section are suspended from the date on the request until the date the Department receives the additional information.
- G.** If the last day of the time-frame period falls on a Saturday, Sunday, or an official State holiday, the Department shall consider the next business day the time-frame period's last day. All periods listed are:
1. Calendar days, and
 2. Maximum time periods.
- H.** The Department may grant or deny a license in less time than specified below.

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Table 1. Time-Frames

Name of Special License	Governing Rule	Administrative Review Time-frame	Substantive Time-frame	Review	Overall Time-frame
Aquatic Wildlife Stocking Permit	R12-4-410	10 days	170 days		180 days
Authorization for Use of Drugs on Wildlife	R12-4-309	20 days	70 days		90 days
Challenged Hunter Access/Mobility Permit	R12-4-217	1 day	29 days		30 days
Crossbow Permit	R12-4-216	1 day	29 days		30 days
Disabled Veteran's License	R12-4-202	1 day	29 days		30 days
Fishing Permits	R12-4-310	10 days	20 days		30 days
Game Bird License	R12-4-414	10 days	20 days		30 days
Guide License	R12-4-208	10 days	20 days		30 days
License Dealer's License	R12-4-105	10 days	20 days		30 days
Live Bait Dealer's License	R12-4-411	10 days	20 days		30 days
Pioneer License	R12-4-201	1 day	29 days		30 days
Private Game Farm License	R12-4-413	10 days	20 days		30 days
Scientific Collecting Permit	R12-4-418	10 days	20 days		30 days
Small Game Depredation Permit	R12-4-113	10 days	20 days		30 days
Sport Falconry License	R12-4-422	10 days	20 days		30 days
Watercraft Agents	R12-4-509	10 days	20 days		30 days
White Amur Stocking License	R12-4-424	10 days	20 days		30 days
Wildlife Holding License	R12-4-417	10 days	20 days		30 days
Wildlife Rehabilitation License	R12-4-423	10 days	50 days		60 days
Wildlife Service License	R12-4-421	10 days	50 days		60 days
Zoo License	R12-4-420	10 days	20 days		30 days

Historical Note

Editorial correction subsections (F) through (G) (Supp. 78-5). Former Section R12-4-09 renumbered as Section R12-4-106 without change effective August 13, 1981 (Supp. 81-4). Repealed effective May 27, 1992 (Supp. 92-2). New Section adopted June 10, 1998 (Supp. 98-2). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

R12-4-107. Bonus Point System

A. For the purpose of this Section, the following definitions apply:

“Bonus point hunt number” means the hunt number assigned in a Commission Order for use by an applicant who is applying for a bonus point only.

“Loyalty bonus point” means a bonus point awarded to a person who has submitted a valid application for a hunt permit-tag or a bonus point for a specific genus identified in subsection (B) at least once annually for a consecutive five-year period.

B. The bonus point system grants a person one random number entry in each computer draw for antelope, bear, bighorn sheep, buffalo, deer, elk, javelina, or turkey for each bonus point that person has accumulated under this Section.

- Each bonus point random number entry is in addition to the entry normally granted under R12-4-104.
- When processing a “group” application, as defined under R12-4-104, the Department shall use the average number of bonus points accumulated by all persons in the group, rounded to the nearest whole number. If the average number of bonus points is equal to or greater than .5, the total will be rounded to the next higher number.
- The Department shall credit a bonus point under an applicant's Department identification number for the genus on the application.

4. The Department shall not transfer bonus points between persons or genera.

C. The Department shall award one bonus point to an applicant who submits a valid Hunt Permit-tag Application provided the following apply:

- The application is unsuccessful in the computer draw or the application is for a bonus point only;
- The application is not for a hunt permit-tag leftover after the computer draw and available on a first-come, first-served basis as established under R12-4-114; and
- The applicant either provides the appropriate hunting license number on the application or submits an application and fees for the applicable license with the Hunt Permit-tag Application, as applicable.

D. An applicant who purchases a bonus point only shall:

- Submit a valid Hunt Permit-tag Application, as prescribed under R12-4-104, with the assigned bonus point hunt number for the particular genus as the first-choice hunt number on the application. The Department shall reject any application that:
 - Indicates the bonus point only hunt number as any choice other than the first-choice, or
 - Includes any other hunt number on the application;
- Include the applicable fees:
 - Application fee, and
 - Applicable license fee, required when the applicant does not possess a valid license at the time of application; and

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3. Submit only one Hunt Permit-tag Application per genus per computer draw.
- E. With the exception of the hunter education bonus point, each accumulated bonus point is valid only for the genus designated on the Hunt Permit-tag Application.
- F. With the exception of a permanent bonus point awarded for hunter education and a loyalty bonus point which is accrued and forfeited as established under subsection (L), a person's accumulated bonus points for a genus are expended if:
 1. The person is issued a hunt permit-tag for that genus in a computer draw;
 2. The person fails to submit a Hunt Permit-tag Application for that genus for five consecutive years; or
 3. The person purchases a surrendered tag as prescribed under R12-4-118(F)(1), (2), or (3).
- G. Notwithstanding subsection (F), the Department shall restore any expended bonus points to a person who surrenders or transfers a tag in compliance with R12-4-118 or R12-4-121.
- H. An applicant issued a first-come, first-served hunt permit-tag under R12-4-114(C)(2)(e) after the computer draw does not expend bonus points for that genus.
- I. An applicant who is unsuccessful for a first-come, first-served hunt permit-tag made available by the Department after the computer draw is not eligible to receive a bonus point.
- J. The Department shall award one permanent bonus point for each genus upon a person's first graduation from a Department-sanctioned Arizona Game and Fish Department Hunter Education Course.
 1. Course participants are required to provide the following information upon registration, the participants:
 - a. Name;
 - b. Mailing address;
 - c. Telephone number;
 - d. E-mail address, when available;
 - e. Date of birth; and
 - f. Department ID number, when applicable.
 2. The Arizona Game and Fish Department-certified Instructor shall submit the course paperwork to the Department within 10 business days of course completion. Course paperwork must be received by the Department no less than 30 days before the computer draw application deadline, as specified in the hunt permit-tag application schedule in order for the Department to assign hunter education bonus points in the next computer draw.
 3. The Department shall not award hunter education bonus points for any of the following specialized hunter education courses:
 - a. Bowhunter Education,
 - b. Trapper Education, or
 - c. Advanced Hunter Education.
- K. The Department provides an applicant's total number of accumulated bonus points on the Department's application web site or IVR telephone system.
 1. If a person believes the total number of accumulated bonus points is incorrect, the person may request proof of compliance with this Section, from the Department, to prove Department error.
 2. In the event of an error, the Department shall correct the person's record.
- L. The following provisions apply to the loyalty bonus point program:
 1. An applicant who submits a valid application at least once a year for a hunt permit-tag or a bonus point for a specific genus consecutively for a five-year period shall accrue a loyalty bonus point for that genus.
2. Except as established under subsection (N), once a loyalty bonus point is accrued, the applicant shall retain the loyalty bonus point provided the applicant annually submits an application, with funds sufficient to cover all application fees and applicable license fees for each applicant listed on the application, for a hunt permit-tag or a bonus point for the genus for which the loyalty bonus point was accrued.
3. An applicant who fails to apply in any calendar year for a hunt permit-tag or bonus point for the genus for which the loyalty bonus point was accrued shall forfeit the loyalty bonus point for that genus.
4. A loyalty bonus point is accrued in addition to all other bonus points.
- M. A military member, military reserve member, member of the National Guard, or emergency response personnel with a public agency may request the reinstatement of any expended bonus points for a successful Hunt Permit-tag Application.
 1. To request reinstatement of expended bonus points under these circumstances, an applicant shall submit all of the following information to the Arizona Game and Fish Department, Draw Section, 5000 W. Carefree Highway, Phoenix, AZ 85086:
 - a. Evidence of mobilization or change in duty status, such as a letter from the public agency or official orders; or
 - b. An official declaration of a state of emergency from the public agency or authority making the declaration of emergency, if applicable; and
 - c. The valid, unused hunt permit-tag.
 2. The Department shall deny requests post-marked after the beginning date of the hunt for which the hunt permit-tag is valid, unless the person also submits, with the request, evidence of mobilization, activation, or a change in duty status that precluded the applicant from submitting the hunt permit-tag before the beginning date of the hunt.
 3. Under A.R.S. § 17-332(E), no refunds for a license or hunt permit-tag will be issued to an applicant who applies for reinstatement of bonus points under this subsection.
 4. Reinstatement of bonus points under this subsection is not subject to the requirements established under R12-4-118.
- N. It is unlawful for a person to purchase a bonus point by fraud or misrepresentation and any bonus point so obtained shall be removed from the person's Department record.

Historical Note

Former Section R12-4-03 renumbered as Section R12-4-107 without change effective August 13, 1981 (Supp. 81-4). Section R12-4-107 repealed, new Section R12-4-107 adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended effective July 29, 1992 (Supp. 92-3). Section R12-4-107 repealed, new Section R12-4-107 adopted effective January 1, 1999; filed with the Office of the Secretary of State February 9, 1998 (Supp. 98-1). Amended by final rulemaking at 9 A.A.R. 610, effective April 6, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 845, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 11 A.A.R. 991, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 11 A.A.R. 991, effective April 2, 2005; amended by final rulemaking at 11 A.A.R. 1177, effective May 2, 2005 (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended

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by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

R12-4-108. Management Unit Boundaries

A. For the purpose of this Section, parentheses mean “also known as,” and the following definitions shall apply:

1. “FH” means “forest highway,” a paved road.
2. “FR” means “forest road,” an unpaved road.
3. “Hwy” means “Highway.”
4. “mp” means “milepost.”

B. The state is divided into units for the purpose of managing wildlife. Each unit is identified by a number, or a number and letter. For the purpose of this Section, Indian reservation land contained within any management unit is not under the jurisdiction of the Arizona Game and Fish Commission or the Arizona Game and Fish Department.

C. Management unit descriptions are as follows:

Unit 1 – Beginning at the New Mexico state line and U.S. Hwy 60; west on U.S. Hwy 60 to Vernon Junction; southerly on the Vernon-McNary road (FR 224) to the White Mountain Apache Indian Reservation boundary; east and south along the reservation boundary to Black River; east and north along Black River to the east fork of Black River; north along the east fork to Three Forks; and continuing north and east on the Three Forks-Williams Valley-Alpine Rd. (FR 249) to U.S. Hwy 180; east on U.S. Hwy 180 to the New Mexico state line; north along the state line to U.S. Hwy 60.

Unit 2A – Beginning at St. Johns on U.S. Hwy 191 (AZ Hwy 61); north on U.S. Hwy 191 (AZ Hwy 61) to the Navajo Indian Reservation boundary; westerly along the reservation boundary to AZ Hwy 77; south on AZ Hwy 77 to Exit 292 on I-40; west on the westbound lane of I-40 to Exit 286; south on AZ Hwy 77 to U.S. Hwy 180; southeast on U.S. Hwy 180 to AZ Hwy 180A; south on AZ Hwy 180A to AZ Hwy 61; east on AZ Hwy 61 to U.S. Hwy 180 (AZ Hwy 61); east to U.S. Hwy 191 at St. Johns; except those portions that are sovereign tribal lands of the Zuni Tribe.

Unit 2B – Beginning at Springerville; east on U.S. Hwy 60 to the New Mexico state line; north along the state line to the Navajo Indian Reservation boundary; westerly along the reservation boundary to U.S. Hwy 191 (AZ Hwy 61); south on U.S. Hwy 191 (U.S. Hwy 180) to Springerville.

Unit 2C – Beginning at St. Johns on U.S. Hwy 191 (AZ Hwy 61); west on to AZ Hwy 61 Concho; southwest on AZ Hwy 61 to U.S. Hwy 60; east on U.S. Hwy 60 to U.S. Hwy 191 (U.S. Hwy 180); north on U.S. Hwy 191 (U.S. Hwy 180) to St. Johns.

Unit 3A – Beginning at the junction of U.S. Hwy 180 and AZ Hwy 77; south on AZ Hwy 77 to AZ Hwy 377; southwesterly on AZ Hwy 377 to AZ Hwy 277; easterly on AZ Hwy 277 to Snowflake; easterly on the Snowflake-Concho Rd. to U.S. Hwy 180A; north on U.S. Hwy 180A to U.S. Hwy 180; northwesterly on U.S. Hwy 180 to AZ Hwy 77.

Unit 3B – Beginning at Snowflake; southerly along AZ Hwy 77 to U.S. Hwy 60; southwest along U.S. Hwy 60 to the White Mountain Apache Indian Reservation boundary; easterly along the reservation boundary to the Vernon-McNary Rd. (FR 224); northerly along the Vernon-McNary Rd. to U.S. Hwy 60; west on U.S. Hwy 60 to AZ Hwy 61; northeasterly on AZ Hwy 61 to AZ Hwy

180A; northerly on AZ Hwy 180A to Concho-Snowflake Rd.; westerly on the Concho-Snowflake Rd. to Snowflake.

Unit 3C – Beginning at Snowflake; westerly on AZ Hwy 277 to AZ Hwy 260; westerly on AZ Hwy 260 to the Sitgreaves National Forest boundary with the Tonto National Forest; easterly along the Apache-Sitgreaves National Forest boundary to U.S. Hwy 60 (AZ Hwy 77); northeasterly on U.S. Hwy 60 (AZ Hwy 77) to Showlow; northerly along AZ Hwy 77 to Snowflake.

Unit 4A – Beginning on the boundary of the Apache-Sitgreaves National Forest with the Coconino National Forest at the Mogollon Rim; north along this boundary (Leonard Canyon) to East Clear Creek; northerly along East Clear Creek to AZ Hwy 99; north on AZ Hwy 99 to AZ Hwy 87; north on AZ Hwy 87 to Business I-40 (3rd St.); west on Business I-40 (3rd St.) to Hipkoe Dr.; northerly on Hipkoe Dr. to I-40; west on I-40 to mp 221.4; north to the southwest corner of the Navajo Indian Reservation boundary; east along the Navajo Indian Reservation boundary to the Little Colorado River; southerly along the Little Colorado River to Chevelon Creek; southerly along Chevelon Creek to Woods Canyon; westerly along Woods Canyon to Woods Canyon Lake Rd.; westerly and southerly along the Woods Canyon Lake Rd. to the Mogollon Rim; westerly along the Mogollon Rim to the boundary of the Apache-Sitgreaves National Forest with the Coconino National Forest.

Unit 4B – Beginning at AZ Hwy 260 and the Sitgreaves National Forest boundary with the Tonto National Forest; northeasterly on AZ Hwy 260 to AZ Hwy 277; northeasterly on AZ Hwy 277 to Hwy 377; northeasterly on AZ Hwy 377 to AZ Hwy 77; northeasterly on AZ Hwy 77 to I-40 Exit 286; northeasterly along the westbound lane of I-40 to Exit 292; north on AZ Hwy 77 to the Navajo Indian Reservation boundary; west along the reservation boundary to the Little Colorado River; southerly along the Little Colorado River to Chevelon Creek; southerly along Chevelon Creek to Woods Canyon; westerly along Woods Canyon to Woods Canyon Lake Rd. (FH 151); westerly and southerly along the Woods Canyon Lake Rd. (FH 151) to the Mogollon Rim; easterly along the Mogollon Rim to the intersection of AZ Hwy 260 and the Sitgreaves National Forest boundary with the Tonto National Forest.

Unit 5A – Beginning at the junction of the Sitgreaves National Forest boundary with the Coconino National Forest boundary at the Mogollon Rim; northerly along this boundary (Leonard Canyon) to East Clear Creek; northeasterly along East Clear Creek to AZ Hwy 99; north on AZ Hwy 99 to AZ Hwy 87; north on AZ Hwy 87 to Business I-40 (3rd St.); west on Business I-40 (3rd St.) to Hipkoe Dr.; north on Hipkoe Dr. to I-40; west on I-40 to the Meteor Crater Rd. (Exit 233); southerly on the Meteor Crater-Chavez Pass-Jack’s Canyon Rd. (FR 69) to AZ Hwy 87; southwest along AZ Hwy 87 to the Coconino-Tonto National Forest boundary; easterly along the Coconino-Tonto National Forest boundary (Mogollon Rim) to the Sitgreaves National Forest boundary with the Coconino National Forest.

Unit 5B – Beginning at Lake Mary-Clint’s Well Rd. (FH3) and Walnut Canyon (mp 337.5 on FH3); southeast on FH3 to AZ Hwy 87; northeasterly on AZ Hwy 87 to FR 69; westerly and northerly on FR 69 to I-40 (Exit

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233); west on I-40 to Walnut Canyon (mp 210.2); southwesterly along the bottom of Walnut Canyon to Walnut Canyon National Monument; southwesterly along the northern boundary of the Walnut Canyon National Monument to Walnut Canyon; southwesterly along the bottom of Walnut Canyon to FH3 (mp 337.5).

Unit 6A – Beginning at the junction of U.S. Hwy 89A and FR 237; southwesterly on U.S. Hwy 89A to the Verde River; southeasterly along the Verde River to the confluence with Fossil Creek; northeasterly along Fossil Creek to Fossil Springs; southeasterly on FS trail 18 (Fossil Spring Trail) to the top of the rim; northeasterly on the rim to Nash Point on the Tonto-Coconino National Forest boundary; easterly along this boundary to AZ Hwy 87; northeasterly on AZ Hwy 87 to Lake Mary-Clint's Well Rd. (FH3); northwesterly on FH3 to FR 132; southwesterly on FR 132 to FR 296; southwesterly on FR 296 to FR 296A; southwesterly on FR 296A to FR 132; northwesterly on FR 132 to FR 235; westerly on FR 235 to Priest Draw; southwesterly along the bottom of Priest Draw to FR 235; westerly on FR 235 to FR 235A; westerly on FR 235A to FR 235; southerly on FR 235 to FR 235K; northwesterly on FR 235K to FR 700; northerly on FR 700 to Mountaineire Rd.; west on Mountaineire Rd. to FR 237; westerly on FR 237 to U.S. Hwy 89A except those portions that are sovereign tribal lands of the Yavapai-Apache Nation.

Unit 6B – Beginning at mp 188.5 on I-40 at a point just north of the east boundary of Camp Navajo; south along the eastern boundary of Camp Navajo to the southeastern corner of Camp Navajo; southeast approximately 1/3 mile through the forest to the forest road in section 33; southeast on the forest road to FR 231 (Woody Mountain Rd.); easterly on FR 231 to FR 533; southerly on FR 533 to U.S. Hwy 89A; southerly on U.S. Hwy 89A to the Verde River; northerly along the Verde River to Sycamore Creek; northeasterly along Sycamore Creek and Volunteer Canyon to the southwest corner of the Camp Navajo boundary; northerly along the western boundary of Camp Navajo to the northwest corner of Camp Navajo; continuing north to I-40 (mp 180.0); easterly along I-40 to mp 188.5.

Unit 7 – Beginning at the junction of AZ Hwy 64 and I-40 (in Williams); easterly on I-40 to FR 171 (mp 184.4 on I-40); northerly on FR 171 to the Transwestern Gas Pipeline; easterly along the Transwestern Gas Pipeline to FR 420 (Schultz Pass Rd.); northeasterly on FR 420 to U.S. Hwy 89; across U.S. Hwy 89 to FR 545; east on FR 545 to the Sunset Crater National Monument; easterly along the southern boundary of the Sunset Crater National Monument to FR 545; east on FR 545 to the 345 KV transmission lines 1 and 2; southeasterly along the power lines to I-40 (mp 212 on I-40); east on I-40 to mp 221.4; north to the southwest corner of the Navajo Indian Reservation boundary; northerly and westerly along the reservation boundary to the Four Corners Gas Line; southwesterly along the Four Corners Gas Line to U.S. Hwy 180; west on U.S. Hwy 180 to AZ Hwy 64; south on AZ Hwy 64 to I-40.

Unit 8 – Beginning at the junction of I-40 and U.S. Hwy 89 (in Ash Fork, Exit 146); south on U.S. Hwy 89 to the Verde River; easterly along the Verde River to Sycamore Creek; northerly along Sycamore Creek to Volunteer Canyon; northeasterly along Volunteer Canyon to the

west boundary of Camp Navajo; north along the boundary to a point directly north of I-40; west on I-40 to U.S. Hwy 89.

Unit 9 – Beginning where Cataract Creek enters the Havasupai Reservation; easterly and northerly along the Havasupai Reservation boundary to Grand Canyon National Park; easterly along the Grand Canyon National Park boundary to the Navajo Indian Reservation boundary; southerly along the reservation boundary to the Four Corners Gas Line; southwesterly along the Four Corners Gas Line to U.S. Hwy 180; westerly along U.S. Hwy 180 to AZ Hwy 64; south along AZ Hwy 64 to Airport Rd.; west and north along Airport Rd. to the Valle-Cataract Creek Rd.; westerly along the Valle-Cataract Creek Rd. to Cataract Creek at Island Tank; northwesterly along Cataract Creek to the Havasupai Reservation Boundary.

Unit 10 – Beginning at the junction of AZ Hwy 64 and I-40; westerly on I-40 to Crookton Rd. (AZ Hwy 66, Exit 139); westerly on AZ Hwy 66 to the Hualapai Indian Reservation boundary; northeasterly along the reservation boundary to Grand Canyon National Park; east along the park boundary to the Havasupai Indian Reservation; easterly and southerly along the reservation boundary to where Cataract Creek enters the reservation; southeasterly along Cataract Creek in Cataract Canyon to Island Tank; easterly on the Cataract Creek-Valle Rd. to Airport Rd.; south and east along Airport Rd. to AZ Hwy 64; south on AZ Hwy 64 to I-40.

Unit 11M – Beginning at the junction of Lake Mary-Clint's Well Rd (FH3) and Walnut Canyon (mp 337.5 on FH3); northeasterly along the bottom of Walnut Canyon to the Walnut Canyon National Monument boundary; northeasterly along the northern boundary of the Walnut Canyon National Monument to Walnut Canyon; north-easterly along the bottom of Walnut Canyon to I-40 (mp 210.2); east on I-40 to the 345 KV transmission lines 1&2 (mp 212 on I-40); north and northeasterly along the power line to FR 545 (Sunset Crater Rd); west along FR 545 to the Sunset Crater National Monument boundary; westerly along the southern boundary of the Sunset Crater National monument to FR 545; west on FR 545 to US Hwy 89; across US Hwy 89 to FR 420 (Schultz Pass Rd); southwesterly on FR 420 to the Transwestern Gas Pipeline; westerly along the Transwestern Gas Pipeline to FR 171; south on FR 171 to I-40 (mp 184.4 on I-40); east on I-40 to a point just north of the eastern boundary of the Navajo Army Depot (mp 188.5 on I-40); south along the eastern boundary of the Navajo Army Depot to the southeast corner of the Depot; southeast approximately 1/3 mile to forest road in section 33; southeasterly along that forest road to FR 231 (Woody Mountain Rd); easterly on FR 231 to FR 533; southerly on FR 533 to US Hwy 89A; southerly on US Hwy 89A to FR 237; northeasterly on FR 237 to Mountaineire Rd; easterly on Mountaineire Rd to FR 700; southerly on FR 700 to FR 235K; southeasterly on FR 235K to FR 235; northerly on FR 235 to FR 235A; easterly on FR 235A to FR 235; easterly on FR 235 to Priest Draw; northeasterly along the bottom of Priest Draw to FR 235; easterly on FR 235 to FR 132; southeasterly on FR 132 to FR 296A; northeasterly on FR 296A to FR 296; northeasterly on FR 296 to FR 132; northeasterly on FR 132 to FH 3; southeasterly on FH 3 to the south rim of Walnut Canyon (mp 337.5 on FH3).

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Unit 12A – Beginning at the confluence of the Colorado River and South Canyon; southerly and westerly along the Colorado River to Kanab Creek; northerly along Kanab Creek to Snake Gulch; northerly, easterly, and southerly around the Kaibab National Forest boundary to South Canyon; northeasterly along South Canyon to the Colorado River.

Unit 12B – Beginning at U.S. Hwy 89A and the Kaibab National Forest boundary near mp 566; southerly and easterly along the forest boundary to Grand Canyon National Park; northeasterly along the park boundary to Glen Canyon National Recreation area; easterly along the recreation area boundary to the Colorado River; northeasterly along the Colorado River to the Arizona-Utah state line; westerly along the state line to Kanab Creek; southerly along Kanab Creek to the Kaibab National Forest boundary; northerly, easterly, and southerly along this boundary to U.S. Hwy 89A near mp 566; except those portions that are sovereign tribal lands of the Kaibab Band of Paiute Indians.

Unit 13A – Beginning on the western edge of the Hurricane Rim at the Utah state line; southerly along the western edge of the Hurricane Rim to Mohave County Rd. 5 (the Mt. Trumbull Rd.); west along Mohave County Rd. 5 to the town of Mt. Trumbull (Bundyville); south from the town of Mt. Trumbull (Bundyville) on Mohave County Rd. 257 to BLM Rd. 1045; south on BLM Rd. 1045 to where it crosses Cold Spring Wash near Cold Spring Wash Pond; south along the bottom of Cold Spring Wash to Whitmore Wash; southerly along the bottom of Whitmore Wash to the Colorado River; easterly along the Colorado River to Kanab Creek; northerly along Kanab Creek to the Utah state line; west along the Utah state line to the western edge of the Hurricane Rim; except those portions that are sovereign tribal lands of the Kaibab Band of Paiute Indians.

Unit 13B – Beginning on the western edge of the Hurricane Rim at the Utah state line; southerly along the western edge of the Hurricane Rim to Mohave County Rd. 5 (the Mt. Trumbull Rd.); west along Mohave County Rd. 5 to the town of Mt. Trumbull (Bundyville); south from the town of Mt. Trumbull (Bundyville) on Mohave County Rd. 257 to BLM Rd. 1045; south on BLM Rd. 1045 to where it crosses Cold Spring Wash near Cold Spring Wash Pond; south along the bottom of Cold Spring Wash to Whitmore Wash; southerly along the bottom of Whitmore Wash to the Colorado River; westerly along the Colorado River to the Nevada state line; north along the Nevada state line to the Utah state line; east along the Utah state line to the western edge of the Hurricane Rim.

Unit 15A – Beginning at Pearce Ferry on the Colorado River; southerly on the Pearce Ferry Rd. to Antares Rd.; southeasterly on Antares Rd. to AZ Hwy 66; easterly on AZ Hwy 66 to the Hualapai Indian Reservation; west and north along the west boundary of the reservation to the Colorado River; westerly along the Colorado River to Pearce Ferry; except those portions that are sovereign tribal lands of the Hualapai Indian Tribe.

Unit 15B – Beginning at Kingman on I-40 (Exit 48); northwesterly on U.S. Hwy 93 to Hoover Dam; north and east along the Colorado River to Pearce Ferry; southerly on the Pearce Ferry Rd. to Antares Rd.; southeasterly on Antares Rd. to AZ Hwy 66; easterly on AZ Hwy 66 to Hackberry Rd.; southerly on the Hackberry Rd. to its

junction with U.S. Hwy 93; north on U.S. Hwy 93 to I-40 (Exit 71); west on I-40 to Kingman (Exit 48).

Unit 15C – Beginning at Hoover Dam; southerly along the Colorado River to AZ Hwy 68 and Davis Dam; easterly on AZ Hwy 68 to U.S. Hwy 93; northwesterly on U.S. Hwy 93 to Hoover Dam.

Unit 15D – Beginning at AZ Hwy 68 and Davis Dam; southerly along the Colorado River to I-40; east and north on I-40 to Kingman (Exit 48); northwest on U.S. Hwy 93 to AZ Hwy 68; west on AZ Hwy 68 to Davis Dam; except those portions that are sovereign tribal lands of the Fort Mohave Indian Tribe.

Unit 16A – Beginning at Kingman on I-40 (Exit 48); south and west on I-40 to U.S. Hwy 95 (Exit 9); southerly on U.S. Hwy 95 to the Bill Williams River; easterly along the Bill Williams and Santa Maria rivers to U.S. Hwy 93; north on U.S. Hwy 93 to I-40 (Exit 71); west on I-40 to Kingman (Exit 48).

Unit 16B – Beginning at I-40 on the Colorado River; southerly along the Arizona-California state line to the Bill Williams River; east along the Bill Williams River to U.S. Hwy 95; north on U.S. Hwy 95 to I-40 (Exit 9); west on I-40 to the Colorado River.

Unit 17A – Beginning at the junction of the Williamson Valley Rd. (County Road 5) and the Camp Wood Rd. (FR 21); westerly on the Camp Wood Rd. to the west boundary of the Prescott National Forest; north along the forest boundary to the Baca Grant; east, north and west around the grant to the west boundary of the Prescott National Forest; north and east along the forest boundary to the Williamson Valley Rd. (County Rd. 5, FR 6); southerly on Williamson Valley Rd. (County Rd. 5, FR 6) to the Camp Wood Rd.

Unit 17B – Beginning at the junction of Iron Springs Rd. (County Rd. 10) and Williamson Valley Rd. (County Road 5) in Prescott; westerly on the Prescott-Skull Valley-Hillside-Bagdad Rd. to Bagdad; northeast on the Bagdad-Camp Wood Rd. (FR 21) to the Williamson Valley Rd. (County Rd. 5, FR 6); south on the Williamson Valley Rd. (County Rd. 5, FR 6) to the Iron Springs Rd.

Unit 18A – Beginning at Seligman; westerly on AZ Hwy 66 to the Hualapai Indian Reservation; southwest and west along the reservation boundary to AZ Hwy 66; southwest on AZ Hwy 66 to the Hackberry Rd.; south on the Hackberry Rd. to U.S. Hwy 93; south on U.S. Hwy 93 to Cane Springs Wash; easterly along Cane Springs Wash to the Big Sandy River; northerly along the Big Sandy River to Trout Creek; northeast along Trout Creek to the Davis Dam-Prescott power line; southeasterly along the power line to the west boundary of the Prescott National Forest; north and east along the forest boundary to the Williamson Valley Rd. (County Rd. 5, FR 6); northerly on the Williamson Valley Rd. (County Rd. 5, FR 6) to Seligman and AZ Hwy 66; except those portions that are sovereign tribal lands of the Hualapai Indian Tribe.

Unit 18B – Beginning at Bagdad; southeast on AZ Hwy 96 to the Santa Maria River; southwest along the Santa Maria River to U.S. Hwy 93; northerly on U.S. Hwy 93 to Cane Springs Wash; easterly along Cane Springs Wash to the Big Sandy River; northerly along the Big Sandy River to Trout Creek; northeasterly along Trout Creek to the Davis Dam-Prescott power line; southeasterly along the

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power line to the west boundary of the Prescott National Forest; south along the forest boundary to the Baca Grant; east, south and west along the forest boundary; south along the west boundary of the Prescott National Forest; to the Camp Wood-Bagdad Rd.; southwesterly on the Camp Wood-Bagdad Rd. to Bagdad; except those portions that are sovereign tribal lands of the Hualapai Indian Tribe.

Unit 19A – Beginning at AZ Hwy 69 and U.S. Hwy 89 (in Prescott); northerly on U.S. Hwy 89 to the Verde River; easterly along the Verde River to I-17; southwest-erly on the southbound lane of I-17 to AZ Hwy 69; north-westerly on AZ Hwy 69 to U.S. Hwy 89; except those portions that are sovereign tribal lands of the Yavapai-Prescott Tribe and the Yavapai-Apache Nation.

Unit 19B – Beginning at the intersection of U.S. Hwy 89 and AZ Hwy 69, west on Gurley St. to Grove Ave.; north on the Grove Ave. to Miller Valley Rd.; northwest on the Miller Valley Rd. to Iron Springs Rd.; northwest on the Iron Springs Rd. to the junction of Williamson Valley Rd. and Iron Springs Rd.; northerly on the Williamson Val-ley-Prescott-Seligman Rd. (FR 6, Williamson Valley Rd.) to AZ Hwy 66 at Seligman; east on Crookton Rd. (AZ Hwy 66) to I-40 (Exit 139); east on I-40 to U.S. Hwy 89; south on U.S. Hwy 89 to the junction with AZ Hwy 69; except those portions that are sovereign tribal lands of the Yavapai-Prescott Tribe.

Unit 20A – Beginning at the intersection of U.S. Hwy 89 and AZ Hwy 69; west on Gurley St. to Grove Ave.; north on the Grove Ave. to Miller Valley Rd., northwest on the Miller Valley Rd. to Iron Springs Rd., west and south on the Iron Springs-Skull Valley-Kirkland Junction Rd. to U.S. Hwy 89; continue south and easterly on the Kirkland Junction-Wagoner-Crown King-Cordes Rd. to Cordes, from Cordes southeast to I-17 (Exit 259); north on the southbound lane of I-17 to AZ Hwy 69; northwest on AZ Hwy 69 to junction of U.S. Hwy 89 at Prescott; except those portions that are sovereign tribal lands of the Yavapai-Prescott Tribe.

Unit 20B – Beginning at the Hassayampa River and U.S. Hwy 60/93 (in Wickenburg); northeasterly along the Has-sayampa River to the Kirkland Junction-Wagoner- Crown King-Cordes road (at Wagoner); southerly and northeas-terly along the Kirkland Junction-Wagoner-Crown King-Cordes Rd. (at Wagoner) to I-17 (Exit 259); south on the southbound lane of I-17 to the New River Road (Exit 232); west on the New River Road to State Hwy 74; west on AZ Hwy 74 to the junction of AZ Hwy 74 and U.S. Hwy 60/93; northwesterly on U.S. Hwy 60/93 to the Has-sayampa River.

Unit 20C – Beginning at U.S. Hwy 60/93 and the Santa Maria River; northeasterly along the Santa Maria River to AZ Hwy 96; easterly on AZ Hwy 96 to Kirkland Junc-tion; southeasterly along the Kirkland Junction-Wagoner-Crown King-Cordes road to the Hassayampa River (at Wagoner); southwesterly along the Hassayampa River to U.S. Hwy 60/93; northwesterly on U.S. Hwy 60/93 to the Santa Maria River.

Unit 21 – Beginning on I-17 at the Verde River; southerly on the southbound lane of I-17 to the New River Road (Exit 232); east on New River Road to Fig Springs Road; northeasterly on Fig Springs Road to the Tonto National

Forest boundary; southeasterly along this boundary to the Verde River; north along the Verde River to I-17.

Unit 22 – Beginning at the junction of the Salt and Verde Rivers; north along the Verde River to the confluence with Fossil Creek; northeasterly along Fossil Creek to Fossil Springs; southeasterly on FS trail 18 (Fossil Spring Trail) to the top of the rim; northeasterly on the rim to Nash Point on the Tonto-Coconino National Forest boundary along the Mogollon Rim; easterly along this boundary to Tonto Creek; southerly along the east fork of Tonto Creek to the spring box, north of the Tonto Creek Hatchery, and continuing southerly along Tonto Creek to the Salt River; westerly along the Salt River to the Verde River; except those portions that are sovereign tribal lands of the Tonto Apache Tribe and the Fort McDowell Yavapai Nation.

Unit 23 – Beginning at the confluence of Tonto Creek and the Salt River; northerly along Tonto Creek to the spring box, north of the Tonto Creek Hatchery, on Tonto Creek; northeasterly along the east fork of Tonto Creek to the Tonto-Sitgreaves National Forest boundary along the Mogollon Rim; east along this boundary to the White Mountain Apache Indian Reservation boundary; south-erly along the reservation boundary to the Salt River; westerly along the Salt River to Tonto Creek.

Unit 24A – Beginning on AZ Hwy 177 in Superior; southeasterly on AZ Hwy 177 to the Gila River; north-easterly along the Gila River to the San Carlos Indian Reservation boundary; easterly, westerly and northerly along the reservation boundary to the Salt River; south-westerly along the Salt River to AZ Hwy 288; southerly on AZ Hwys 288 and 188 to U.S. Hwy 60; southwest-erly on U.S. Hwy 60 to AZ Hwy 177.

Unit 24B – Beginning on U.S. Hwy 60 in Superior; north-easterly on U.S. Hwy 60 to AZ Hwy 188; northerly on AZ Hwys 188 and 288 to the Salt River; westerly along the Salt River to the Tonto National Forest boundary near Granite Reef Dam; southeasterly along Forest boundary to Forest Route 77 (Peralta Rd.); southwest-erly on Forest Route 77 (Peralta Rd.) to U.S. Hwy 60; easterly on U.S. Hwy 60 to Superior.

Unit 25M – Beginning at the junction of 51st Ave. and I-10; west on I-10 to AZ Loop 303, northeasterly on AZ Loop 303 to I-17; north on I-17 to Carefree Hwy; east on Carefree Hwy to Cave Creek Rd.; northeasterly on Cave Creek Rd. to the Tonto National Forest boundary; east-erly and southerly along the Tonto National Forest boundary to Fort McDowell Yavapai Nation boundary; northeasterly along the Fort McDowell Yavapai Nation boundary to the Verde River; southerly along the Verde River to the Salt River; southwest-erly along the Salt River to the Tonto National Forest boundary; southerly along the Tonto National Forest boundary to Bush Hwy/Power Rd.; southerly on Bush Hwy/Power Rd. to AZ Loop 202; easterly, southerly, and westerly on AZ Loop 202 to the intersection of Pecos Rd. at I-10; west on Pecos Rd. to the Gila River Indian Community boundary; northwesterly along the Gila River Indian Community boundary to 51st Ave; northerly on 51st Ave to I-10; except those portions that are sovereign tribal lands.

Unit 26M – Beginning at the junction of I-17 and New River Rd. (Exit 232); southwest-erly on New River Rd. to AZ Hwy 74; westerly on AZ Hwy 74 to U.S. Hwy 93;

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southeasterly on U.S. Hwy 93 to the Beardsley Canal; southwesterly on the Beardsley Canal to Indian School Rd.; west on Indian School Rd. to Jackrabbit Trail; south on Jackrabbit Trail to I-10 (Exit 121); west on I-10 to Oglesby Rd. (Exit 112); south on Oglesby Rd. to AZ Hwy 85; south on AZ Hwy 85 to the Gila River; north-easterly along the Gila River to the Gila River Indian Community boundary; southeasterly along the Gila River Indian Community boundary to AZ Hwy 347 (John Wayne Parkway); south on AZ Hwy 347 (John Wayne Parkway) to AZ Hwy 84; east on AZ Hwy 84 to Stanfield; south on the Stanfield-Cocklebur Rd. to the Tohono O'odham Nation boundary; easterly along the Tohono O'odham Nation boundary to Battaglia Rd.; east on Battaglia Rd. to Toltec Rd.; north on Toltec Rd. to I-10 (Exit 203); southeasterly on I-10 to AZ Hwy 87 (Exit 211); north on AZ Hwy 87 to AZ Hwy 287 north of Coolidge; east on AZ Hwy 287 to AZ Hwy 79; north on AZ Hwy 79 to U.S. Hwy 60; northwesterly on U.S. Highway 60 to Peralta Rd.; northeasterly along Peralta Rd. to the Tonto National Forest boundary; northwesterly along the Tonto National Forest boundary to the Salt River; northeasterly along the Salt River to the Verde River; northerly along the Verde River to the Tonto National Forest boundary; northwesterly along the Tonto National Forest boundary to Fig Springs Rd.; southwesterly on Fig Springs Rd. to New River Rd.; west on New River Rd. to I-17 (Exit 232); except Unit 25M and those portions that are sovereign tribal lands.

Unit 27 – Beginning at the New Mexico state line and AZ Hwy 78; southwest on AZ Hwy 78 to U.S. Hwy 191; north on U.S. Hwy 191 to Lower Eagle Creek Rd. (Pump Station Rd.); west on the Lower Eagle Creek Rd. (Pump Station Rd.) to Eagle Creek; north along Eagle Creek to the San Carlos Apache Indian Reservation boundary; north along the San Carlos Apache Indian Reservation boundary to Black River; northeast along Black River to the East Fork of Black River; northeast along the East Fork of Black River to Three Forks-Williams Valley-Alpine Rd. (FR 249); easterly along Three Forks-Williams Valley-Alpine Rd. to U.S. Hwy 180; southeast on U.S. Hwy 180 to the New Mexico state line; south along the New Mexico state line to AZ Hwy 78.

Unit 28 – Beginning at I-10 and the New Mexico state line; north along the state line to AZ Hwy 78; southwest on AZ Hwy 78 to U.S. Hwy 191; northwest on U.S. Hwy 191 to Clifton; westerly on the Lower Eagle Creek Rd. (Pump Station Rd.) to Eagle Creek; northerly along Eagle Creek to the San Carlos Indian Reservation boundary; southerly and west along the reservation boundary to U.S. Hwy 70; southeast on U.S. Hwy 70 to U.S. Hwy 191; south on U.S. Hwy 191 to I-10 Exit 352; easterly on I-10 to the New Mexico state line.

Unit 29 – Beginning on I-10 at the New Mexico state line; westerly on I-10 to the Bowie-Apache Pass Rd.; southerly on the Bowie-Apache Pass Rd. to AZ Hwy 186; southeast on AZ Hwy 186 to AZ Hwy 181; south on AZ Hwy 181 to the West Turkey Creek-Kuykendall cutoff road; southerly on the Kuykendall cutoff road to Rucker Canyon Rd.; easterly on the Rucker Canyon Rd. to Tex Canyon Rd.; southerly on Tex Canyon Rd. to U.S. Hwy 80; northeast on U.S. Hwy 80 to the New Mexico state line; north along the state line to I-10.

Unit 30A – Beginning at the junction of the New Mexico state line and U.S. Hwy 80; south along the state line to the U.S.-Mexico border; west along the border to U.S. Hwy 191; northerly on U.S. Hwy 191 to I-10 Exit 331; northeasterly on I-10 to the Bowie-Apache Pass Rd.; southerly on the Bowie-Apache Pass Rd. to AZ Hwy 186; southeasterly on AZ Hwy 186 to AZ Hwy 181; south on AZ Hwy 181 to the West Turkey Creek - Kuykendall cut-off road; southerly on the Kuykendall cutoff road to Rucker Canyon Rd.; easterly on Rucker Canyon Rd. to the Tex Canyon Rd.; southerly on Tex Canyon Rd. to U.S. Hwy 80; northeast on U.S. Hwy 80 to the New Mexico state line.

Unit 30B – Beginning at U.S. Hwy 191 and the U.S.-Mexico border; west along the border to the San Pedro River; north along the San Pedro River to I-10; northeasterly on I-10 to U.S. Hwy 191; southerly on U.S. Hwy 191 to the U.S.-Mexico border.

Unit 31 – Beginning at Willcox Exit 340 on I-10; north on Fort Grant Rd. to Brookerson Rd.; north on Brookerson Rd. to Ash Creek Rd.; west on Ash Creek Rd. to Fort Grant Rd.; north on Fort Grant Rd. to Bonita; northerly on the Bonita-Klondyke Rd. to the junction with Aravaipa Creek; west along Aravaipa Creek to AZ Hwy 77; northerly along AZ Hwy 77 to the Gila River; northeast along the Gila River to the San Carlos Indian Reservation boundary; south then east and north along the reservation boundary to U.S. Hwy 70; southeast on U.S. Hwy 70 to U.S. Hwy 191; south on U.S. Hwy 191 to the 352 exit on I-10; southwest on I-10 to Exit 340.

Unit 32 – Beginning at Willcox Exit 340 on I-10; north on Fort Grant Rd. to Brookerson Rd.; north on Brookerson Rd. to Ash Creek Rd.; west on Ash Creek Rd. to Fort Grant Rd.; north on Fort Grant Rd. to Bonita; northerly on the Bonita-Klondyke Rd. to the junction with Aravaipa Creek; west along Aravaipa Creek to AZ Hwy 77; southerly along AZ Hwy 77 to the San Pedro River; southerly along the San Pedro River to I-10; northeast on I-10 to Willcox Exit 340.

Unit 33 – Beginning at Tangerine Rd. and AZ Hwy 77; north and northeast on AZ Hwy 77 to the San Pedro River; southeast along the San Pedro River to I-10 at Benson; west on I-10 to Marsh Station Rd. (Exit 289); northwest on the Marsh Station Rd. to the Agua Verde Rd.; north on the Agua Verde Rd. to its terminus then north 1/2 mile to the Coronado National Forest boundary; north and west along the National Forest boundary; then west, north, and east along the Saguaro National Park boundary; continuing north and west along the Coronado National Forest boundary to the southern boundary of Catalina State Park; west along the southern boundary of Catalina State Park to AZ Hwy 77; north on AZ Hwy 77 to Tangerine Rd.

Unit 34A – Beginning in Nogales at I-19 and Grand Avenue (U.S. Highway 89); northeast on Grand Avenue (U.S. Hwy. 89) to AZ Hwy 82; northeast on AZ Hwy 82 to AZ Hwy 83; northerly on AZ Hwy 83 to the Sahuarita road alignment; west along the Sahuarita road alignment to I-19 Exit 75; south on I-19 to Grand Avenue (U.S. Hwy 89).

Unit 34B – Beginning at AZ Hwy 83 and I-10 Exit 281; easterly on I-10 to the San Pedro River; south along the

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San Pedro River to AZ Hwy 82; westerly on AZ Hwy 82 to AZ Hwy 83; northerly on AZ Hwy 83 to I-10 Exit 281.

Unit 35A – Beginning on the U.S.-Mexico border at the San Pedro River; west along the border to Lochiel Rd.; north on Lochiel Rd. to Patagonia San Rafael Rd.; north on the Patagonia San Rafael Rd. to San Rafael Valley-FS 58 Rd.; north on the San Rafael Valley-FS 58 Rd. to Christian Ln.; north on the Christian Ln. to Ranch Rd.; east and north on the Ranch Rd. to FR 799-Canelo Pass Rd.; northeasterly on the FR 799-Canelo Pass Rd. to AZ Hwy 83; northwesterly on the AZ Hwy 83 to Elgin Canelo Rd.; northeasterly on the Elgin-Canelo Rd. to Upper Elgin Rd.; north on the Upper Elgin Rd. to AZ Hwy 82; easterly on AZ Hwy 82 to the San Pedro River; south along the San Pedro River to the U.S.-Mexico border.

Unit 35B – Beginning at Grand Avenue (U.S. Hwy 89) at the U.S.-Mexico border in Nogales; east along the U.S.-Mexico border to Lochiel Rd.; north on the Lochiel Rd. to Patagonia San Rafael Rd.; north on the Patagonia San Rafael Rd. to San Rafael Valley-FS 58 Rd.; north on the San Rafael Valley-FS 58 Rd. to Christian Ln.; north on the Christian Ln. to Ranch Rd.; east and north on the Ranch Rd. to FR 799-Canelo Pass Rd.; northeasterly on FR 799-Canelo Pass Rd. to AZ Hwy 83; northwesterly on the AZ Hwy 83 to Elgin Canelo Rd.; north on the Elgin Canelo Rd. to Upper Elgin Rd.; north on the Upper Elgin Rd. to AZ Hwy 82; southwest on AZ Hwy 82 to Grand Avenue; southwest on Grand Avenue to the U.S.-Mexico border.

Unit 36A – Beginning at the junction of Sandario Rd. and AZ Hwy 86; southwest on AZ Hwy 86 to AZ Hwy 286; southerly on AZ Hwy 286 to the Arivaca-Sasabe Rd.; southeasterly on the Arivaca-Sasabe Rd. to the town of Arivaca; from the town of Arivaca northeasterly on the Arivaca Rd. to I-19; north on I-19 to the southern boundary of the San Xavier Indian Reservation boundary; westerly and northerly along the reservation boundary to the Sandario road alignment; north on Sandario Rd. to AZ Hwy 86.

Unit 36B – Beginning at I-19 and Grand Avenue (U.S. Hwy 89) in Nogales; southwest on Grand Avenue to the U.S.-Mexico border; west along the U.S.-Mexico border to AZ Hwy 286; north on AZ Hwy 286 to the Arivaca-Sasabe Rd.; southeasterly on the Arivaca-Sasabe Rd. to the town of Arivaca; from the town of Arivaca northeasterly on the Arivaca Rd. to I-19; south on I-19 to Grand Avenue (U.S. Hwy 89).

Unit 36C – Beginning at the junction of AZ Hwy 86 and AZ Hwy 286; southerly on AZ Hwy 286 to the U.S.-Mexico border; westerly along the border to the east boundary of the Tohono O'odham (Papago) Indian Reservation; northerly along the reservation boundary to AZ Hwy 86; easterly on AZ Hwy 86 to AZ Hwy 286.

Unit 37A – Beginning at the junction of I-10 and Tangerine Rd. (Exit 240); southeast on I-10 to Avra Valley Rd. (Exit 242); west on Avra Valley Rd. to Sandario Rd.; south on Sandario Rd. to AZ Hwy 86; southwest on AZ Hwy 86 to the Tohono O'odham Nation boundary; north, east, and west along this boundary to Battaglia Rd.; east on Battaglia Rd. to Toltec Rd.; north on Toltec Rd. to I-10 (Exit 203); southeast on I-10 to AZ Hwy 87 (Exit 211); north on AZ Hwy 87 to AZ Hwy 287; east on AZ Hwy

287 to AZ Hwy 79 at Florence; southeast on AZ Hwy 79 to its junction with AZ Hwy 77; south on AZ Hwy 77 to Tangerine Rd.; west on Tangerine Rd. to I-10.

Unit 37B – Beginning at the junction of AZ Hwy 79 and AZ Hwy 77; northwest on AZ Hwy 79 to U.S. Hwy 60; east on U.S. Hwy 60 to AZ Hwy 177; southeast on AZ Hwy 177 to AZ Hwy 77; southeast and southwest on AZ Hwy 77 to AZ Hwy 79.

Unit 38M – Beginning at the junction of I-10 and Tangerine Rd. (Exit 240); southeast on I-10 to Avra Valley Rd. (Exit 242); west on Avra Valley Rd. to Sandario Rd.; south on Sandario Rd. to the San Xavier Indian Reservation boundary; south and east along the reservation boundary to I-19; south on I-19 to Sahuarita Rd. (Exit 75); east on Sahuarita Rd. to AZ Hwy 83; north on AZ Hwy 83 to I-10 (Exit 281); east on I-10 to Marsh Station Rd. (Exit 289); northwest on Marsh Station Rd. to the Agua Verde Rd.; north on the Agua Verde Rd. to its terminus, then north 1/2 mile to the Coronado National Forest boundary; north and west along the National Forest boundary, then west, north, and east along the Saguaro National Park boundary; continuing north and west along the Coronado National Forest boundary to the southern boundary of Catalina State Park; west along the southern boundary of Catalina State Park to AZ Hwy 77; north on AZ Hwy 77 to Tangerine Rd.; west on Tangerine Rd. to I-10.

Unit 39 – Beginning at AZ Hwy 85 and the Gila River; east along the Gila River to the western boundary of the Gila River Indian Community; southeasterly along this boundary to AZ Hwy 347 (John Wayne Parkway); south on AZ Hwy 347 (John Wayne Parkway) to AZ Hwy 84; east on AZ Hwy 84 to Stanfield; south on the Stanfield-Cocklebur Rd. to I-8; westerly on I-8 to Exit 87; northerly on the Agua Caliente Rd. to the Hyder Rd.; northeasterly on Hyder Rd. to 555th Ave.; north on 555th Ave. to Lahman Rd.; east on Lahman Rd., which becomes Agua Caliente Rd.; northeasterly on Agua Caliente Rd. to Old Hwy 80; northeasterly on Old Hwy 80 to Arizona Hwy 85; southerly on AZ Hwy 85 to the Gila River; except those portions that are sovereign tribal lands of the Tohono O'odham Nation and the Ak-Chin Indian Community.

Unit 40A – Beginning at Ajo; southeasterly on AZ Hwy 85 to Why; southeasterly on AZ Hwy 86 to the Tohono O'odham (Papago) Indian Reservation; northerly and easterly along the reservation boundary to the Cocklebur-Stanfield Rd.; north on the Cocklebur-Stanfield Rd. to I-8; westerly on I-8 to AZ Hwy 85; southerly on AZ Hwy 85 to Ajo.

Unit 40B – Beginning at Gila Bend; westerly on I-8 to the Colorado River; southerly along the Colorado River to the Mexican border at San Luis; southeasterly along the border to the Cabeza Prieta National Wildlife Refuge; northerly, easterly and southerly around the refuge boundary to the Mexican border; southeast along the border to the Tohono O'odham (Papago) Indian Reservation; northerly along the reservation boundary to AZ Hwy 86; northwesterly on AZ Hwy 86 to AZ Hwy 85; north on AZ Hwy 85 to Gila Bend; except those portions that are sovereign tribal lands of the Cocopah Tribe.

Unit 41 – Beginning at I-8 and U.S. Hwy 95 (in Yuma); easterly on I-8 to exit 87; northerly on the Agua Caliente

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Rd. to the Hyder Rd.; northeasterly on Hyder Rd. to 555th Ave.; north on 555th Ave. to Lahman Rd.; east on Lahman Rd., which becomes Agua Caliente Rd.; northeasterly on Agua Caliente Rd. to Old Hwy 80; northeasterly on Old Hwy 80 to Arizona Hwy 85; northerly on AZ Hwy 85 to Oglesby Rd.; north on Oglesby Rd. to I-10; westerly on I-10 to Exit 45; southerly on Vicksburg-Kofa National Wildlife Refuge Rd. to the Refuge boundary; easterly, southerly, westerly, and northerly along the boundary to the Castle Dome Rd.; southwesterly on the Castle Dome Rd. to U.S. Hwy 95; southerly on U.S. Hwy 95 to I-8.

Unit 42 – Beginning at the junction of the Beardsley Canal and U.S. Hwy 93 (U.S. 89, U.S. 60); northwesterly on U.S. Hwy 93 to AZ Hwy 71; southwesterly on AZ Hwy 71 to U.S. Hwy 60; westerly on U.S. Hwy 60 to Aguila; south on the Eagle Eye Rd. to the Salome-Hassayampa Rd.; southeasterly on the Salome-Hassayampa Rd. to I-10 (Exit 81); easterly on I-10 to Jackrabbit Trail (Exit 121); north along Jackrabbit Trail to the Indian School road; east along Indian School Rd. to the Beardsley Canal; northeasterly along the Beardsley Canal to U.S. Hwy 93.

Unit 43A – Beginning at U.S. Hwy 95 and the Bill Williams River; west along the Bill Williams River to the Arizona-California state line; southerly to the south end of Cibola Lake; northerly and easterly on the Cibola Lake Rd. to U.S. Hwy 95; south on U.S. Hwy 95 to the Stone Cabin-King Valley Rd. (King Rd.); east along the Stone Cabin-King Valley Rd. (King Rd.) to the west boundary of the Kofa National Wildlife Refuge; northerly along the refuge boundary to the Crystal Hill Rd. (Blevens Rd.); northwesterly on the Crystal Hill Rd. (Blevens Rd.) to U.S. Hwy 95; northerly on U.S. Hwy 95 to the Bill Williams River; except those portions that are sovereign tribal lands of the Colorado River Indian Tribes.

Unit 43B – Beginning at the south end of Cibola Lake; southerly along the Arizona-California state line to I-8; southeasterly on I-8 to U.S. Hwy 95; easterly and northerly on U.S. Hwy 95 to the Castle Dome road; northeast on the Castle Dome Rd. to the Kofa National Wildlife Refuge boundary; north along the refuge boundary to the Stone Cabin-King Valley Rd. (King Rd.); west along the Stone Cabin-King Valley Rd. (King Rd.) to U.S. Hwy 95; north on U.S. Hwy 95 to the Cibola Lake Rd.; west and south on the Cibola Lake Rd. to the south end of Cibola Lake; except those portions that are sovereign tribal lands of the Quechan Tribe.

Unit 44A – Beginning at U.S. Hwy 95 and the Bill Williams River; south along U.S. Hwy 95 to AZ Hwy 72; southeasterly on AZ Hwy 72 to Vicksburg; south on the Vicksburg-Kofa National Wildlife Refuge Rd. to I-10; easterly on I-10 to the Salome-Hassayampa Rd. (Exit 81); northwesterly on the Salome-Hassayampa Rd. to Eagle Eye Rd.; northeasterly on Eagle Eye Rd. to Aguila; east on U.S. Hwy 60 to AZ Hwy 71; northeasterly on AZ Hwy 71 to U.S. Hwy 93; northwesterly on U.S. Hwy 93 to the Santa Maria River; westerly along the Santa Maria and Bill Williams rivers to U.S. Hwy 95; except those portions that are sovereign tribal lands of the Colorado River Indian Tribes.

Unit 44B – Beginning at Quartzsite; south on U.S. Hwy 95 to the Crystal Hill Rd. (Blevens Rd.); east on the Crystal Hill Rd. (Blevens Rd.) to the Kofa National Wildlife

Refuge; north and east along the refuge boundary to the Vicksburg-Kofa National Wildlife Refuge Rd.; north on the Vicksburg-Kofa National Wildlife Refuge Rd. to AZ Hwy 72; northwest on AZ Hwy 72 to U.S. Hwy 95; south on U.S. Hwy 95 to Quartzsite.

Unit 45A – Beginning at the junction of the Stone Cabin-King Valley Rd. (King Rd.) and Kofa National Wildlife Refuge boundary; east on the Stone Cabin-King Valley Rd. (King Rd.) to O-O Junction; north from O-O Junction on the Kofa Mine Rd. to the Evening Star Mine; north on a line over Polaris Mountain to Midwell-Alamo Spring-Kofa Cabin Rd. (Wilbanks Rd.); north on the Midwell-Alamo Spring-Kofa Cabin Rd. (Wilbanks Rd.) to the El Paso Natural Gas Pipeline Rd.; north on a line from the junction to the north boundary of the Kofa National Wildlife Refuge; west and south on the boundary line to Stone Cabin-King Valley Rd. (King Rd.).

Unit 45B – Beginning at O-O Junction; north from O-O Junction on the Kofa Mine Rd. to the Evening Star Mine; north on a line over Polaris Mountain to Midwell-Alamo Spring-Kofa Cabin Rd. (Wilbanks Rd.); north on the Midwell-Alamo Spring-Kofa Cabin Rd. (Wilbanks Rd.) to the El Paso Natural Gas Pipeline Rd.; north on a line from the junction to the north Kofa National Wildlife Refuge boundary; east to the east refuge boundary; south and west along the Kofa National Wildlife Refuge boundary to the Stone Cabin-King Valley Rd. (Wellton-Kofa Rd./Ave 40E); north and west on the Stone Cabin-King Valley Rd. (Wellton-Kofa Rd./Ave 40E) to O-O Junction.

Unit 46A – That portion of the Cabeza Prieta National Wildlife Refuge east of the Yuma-Pima County line.

Unit 46B – That portion of the Cabeza Prieta National Wildlife Refuge west of the Yuma-Pima County line.

Historical Note

Amended as an emergency effective April 10, 1975 (Supp. 75-1). Amended effective March 5, 1976 (Supp. 76-2). Amended effective May 17, 1977 (Supp. 77-3). Amended effective September 7, 1978 (Supp. 78-5). Amended effective June 4, 1979 (Supp. 79-3). Former Section R12-4-10 renumbered as Section R12-4-108 without change effective August 13, 1981 (Supp. 81-4). Amended effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended effective February 4, 1993 (Supp. 93-1). Amended effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended by final rulemaking at 6 A.A.R. 1146, effective July 1, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 865, effective July 1, 2001 (Supp. 01-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 1458, effective January 1, 2013 (Supp. 12-2). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

R12-4-109. Approved Trapping Education Course Fee

Under A.R.S. § 17-333.02(A), the provider of an approved educational course of instruction in responsible trapping and environmental ethics may collect a fee from each participant that:

1. Is reasonable and commensurate for the course, and
2. Does not exceed \$25.

Historical Note

Amended as an emergency effective April 10, 1975 (Supp. 75-1). Amended effective May 3, 1976 (Supp. 76-3). Editorial correction paragraph (14) (Supp. 78-5). For-

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mer Section R12-4-11 renumbered as Section R12-4-109 without change effective August 13, 1981 (Supp. 81-4). Amended by adding paragraphs (2) and (3) and renumbering former paragraphs (2) through (17) as paragraphs (4) through (19) effective May 12, 1982 (Supp. 82-3). Amended effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Section repealed by final rulemaking at 6 A.A.R. 211, effective May 1, 2000 (Supp. 99-4). New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

R12-4-110. Posting and Access to State Land

- A.** For the purpose of this Section:
1. "Corrals," "feed lots," or "holding pens" mean completely fenced areas used to contain livestock for purposes other than grazing.
 2. "Existing road" means any maintained or unmaintained road, way, highway, trail, or path that has been used for motorized vehicular travel, and clearly shows or has a history of established vehicle use, and is not currently closed by the Commission.
 3. "State lands" means all land owned or held in trust by the state that is managed by the State Land Department and lands that are owned or managed by the Game and Fish Commission.
- B.** In addition to the prohibition against posting prescribed under A.R.S. § 17-304, a person shall not lock a gate, construct a fence, place an obstacle, or otherwise commit an act that denies legally available access to or use of any existing road upon state lands by persons lawfully taking or retrieving wildlife or conducting any activities that are within the scope of and take place while lawfully hunting or fishing.
1. A person in violation of this Section shall take immediate corrective action to remove any lock, fence, or other obstacle unlawfully preventing access to state lands.
 2. If immediate corrective action is not taken, a representative of the Department may remove any unlawful posting and remove any lock, fence, or other obstacle that unlawfully prevents access to state lands.
 3. In addition, the Department may take appropriate legal action to recover expenses incurred in the removal of any unlawful posting or obstacle that prevented access to state land.
- C.** The provisions of this Section do not allow any person to trespass upon private land to gain access to any state land.
- D.** A person may post state lands as closed to hunting, fishing, or trapping without further action by the Commission when the state land is within one-quarter mile of any:
1. Occupied residence, cabin, lodge, or other building; or
 2. Corrals, feed lots, or holding pens containing concentrations of livestock other than for grazing purposes.
- E.** The Commission may grant permission to lock, tear down, or remove a gate or close a road or trail that provides legally available access to state lands for persons lawfully taking wildlife or conducting any activities that are within the scope of and take place while lawfully hunting or fishing if access to such lands is provided by a reasonable alternate route.
1. Under R12-4-610, the Director may grant a permit to a state land lessee to temporarily lock a gate or close an existing road that provides access to state lands if the taking of wildlife will cause unreasonable interference during a critical livestock or commercial operation. This permit shall not exceed 30 days.
 2. Applications for permits for more than 30 days shall be submitted to the Commission for approval.
3. If a permit is issued to temporarily close a road or gate, a copy of the permit shall be posted at the point of the closure during the period of the closure.
- F.** A person may post state lands other than those referenced under subsection (D) as closed to hunting, fishing, or trapping, provided the person has obtained a permit from the Commission authorizing the closure. A person possessing a permit authorizing the closure of state lands shall post signs in compliance with A.R.S. 17-304(C). The Commission may permit the closure of state land when it is necessary:
1. Because the taking of wildlife constitutes an unusual hazard to permitted users;
 2. To prevent unreasonable destruction of plant life or habitat; or
 3. For proper resource conservation, use, or protection, including but not limited to high fire danger, excessive interference with mineral development, developed agricultural land, or timber or livestock operations.
- G.** A person shall submit an application for posting state land to prohibit hunting, fishing, or trapping under subsection (F), or to close an existing road under subsection (E), as required under R12-4-610. If an application to close state land to hunting, fishing, or trapping is made by a person other than the state land lessee, the Department shall provide notice to the lessee and the State Land Commissioner before the Commission considers the application. The state land lessee or the State Land Commissioner shall file any objections with the Department, in writing, within 30 days after receipt of notice, after which the matter shall be submitted to the Commission for determination.
- H.** A person may use a vehicle on or off a road to pick up lawfully taken big game animals.
- I.** The closing of state land to hunting, fishing, or trapping shall not restrict any other permitted use of the land.
- J.** State trust land may be posted with signs that read "State Land No Trespassing," but such posting shall not prohibit access to such land by any person lawfully taking or retrieving wildlife or conducting any activities that are within the scope of and take place while lawfully hunting or fishing.
- K.** When hunting, fishing, or trapping on state land, a license holder shall not:
1. Break or remove any lock or cut any fence to gain access to state land;
 2. Open and not immediately close a gate;
 3. Intentionally or wantonly destroy, deface, injure, remove, or disturb any building, sign, equipment, marker, or other property;
 4. Harvest or remove any vegetative or mineral resources or object of archaeological, historic, or scientific interest;
 5. Appropriately mutilate, deface, or destroy any natural feature, object of natural beauty, antiquity, or other public or private property;
 6. Dig, remove, or destroy any tree or shrub;
 7. Gather or collect renewable or non-renewable resources for the purpose of sale or barter unless specifically permitted or authorized by law;
 8. Frighten or chase domestic livestock or wildlife, or endanger the lives or safety of others when using a motorized vehicle or other means; or
 9. Operate a motor vehicle off road or on any road closed to the public by the Commission or landowner, except to retrieve a lawfully taken big game animal.

Historical Note

Adopted effective June 1, 1977 (Supp. 77-3). Editorial correction subsection (F) (Supp. 78-5). Former Section R12-4-13 renumbered as Section R12-4-110 without

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change effective August 13, 1981 (Supp. 81-4). Amended effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

R12-4-111. Identification Number

A person applying for a Department identification number, as defined under R12-4-101, shall provide the person's:

1. Full name,
2. Any additional names the person has lawfully used in the past or is known by,
3. Date of birth, and
4. Mailing address.

Historical Note

Amended effective April 22, 1980 (Supp. 80-2). Former Section R12-4-05 renumbered as Section R12-4-111 without change effective August 13, 1981 (Supp. 81-4). Section R12-4-111 repealed effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). New Section adopted effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

R12-4-112. Diseased, Injured, or Chemically-immobilized Wildlife

- A. A person who lawfully takes and possesses wildlife believed to be diseased, injured, or chemically-immobilized may request an inspection of the wildlife carcass provided:
 1. The wildlife was lawfully taken and possessed under a valid hunt permit- or nonpermit-tag, and
 2. The person who took the wildlife did not create the condition.
- B. The Department, after inspection, may condemn the carcass if it is determined the wildlife is unfit for human consumption. The Department shall condemn chemically-immobilized wildlife only when the wildlife was taken during the immobilizing drug's established withdrawal period.
- C. The person shall surrender the entire condemned wildlife carcass and any parts thereof to the Department.
 1. Upon surrender of the condemned wildlife, the Department shall provide to the person written authorization allowing the person to purchase a duplicate hunt permit- or nonpermit-tag.
 2. The person may purchase a duplicate tag from any Department office or license dealer where the permit-tag is available.
- D. If the duplicate tag is issued by a license dealer, the license dealer shall forward the written authorization to the Department with the report required under R12-4-105(K).

Historical Note

Former Section R12-4-04 renumbered as Section R12-4-112 without change effective August 13, 1981 (Supp. 81-4). Amended effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

R12-4-113. Small Game Depredation Permit

- A. The Department shall issue a small game depredation permit authorizing the take of small game and the allowable methods

of take only after the Department has determined all other remedies prescribed under A.R.S. § 17-239(A), (B), and (C) have been exhausted and the take of the small game is necessary to alleviate the property damage. A small game depredation permit is:

1. A complimentary permit.
 2. Not valid for the take of migratory birds unless the permit holder:
 - a. Obtains and possesses a federal special purpose permit under 50 C.F.R. 21.41, revised October 1, 2014, which is incorporated by reference; or
 - b. Is exempt from permitting requirements under 50 C.F.R. 21.43, revised October 1, 2014, which is incorporated by reference;
 - c. For subsections (A)(2)(a) and (b), 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, Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000. This incorporation by reference does not include any later amendments or editions of the incorporated material.
- B.** A person desiring a small game depredation permit shall submit to the Department an application requesting the permit. The application form is furnished by the Department and is available at any Department office and online at www.azgfd.gov. The person shall provide all of the following information on the form:
1. Full name or, when submitted by a municipality, the name of the agency and agency contact;
 2. Mailing address;
 3. Telephone number or, when submitted by a municipality, agency contact number;
 4. E-mail address, when available, or, when submitted by a municipality, agency contact e-mail address;
 5. Description of property damage suffered;
 6. Species of animal causing the property damage; and
 7. Area the permit would be valid for.

Historical Note

Adopted effective August 5, 1976 (Supp. 76-4). Former Section R12-4-12 renumbered as Section R12-4-113 without change effective August 13, 1981 (Supp. 81-4). Amended as an emergency effective September 20, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-5). Amended effective May 5, 1986 (Supp. 86-3). Section R12-4-113 repealed, new Section R12-4-113 adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

R12-4-114. Issuance of Nonpermit-tags and Hunt Permit-tags

- A. The Department provides numbered tags for sale to the public. The Department shall ensure each tag:
 1. Includes a transportation and shipping permit as prescribed under A.R.S. §§ 17-332 and 17-371, and
 2. Clearly identifies the animal for which the tag is valid.
- B. If the Commission establishes a big game season for which a hunt number is not assigned, the Department or its authorized agent, or both, shall sell nonpermit-tags.
 1. A person purchasing a nonpermit-tag shall provide all of the following information to a Department office or license dealer at the time of purchase; the applicant's:
 - a. Name,

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- b. Mailing address, and
 - c. Department identification number.
2. An applicant shall not obtain nonpermit-tags in excess of the bag limit established by Commission Order when it established the season for which the nonpermit-tags are valid.
- C. If the number of hunt permits for a species in a particular hunt area must be limited, a Commission Order establishes a hunt number for that hunt area and a hunt permit-tag is required to take the species in that hunt area.
- 1. A person applying for a hunt permit-tag shall submit an application as described under R12-4-104.
 - 2. The Department shall determine whether a hunt permit-tag will be issued to an applicant as follows:
 - a. The Department shall reserve a maximum of 20% of the hunt permit-tags for each hunt number, except as established under subsection (C)(2)(b), for antelope, bear, deer, elk, javelina, and turkey and reserve a maximum of 20% of the hunt permit-tags for all hunt numbers combined statewide for bighorn sheep and buffalo to issue to persons who have bonus points and shall issue the hunt permit-tags as established under subsection (C)(2)(c).
 - b. For antelope, bear, deer, elk, javelina, and turkey, the Department shall reserve one hunt permit-tag for any hunt number with fewer than five, but more than one, hunt permit-tags and shall issue the tag as established under subsection (C)(2)(c). When this occurs, the Department shall adjust the number of available hunt permit-tags in order to ensure the total number of hunt permit-tags available does not exceed the 20% maximum specified in subsection (C)(2)(a).
 - c. The Department shall issue the reserved hunt permit-tags for hunt numbers that eligible applicants designate as their first or second choices. The Department shall issue the reserved hunt permit-tags by random selection:
 - i. First, to eligible applicants with the highest number of bonus points for that genus;
 - ii. Next, if there are reserved hunt permit-tags remaining, to eligible applicants with the next highest number of bonus points for that genus; and
 - iii. If there are still tags remaining, to the next eligible applicants with the next highest number of bonus points; continuing in the same manner until all of the reserved tags have been issued or until there are no more applicants for that hunt number who have bonus points.
 - d. The Department shall ensure that all unreserved hunt permit-tags are issued by random selection:
 - i. First, to hunt numbers designated by eligible applicants as their first or second choices; and
 - ii. Next, to hunt numbers designated by eligible applicants as their third, fourth, or fifth choices.
 - e. Before each of the three passes listed under (C)(2)(c)(i),(ii), and (iii), each application is processed through the Department's random number generator program. A random number is assigned to each application; an additional random number is assigned to each application for each group bonus point, including the Hunter Education and Loyalty bonus points. Only the lowest random number generated for an application is used in the computer draw process. A new random number is generated for each application for each pass of the computer draw.
- f. If the bag limit is more than one per calendar year, or if there are unissued hunt permit-tags remaining after the random computer draw, the Department shall ensure these hunt permit-tags are available on a first-come, first-served basis as specified in the annual hunt permit-tag application schedule.
- D. A person may purchase hunt permit-tags equal to the bag limit for a genus.
- 1. A person shall not exceed the established bag limit for that genus.
 - 2. A person shall not apply for any additional hunt-permit-tags if the person has reached the bag limit for that genus during the same calendar year.
 - 3. A person who surrenders a tag in compliance with R12-4-118 is eligible to apply for another hunt permit-tag for the same genus during the same calendar year, provided the person has not reached the bag limit for that genus.
- E. The Department shall make available to nonresidents:
- 1. For bighorn sheep and buffalo, no more than one hunt permit-tag or 10% of the total hunt permit-tags, whichever is greater, for bighorn sheep or buffalo in any computer draw. The Department shall not make available more than 50% nor more than two bighorn sheep or buffalo hunt permit-tags of the total in any hunt number.
 - 2. For antelope, antlered deer, bull elk, or turkey, no more than 10%, rounded down to the next lowest number, of the total hunt permit-tags in any hunt number. If a hunt number for antelope, antlered deer, bull elk, or turkey has 10 or fewer hunt permit-tags, no more than one hunt permit-tag will be made available unless the hunt number has only one hunt permit-tag, then that tag shall only be available to a resident.
- F. The Commission may, at a public meeting, increase the number of hunt permit-tags issued to nonresidents in a computer draw when necessary to meet management objectives.
- G. The Department shall not issue under subsection (C)(2)(c), more than half of the hunt permit-tags made available to nonresidents under subsection (E).
- H. A nonresident cap established under this Section applies only to hunt permit-tags issued by computer draw under subsections (C)(2)(c) and (d).

Historical Note

Adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended effective January 1, 1993; filed December 18, 1992 (Supp. 92-4). Amended effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended effective January 1, 1997; filed with the Office of the Secretary of State November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 9 A.A.R. 610, effective April 6, 2003 (Supp. 03-1). Amended by final rulemaking at 11 A.A.R. 1183, effective May 2, 2005 (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

R12-4-115. Restricted Nonpermit-Tags; Supplemental Hunts and Hunter Pool

- A. For the purposes of this Section, the following definitions apply:

“Companion tag” means a restricted nonpermit-tag valid for a supplemental hunt prescribed by Commission Order that exactly matches the season dates and open areas of

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another big game hunt, for which a hunt number is assigned and hunt permit-tags are issued through the computer draw.

“Emergency season” means a season established for reasons constituting an immediate threat to the health, safety or management of wildlife or its habitat, or public health or safety.

“Management objectives” means goals, recommendations, or guidelines contained in Department or Commission-approved wildlife management plans, which include hunt guidelines, operational plans, or hunt recommendations;

“Hunter pool” means all persons who have submitted an application for a supplemental hunt.

“Restricted nonpermit-tag” means a permit limited to a season for a supplemental hunt established by the Commission for the following purposes:

Take of depredating wildlife as authorized under A.R.S. § 17-239;

Take of wildlife under an Emergency Season; or

Take of wildlife under a population management hunt if the Commission has prescribed nonpermit-tags by Commission Order for the purpose of meeting management objectives because regular seasons are not, have not been, or will not be sufficient or effective to achieve management objectives.

- B.** The Commission shall, by Commission Order, open a season or seasons and prescribe a maximum number of restricted nonpermit-tags to be made available under this Section.
- C.** The Department shall implement a population management hunt under the open season or seasons established under subsection (B) if the Department determines the:
1. Regular seasons have not met or will not meet management objectives;
 2. Take of wildlife is necessary to meet management objectives; and
 3. Issuance of a specific number of restricted nonpermit-tags is likely to meet management objectives.
- D.** To implement a population management hunt established by Commission Order, the Department shall:
1. Select season dates, within the range of dates listed in the Commission Order;
 2. Select specific hunt areas, within the range of hunt areas listed in the Commission Order;
 3. Select the legal animal that may be taken from the list of legal animals identified in the Commission Order;
 4. Determine the number of restricted nonpermit-tags that will be issued from the maximum number of tags authorized in the Commission Order.
 - a. The Department shall not issue more restricted nonpermit-tags than the maximum number prescribed by Commission Order.
 - b. A restricted nonpermit-tag is valid only for the supplemental hunt for which it is issued.
- E.** The provisions of R12-4-104, R12-4-107, R12-4-114, and R12-4-609 do not apply to a supplemental hunt.
- F.** If the Department anticipates the normal fee structure will not generate adequate participation, then the Department may reduce restricted nonpermit-tag fees up to 75%, as authorized under A.R.S. § 17-239(D).
- G.** A supplemental hunt application submitted in accordance with this Section does not invalidate any other application submitted by the person for a hunt permit-tag.
 1. The Department shall not accept a group application, as defined under R12-4-104, for a restricted nonpermit-tag.
 2. An applicant shall not apply for or obtain a restricted nonpermit-tag to take wildlife in excess of the bag limit established by Commission Order.
 3. The issuance of a restricted nonpermit-tag does not authorize a person to exceed the bag limit established by Commission Order.
- H.** To participate in a supplemental hunt, a person shall:
 1. Obtain a restricted nonpermit-tag as prescribed under this Section, and
 2. Possess a valid hunting license. If the applicant does not possess a valid license or the license will expire before the supplemental hunt, the applicant shall purchase an appropriate license.
- I.** The Department or its authorized agent shall maintain a hunter pool for supplemental hunts other than companion tag hunts.
 1. The Department shall purge and renew the hunter pool on an annual basis.
 2. An applicant for a restricted nonpermit-tag under this subsection shall submit a hunt permit-tag application to the Department. The application is available at any Department office, an authorized agent, or online at www.azgfd.gov. The applicant shall provide all of the following information on the application:
 - a. The applicant’s:
 - i. Name,
 - ii. Mailing address,
 - iii. Number of years of residency immediately preceding application,
 - iv. Date of birth, and
 - v. Daytime and evening telephone numbers,
 - b. The species that the applicant would like to hunt, if selected,
 - c. The applicant’s hunting license number.
 3. In addition to the requirements established under subsection (I)(2), at the time of application the applicant shall submit the application fee required under R12-4-102.
 4. When issuing a restricted nonpermit-tag, the Department or its authorized agent shall randomly select applicants from the hunter pool.
 - a. The Department or its authorized agent shall attempt to contact each randomly-selected applicant by telephone at least three times within a 24-hour period.
 - b. If an applicant cannot be contacted or is unable to participate in the supplemental hunt, the Department or its authorized agent shall return the application to the hunter pool and draw another application.
 - c. In compliance with subsection (D)(4), the Department or its authorized agent shall select no more applications after the number of restricted nonpermit-tags established by Commission Order are issued.
 5. The Department shall reserve a restricted nonpermit-tag for an applicant only for the period specified by the Department when contact is made with the applicant. If an applicant fails to purchase the nonpermit-tag within the specified period, the Department or its authorized agent shall:
 - a. Remove the person’s application from the hunter pool, and
 - b. Offer that restricted nonpermit-tag to another person whose application is drawn from the hunter pool as established under this Section.

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6. A person who participates in a supplemental hunt through the hunter pool shall be removed from the supplemental hunter pool for the genus for which the person participated. A hunter pool applicant who is selected and who wishes to participate in a supplemental hunt shall submit the following to the Department to obtain a restricted nonpermit-tag:
- The fee for the tag as established under R12-4-102 or subsection (F) if the fee has been reduced, and
 - The applicant's hunting license number. The applicant shall possess an appropriate license that is valid at the time of the supplemental hunt. The applicant shall purchase a license at the time of application when:
 - The applicant does not possess a valid license, or
 - The applicant's license will expire before the supplemental hunt.
7. A person who participates in a supplemental hunt shall not reapply for the hunter pool for that genus until the hunter pool is renewed.
- J.** The Department shall only make a companion tag available to a person who possesses a matching hunt permit-tag and not a person from the hunter pool. Authorization to issue a companion tag occurs when the Commission establishes a hunt in Commission Order under subsection (B).
- The requirements of subsection (D) are not applicable to a companion tag issued under this subsection.
 - To obtain a companion tag under this subsection, an applicant shall submit a hunt permit-tag application to the Department. The application is available at any Department office and online at www.azgfd.gov. The applicant shall provide all of the following information on the application, the applicant's:
 - Name,
 - Mailing address,
 - Department identification number, and
 - Hunt permit-tag number, to include the hunt number and permit number, corresponding with the season dates and open areas of the supplemental hunt.
 - In addition to the requirements established under subsection (J)(2), at the time of application the applicant shall:
 - Provide verification that the applicant lawfully obtained the hunt permit-tag for the hunt described under this subsection by presenting the hunt permit-tag to a Department office for verification, and
 - Submit all applicable fees required under R12-4-102.
- Historical Note**
- Adopted effective June 13, 1977 (Supp. 77-3). Former Section R12-4-14 renumbered as Section R12-4-115 without change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-115 renumbered as Section R12-4-607 without change effective December 22, 1987 (Supp. 87-4). New Section R12-4-115 adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended effective January 1, 1993; filed December 18, 1992 (Supp. 92-4). Amended by final rulemaking at 9 A.A.R. 610, effective April 6, 2003 (Supp. 03-1). Amended by final rulemaking at 11 A.A.R. 991, effective April 2, 2005; amended by final rulemaking at 11 A.A.R. 1177, effective May 2, 2005 (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).
- R12-4-116. Reward Payments**
- A.** Subject to the restrictions prescribed under A.R.S. § 17-315, a person may claim a reward from the Department when the person provides information that leads to an arrest through the Operation Game Thief Program. The person who reports the unlawful activity will then become eligible to receive a reward as established under subsections (C) and (D), provided funds are available in the Wildlife Theft Prevention Fund and:
- The person who reported the violation provides the Operation Game Thief control number issued by Department law enforcement personnel, as established under subsection (B);
 - The information provided relates to a violation of any provisions of A.R.S. Title 17, A.A.C. Title 12, Chapter 4, or federal wildlife laws enforced by and under the jurisdiction of the Department, but not on Indian Reservations;
 - The person did not first provide information during a criminal investigation or judicial proceeding; and
 - The person who reports the violation is not:
 - The person who committed the violation,
 - A peace officer,
 - A Department employee, or
 - An immediate family member of a Department employee.
- B.** The Department shall inform the person providing information regarding a wildlife violation of the procedure for claiming a reward if the information results in an arrest. The Department shall also provide the person with the control number assigned to the reported violation.
- C.** Reward payments for information that results in an arrest for the reported violation are as follows:
- For cases that involve antelope, eagles, bear, bighorn sheep, buffalo, deer, elk, javelina, mountain lion, turkey, or endangered or threatened wildlife as defined under R12-4-401, \$500;
 - For cases that involve wildlife that are not listed under subsection (C)(1), a minimum of \$50, not to exceed \$150, except for additional amounts authorized under subsection (C)(3); and
 - For cases that involve any wildlife, an additional \$1,000 may be made available based on:
 - The value of the information;
 - The unusual value of the wildlife;
 - The number of individual animals taken;
 - Whether or not the person who committed the unlawful act was arrested for commercialization of wildlife; and
 - Whether or not the person who committed the unlawful act is a repeat offender.
- D.** If more than one person independently provides information or evidence that leads to an arrest for a violation, the Department may divide the reward payment among the persons who provided the information if the total amount of the reward payment does not exceed the maximum amount of a monetary reward established under subsections (C) or (E);
- E.** Notwithstanding subsection (C), the Department may offer and pay a reward up to the minimum civil damage value of the wildlife unlawfully taken, wounded or killed, or unlawfully possessed as prescribed under A.R.S. § 17-314, if the Department believes that an enhanced reward offer is merited due to the specific circumstances of the case.

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Historical Note

Adopted effective January 10, 1979 (Supp. 79-1). Former Section R12-4-15 renumbered as Section R12-4-116 without change effective August 13, 1981 (Supp. 81-4). Amended effective December 18, 1985 (Supp. 85-6). Section R12-4-116 repealed, new Section R12-4-116 adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

R12-4-117. Indian Reservations

A state license, permit, or tag is not required to hunt or fish on any Indian reservation in this State. Wildlife lawfully taken on an Indian reservation may be transported or processed anywhere in the State if it can be identified as to species and legality as provided in A.R.S. § 17-309(A)(19). All wildlife transported anywhere in this State is subject to inspection under the provisions of A.R.S. § 17-211(E)(4).

Historical Note

Former Section R12-4-02 renumbered as Section R12-4-117 without change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-117 repealed, new Section R12-4-117 adopted effective April 10, 1984 (Supp. 84-2). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

R12-4-118. Hunt Permit-tag Surrender

- A.** The Commission authorizes the Department to implement a tag surrender program if the Director finds:
1. The Department has the administrative capacity to implement the program;
 2. There is public interest in such a program; or
 3. The tag surrender program is likely to meet the Department's revenue objectives.
- B.** The tag surrender program is limited to a person who has a valid and active membership in a Department membership program.
1. The Department may establish a membership program that offers a person various products and services.
 2. The Department may establish different membership levels based on the type of products and services offered and set prices for each level.
 - a. The lowest membership level may include the option to surrender one hunt permit-tag during the membership period.
 - b. A higher membership level may include the option to surrender more than one hunt permit-tag during the membership period.
 3. The Department may establish terms and conditions for the membership program in addition to the following:
 - a. Products and services to be included with each membership level.
 - b. Membership enrollment is available online only and requires a person to create a portal account.
 - c. Membership is not transferable.
 - d. No refund shall be made for the purchase of a membership, unless an internal processing error resulted in the collection of erroneous fees.
- C.** The tag surrender program is restricted to the surrender of an original, unused hunt permit-tag obtained through a computer draw.

1. A person must have a valid and active membership in the Department's membership program with at least one unredeemed tag surrender that was valid:
 - a. On the application deadline date for the computer draw in which the hunt permit-tag being surrendered was drawn, and
 - b. At the time of tag surrender.
 2. A person who chooses to surrender an original, unused hunt permit-tag shall do so prior to the close of business the day before the hunt begins for which the tag is valid.
 3. A person may surrender an unused hunt permit-tag for a specific species only once before any bonus points accrued for that species must be expended.
- D.** To surrender an original, unused hunt permit-tag, a person shall comply with all of the following conditions:
1. A person shall submit a completed application form to any Department office. The application form is available at any Department office and online at www.azgfd.gov. The applicant shall provide all of the following information on the application form:
 - a. The applicant's:
 - i. Name,
 - ii. Mailing address,
 - iii. Department identification number,
 - iv. Membership number,
 - b. Applicable hunt number,
 - c. Applicable hunt permit-tag number, and
 - d. Any other information required by the Department.
 2. A person shall surrender the original, unused hunt permit-tag as required under subsection (C) in the manner described by the Department as indicated on the application form.
- E.** Upon receipt of an original, unused hunt permit-tag surrendered in compliance with this Section, the Department shall:
1. Restore the person's bonus points that were expended for the surrendered tag, and
 2. Award the bonus point the person would have accrued had the person been unsuccessful in the computer draw for the surrendered tag.
 3. Not refund any fees the person paid for the surrendered tag, as prohibited under A.R.S. § 17-332(E).
- F.** The Department may, at its sole discretion, re-issue or destroy the surrendered original, unused hunt permit-tag. When re-issuing a tag, the Department may use any of the following methods in no order of preference:
1. Re-issuing the surrendered tag, beginning with the highest membership level in the Department's membership program, to a person who has a valid and active membership in that membership level and who would have been next to receive a tag for that hunt number, as evidenced by the random numbers assigned during the Department's computer draw process;
 2. Re-issuing the surrendered tag to a person who has a valid and active membership in any tier of the Department's membership program with a tag surrender option and who would have been next to receive a tag for that hunt number, as evidenced by the random numbers assigned during the Department's computer draw process;
 3. Re-issuing the surrendered tag to an eligible person who would have been next to receive a tag for that hunt number, as evidenced by the random numbers assigned during the Department's computer draw process; or
 4. Offering the surrendered tag through the first-come, first-served process.

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- G.** For subsections (F)(1), (2), and (3); if the Department cannot contact a person qualified to receive a tag or the person declines to purchase the surrendered tag, the Department shall make a reasonable attempt to contact and offer the surrendered tag to the next person qualified to receive a tag for that hunt number based on the assigned random number during the Department's computer draw process. This process will continue until the surrendered tag is either purchased or the number of persons qualified is exhausted. For purposes of subsections (G) and (H), the term "qualified" means a person who satisfies the conditions for re-issuing a surrendered tag as provided under the selected re-issuing method.
- H.** When the re-issuance of a surrendered tag involves a group application and one or more members of the group is qualified under the particular method for re-issuing the surrendered tag, the Department shall offer the surrendered tag first to the applicant designated "A" if qualified to receive a surrendered tag.
1. If applicant "A" chooses not to purchase the surrendered tag or is not qualified, the Department shall offer the surrendered tag to the applicant designated "B" if qualified to receive a surrendered tag.
 2. This process shall continue with applicants "C" and then "D" until the surrendered tag is either purchased or all qualified members of the group application choose not to purchase the surrendered tag.
- I.** A person who receives a surrendered tag shall submit the applicable tag fee as established under R12-4-102 and provide their valid hunting license number.
1. A person receiving the surrendered tag as established under subsections (F)(1), (2), and (3) shall expend all bonus points accrued for that genus, except any accrued Hunter Education and loyalty bonus points.
 2. The applicant shall possess a valid hunting license at the time of purchasing the surrendered tag and at the time of the hunt for which the surrendered tag is valid. If the person does not possess a valid license at the time the surrendered tag is offered, the applicant shall purchase a license in compliance with R12-4-104.
 3. The issuance of a surrendered tag does not authorize a person to exceed the bag limit established by Commission Order.
 4. It is unlawful for a person to purchase a surrendered tag when the person has reached the bag limit for that genus during the same calendar year.
- J.** A person is not eligible to petition the Commission under R12-4-611 for reinstatement of any expended bonus points, except as authorized under R12-4-107(M).
- K.** For the purposes of this Section and R12-4-121, "valid and active membership" means a paid and unexpired membership in any level of the Department's membership program.

Historical Note

Adopted effective April 8, 1983 (Supp. 83-2). Section R12-4-118 repealed effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). New Section made by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

R12-4-119. Arizona Game and Fish Department Reserve

- A.** The Commission shall establish an Arizona Game and Fish Department Reserve under A.R.S. § 17-214, consisting of commissioned reserve officers and noncommissioned reserve volunteers.
- B.** Commissioned reserve officers shall:
1. Meet and maintain the minimum qualifications and training requirements necessary for peace officer certification

- by the Arizona Peace Officer Standards and Training Board as prescribed under 13 A.A.C. 4, and
2. Assist with wildlife enforcement patrols, boating enforcement patrols, off-highway vehicle enforcement patrols, special investigations, and other enforcement and related non-enforcement duties as the Director designates.

- C.** Noncommissioned reserve volunteers shall:
1. Meet qualifications that the Director determines are related to the services to be performed by the volunteer and the success or safety of the program mission, and
 2. Perform any non-enforcement duties designated by the Director for the purposes of conservation and education to maximize paid staff time.

Historical Note

Adopted effective September 29, 1983 (Supp. 83-5). Section R12-4-119 repealed, new Section R12-4-119 adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended by final rulemaking at 8 A.A.R. 1702, effective March 11, 2002 (Supp. 02-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

R12-4-120. Issuance, Sale, and Transfer of Special Big Game License-tags

- A.** An incorporated nonprofit organization that is tax exempt under section 501(c) seeking special big game license-tags as authorized under A.R.S. § 17-346 shall submit a proposal to the Director of the Arizona Game and Fish Department from March 1 through May 31 preceding the year when the tags may be legally used. The proposal shall include all of the following information for each member of the organization coordinating the proposal:
1. The name of the organization making the proposal and the:
 - a. Name;
 - b. Mailing address;
 - c. E-mail address, when available; and
 - d. Telephone number;
 2. Organization's previous involvement with wildlife management;
 3. Organization's conservation objectives;
 4. Number of special big game license-tags and the species requested;
 5. Purpose to be served by the issuance of these tags;
 6. Method or methods by which the tags will be marketed and sold;
 7. Proposed fund raising plan;
 8. Estimated amount of money to be raised and the rationale for that estimate;
 9. Any special needs or particulars relevant to the marketing of the tags;
 10. A copy of the organization's articles of incorporation and evidence that the organization has tax-exempt status under Section 501(c) of the Internal Revenue Code, unless a current and correct copy is already on file with the Department;
 11. Statement that the person or organization submitting the proposal agrees to the conditions established under A.R.S. § 17-346 and this Section;
 12. Printed name and signature of the president and secretary-treasurer of the organization or their equivalent; and
 13. Date of signing.
- B.** The Director shall return to the organization any proposal that does not comply with the requirements established under A.R.S. § 17-346 and this Section. Because proposals are

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reviewed for compliance after the May 31 deadline, an organization that receives a returned proposal cannot resubmit a corrected proposal, but may submit a proposal that complies with the requirements established under A.R.S. § 17-346 and this Section the following year.

- C. The Director shall submit all timely and valid proposals to the Commission for consideration.
1. In selecting an organization, the Commission shall consider the:
 - a. Written proposal;
 - b. Proposed uses for tag proceeds;
 - c. Qualifications of the organization as a fund raiser;
 - d. Proposed fund raising plan;
 - e. Organization's previous involvement with wildlife management; and
 - f. Organization's conservation objectives.
 2. The Commission may accept any proposal in whole or in part and may reject any proposal if it is in the best interest of wildlife to do so.
 3. Commission approval and issuance of any special big game license-tag is contingent upon compliance with this Section.
- D. A successful organization shall agree in writing to all of the following:
1. To underwrite all promotional and administrative costs to sell and transfer each special big game license-tag;
 2. To transfer all proceeds to the Department within 90 days of the date that the organization sells or awards the tag;
 3. To sell and transfer each special big game license-tag as described in the proposal; and
 4. To provide the Department with the name, address, and physical description of each person to whom a special big game license-tag is transferred.
- E. The Department and the successful organization shall coordinate on:
1. The specific projects or purposes identified in the proposal;
 2. The arrangements for the deposit of the proceeds, the accounting procedures, and final audit; and
 3. The dates when the wildlife project or purpose will be accomplished.
- F. The Department shall dedicate all proceeds generated by the sale or transfer of a special big game license-tag to the management of the species for which the tag was issued.
- a. A special license-tag shall not be issued until the Department receives all proceeds from the sale of license-tags.
 - b. The Department shall not refund proceeds.
- G. A special big game license-tag is valid only for the person named on the tag, for the season dates on the tag, and for the species for which the tag was issued.
1. A hunting license is not required for the tag to be valid.
 2. Possession of a special big game license-tag shall not invalidate any other big game tag or application for any other big game tag.
 3. Wildlife taken under the authority of a special big game license-tag shall not count towards the established bag limit for that species.

Historical Note

Adopted effective September 22, 1983 (Supp. 83-5). Amended effective April 7, 1987 (Supp. 87-2). Correction, balance of language in subsection (I) is deleted as certified effective April 7, 1987 (Supp. 87-4). Amended effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by

final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

R12-4-121. Big Game Tag Transfer

A. For the purposes of this Section:

"Authorized nonprofit organization" means a nonprofit organization approved by the Department to receive donated unused tags.

"Unused tag" means a big game hunt permit-tag, nonpermit-tag, or special license tag that has not been attached to any animal.

- B. A parent, grandparent, or guardian issued a big game hunt permit-tag, nonpermit-tag, or special license tag may transfer the unused tag to the parent's, grandparent's, or guardian's minor child or grandchild.
1. A parent, grandparent, or guardian issued a tag may transfer the unused tag to a minor child or grandchild at any time prior to the end of the season for which the unused tag was issued.
 2. A parent, grandparent, or guardian may transfer the unused tag by providing all of the following documentation in person at any Department office:
 - a. Proof of ownership of the unused tag to be transferred,
 - b. The unused tag, and
 - c. The minor's valid hunting license.
 3. If a parent, grandparent, or legal guardian is deceased, the personal representative of the person's estate may transfer an unused tag to an eligible minor. The person acting as the personal representative shall present:
 - a. The deceased person's death certificate, and
 - b. Proof of the person's authority to act as the personal representative of the deceased person's estate.
 4. To be eligible to receive an unused tag from a parent, grandparent, or legal guardian, the minor child shall meet the criteria established under subsection (D).
 5. A minor child or grandchild receiving an unused tag from a parent, grandparent, or legal guardian shall be accompanied into the field by any grandparent, parent, or legal guardian of the minor child.
- C. A person issued a tag or the person's legal representative may donate the unused tag to an authorized nonprofit organization for use by a minor child with a life threatening medical condition or permanent physical disability or a veteran of the Armed Forces of the United States with a service-connected disability.
1. The person or legal representative who donates the unused tag shall provide the authorized nonprofit organization with a written statement indicating the unused tag is voluntarily donated to the organization.
 2. An authorized nonprofit organization receiving a donated tag under this subsection may transfer the unused tag to an eligible minor child or veteran by contacting any Department office.
 - a. To obtain a transfer, the nonprofit organization shall:
 - i. Provide proof of donation of the unused tag to be transferred;
 - ii. Provide the unused tag;
 - iii. Provide proof of the minor child's or veteran's valid hunting license.
 - b. To be eligible to receive a donated unused tag from an authorized nonprofit organization, a minor child shall meet the criteria established under subsection (D).
 3. A person who donates an original, unused hunt permit-tag issued in a computer drawing to an authorized non-

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profit organization may submit a request to the Department for the reinstatement of the bonus points expended for that unused tag, provided all of the following conditions are met:

- a. The person has a valid and active membership in the Department's membership program with at least one unredeemed tag surrender on the application deadline date, for the computer draw in which the hunt permit-tag being surrendered was drawn, and at the time of tag surrender.
 - b. The person submits a completed application form as described under R12-4-118;
 - c. The person provides acceptable proof to the Department that the tag was transferred to an authorized nonprofit organization; and
 - d. The person submits the request to the Department:
 - i. No later than 60 days after the date on which the tag was donated to an authorized nonprofit organization; and
 - ii. No less than 30 days prior to the computer draw application deadline for that genus, as specified in the hunt permit-tag application schedule.
- D.** To receive an unused tag authorized under subsections (B) or (C), an eligible minor child shall meet the following criteria:
1. Possess a valid hunting license,
 2. Has not reached the applicable annual or lifetime bag limit for that genus, and
 3. Is 10 to 17 years of age on the date of the transfer. A minor child under the age of 14 shall have satisfactorily completed a Department-sanctioned hunter education course before the beginning date of the hunt.
- E.** To receive an unused tag authorized under subsection (C), an eligible veteran of the Armed Forces of the United States with a service-connected disability shall meet the following criteria:
1. Possess a valid hunting license, and
 2. Has not reached the applicable annual or lifetime bag limit for that genus.
- F.** A nonprofit organization is eligible to apply for authorization to receive a donated unused tag, provided the nonprofit organization:
1. Is qualified under section 501(c)(3) of the United States Internal Revenue Code, and
 2. Affords opportunities and experiences to:
 - a. Children with life-threatening medical conditions or physical disabilities, or
 - b. Veterans with service-connected disabilities.
 3. This authorization is valid for a period of one-year, unless revoked by the Department for noncompliance with the requirements established under A.R.S. § 17-332 or this Section.
 4. A nonprofit organization shall apply for authorization by submitting an application to any Department office. The application form is furnished by the Department and is available at any Department office. A nonprofit organization shall provide all of the following information on the application:
 - a. Nonprofit organization's information:
 - i. Name,
 - ii. Physical address,
 - iii. Telephone number;
 - b. Contact information for the person responsible for ensuring compliance with this Section:
 - i. Name,
 - ii. Address,
 - iii. Telephone number;

- c. Signature of the president and secretary-treasurer of the organization or their equivalents; and
 - d. Date of signing.
5. In addition to the application, a nonprofit organization shall provide all of the following:
- a. A copy of the organization's articles of incorporation and evidence that the organization has tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, unless a current and correct copy is already on file with the Department;
 - b. Document identifying the organization's mission;
 - c. A letter stating how the organization will participate in the Big Game Tag Transfer program; and
 - d. A statement that the person or organization submitting the application agrees to the conditions established under A.R.S. § 17-332 and this Section.
6. An applicant who is denied authorization to receive donated tags under this Section may appeal to the Commission as provided under A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

Adopted effective October 10, 1986, filed September 25, 1986 (Supp. 86-5). Rule expired one year from effective date of October 10, 1986. Rule readopted without change for one year effective January 22, 1988, filed January 7, 1988 (Supp. 88-1). Rule expired effective January 22, 1989 (Supp. 89-1). New Section R12-4-121 adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Repealed effective January 1, 1993; filed December 18, 1992 (Supp. 92-4). New Section made by final rulemaking at 7 A.A.R. 2732, effective July 1, 2001 (Supp. 01-2). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 1195, effective June 30, 2012 (Supp. 12-2). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

R12-4-122. Handling, Transporting, Processing, and Storing of Game Meat Given to Public Institutions and Charitable Organizations

- A.** Under A.R.S. § 17-240 and this Section, the Department may donate the following wildlife, except that the Department shall not donate any portion of an animal killed in a collision with a motor vehicle or an animal that died subsequent to immobilization by any chemical agent:
1. Big game, except bear or mountain lion;
 2. Upland game birds;
 3. Migratory game birds;
 4. Game fish.
- B.** The Director shall not authorize an employee to handle game meat for the purpose of this Section until the employee has satisfactorily completed a course designed to give the employee the expertise necessary to protect game meat recipients from diseased or unwholesome meat products. A Department employee shall complete a course that is either conducted or approved by the State Veterinarian. The employee shall provide a copy of a certificate that demonstrates satisfactory completion of the course to the Director.
- C.** Only an employee authorized by the Director shall determine if game meat is safe and appropriate for donation. An authorized Department employee shall inspect and field dress each donated carcass before transporting it. The Department shall not retain the game meat in storage for more than 48 continuous hours before transporting it, and shall reinspect the game meat for wholesomeness before final delivery to the recipient.

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- D. Final processing and storage is the responsibility of the recipient.

Historical Note

Adopted effective August 6, 1991 (Supp. 91-3).
Amended by final rulemaking at 12 A.A.R. 291, effective
March 11, 2006 (Supp. 06-1).

R12-4-123. Expenditure of Funds

- A. The Director may expend funds available through appropriations, licenses, gifts, or other sources, in compliance with applicable laws and rules, and:
1. For purposes designated by lawful Commission agreements and Department guidelines;
 2. In agreement with budgets approved by the Commission;
 3. In agreement with budgets appropriated by the legislature;
 4. With regard to a gift, for purposes designated by the donor, the Director shall expend undesignated donations for a public purpose in furtherance of the Department's responsibilities and duties.
- B. The Director shall ensure that the Department implements internal management controls to comply with subsection (A) and to deter unlawful use or expenditure of funds.

Historical Note

Adopted effective July 12, 1996 (Supp. 96-3). Amended
by final rulemaking at 12 A.A.R. 291, effective March
11, 2006 (Supp. 06-1).

R12-4-124. Proof of Domicile

- A. An applicant may be required to present acceptable proof of domicile in Arizona to the Department upon request.
- B. Acceptable proof of domicile in Arizona may include, but is not limited to, one or more of the following lawfully obtained documents:
1. Arizona Driver's License;
 2. Arizona Resident State Income Tax Return filing;
 3. Arizona school records containing satisfactory proof of identity and relationship of the parent or guardian to the minor child, when applicable;
 4. Arizona Voter Registration Card;
 5. Certified copy of an Arizona court order such as an order of probation, parole, or mandatory release;
 6. Selective Service Registration Acknowledgement Card indicating an address in Arizona;
 7. Social Security Administration document indicating an address in Arizona; or
 8. Current documents issued by the U.S. military indicating Arizona as state of residence or an address in Arizona.

Historical Note

New Section made by final rulemaking at 21 A.A.R.
3025, effective January 2, 2016 (Supp. 15-4).

R12-4-125. Public Solicitation or Event on Department Property

- A. All Department buildings, properties, and wildlife areas are designated non-public forums and are closed to all solicitations and events unless permitted by the Department.
- B. A solicitation or event on Department property shall not:
1. Conflict with the Department's mission; or
 2. Constitute partisan political activity, the activity of a political campaign, or influence in any way an election or the results thereof.
- C. A request for permission to conduct a solicitation or event on Department property shall be directed to the responsible Regional Supervisor or Branch Chief who shall initially deter-

mine whether an application is required for the solicitation or event.

- D. If it is determined that an application is required, the person may apply for a solicitation or event permit by submitting a completed solicitation or event application to any Department office or Department Headquarters, Director's Office, at 5000 W. Carefree Hwy, Phoenix, AZ 85086. The application form is furnished by the Department and available at all Department offices.
1. An applicant shall submit an application:
 - a. Not more than six months prior to the solicitation or event; and
 - b. Not less than 14 days prior to the desired date of the solicitation or event for solicitations other than the posting of advertising, handbills, leaflets, circulars, posters, or other printed materials; or
 - c. Not less than 10 days prior to the desired date of the solicitation or event for solicitations involving only the posting of advertising, handbills, leaflets, circulars, posters, or other printed materials.
 2. An applicant shall provide all of the following information on the application:
 - a. Sponsor's name, address, and telephone number;
 - b. Sponsor's e-mail address, when available;
 - c. Contact person's name and telephone number, when the sponsor is an organization;
 - d. Proposed date of the solicitation or event;
 - e. Specific, proposed location for the solicitation or event;
 - f. Starting and approximate concluding times;
 - g. General description of the solicitation or event's purpose;
 - h. Anticipated number of attendees, when applicable;
 - i. Amount of fees to be charged to attendees, when applicable;
 - j. Detailed description of any activity that will occur at the solicitation or event, including a detailed map of the solicitation or event and any equipment that will be used, e.g., tents, tables, etc.;
 - k. Copies of any solicitation materials to be distributed to the public or to be posted on Department property;
 - l. Copy of a current and valid license issued by the Arizona Department of Liquor Licenses and Control, required when the applicant intends to sell alcohol at the solicitation or event; and
 - m. The contact person's signature and date. The person's signature on the application certifies that the sponsor:
 - i. Assumes risk of injury to persons or property;
 - ii. Agrees to hold harmless the state of Arizona, its officials, Departments, employees, and agents against all claims arising from the use of Department facilities;
 - iii. Assumes responsibility for any damages or clean-up costs due to the solicitation or event, solicitation or event cleanup, or solicitation or event damage repair; and
 - iv. Agrees to surrender the premises in a clean and orderly condition.
- E. The Department may take any of the following actions to the extent necessary and in the best interest of the State:
1. Require the sponsor to furnish all necessary labor, material, and equipment for the solicitation or event;
 2. Require the sponsor to post a deposit against damage and cleanup expense;

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3. Require indemnification of the state of Arizona, its Departments, agencies, officers, and employees;
 4. Require the sponsor to carry adequate insurance and provide certificates of insurance to the Department not less than ten business days before the solicitation or event. A certificate of insurance for a solicitation or event shall name the state of Arizona, its Departments, agencies, boards, commissions, officers, agents, and employees as additional insureds;
 5. Require the sponsor to enter into written agreements with any vendors and subcontractors and require vendors and subcontractors to provide certificates of insurance to the Department not less than ten business days before the solicitation or event. A certificate of insurance for a solicitation or event shall name the state of Arizona, its Departments, agencies, boards, commissions, officers, agents, and employees as additional insureds;
 6. Require the sponsor to provide medical support, security, and sanitary services, including public restrooms; and
 7. Impose additional conditions not otherwise specified under this Section on the conduct of the solicitation or event.
- F.** The Department may consider the following criteria when determining whether any of the actions in subsection (E) are necessary and in the best interest of the state:
1. Previous experience with similar solicitations or events;
 2. Deposits required for similar solicitations or events in Arizona;
 3. Risk data; and
 4. Medical, sanitary, and security services required for similar solicitations or events in Arizona and the cost of those services.
- G.** The Department shall designate the hours of use for Department property.
- H.** The Department shall inspect the solicitation or event site at the conclusion of activities and document any damage or cleanup costs incurred because of the solicitation or event. The sponsor shall be responsible for any cleanup or damage costs associated with the solicitation or event.
- I.** The sponsor shall not allow, without the express written permission of the Department, the possession, use, or consumption of alcoholic beverages at the solicitation or event site. When the Department provides written permission for the possession, use, or consumption of alcoholic beverages at the solicitation or event site, the sponsor shall provide to the Department:
1. A copy of a current and valid license issued by the Arizona Department of Liquor Licenses and Control to the sponsor and vendor, required when the applicant intends to sell alcohol at the solicitation or event; and
 2. A liquor liability rider, included with the insurance certificate required under subsection (E)(4).
- J.** The sponsor shall not allow unlawful possession or use of drugs at the solicitation or event site.
- K.** The Department shall deny an application for any of the following reasons:
1. The solicitation or event interferes with the work of an employee or the daily business of the Department;
 2. The solicitation or event conflicts with the time, place, manner, or duration of other approved or pending solicitations or events;
 3. The content of the solicitation or event conflicts with or is unrelated to the Department's activities or its mission;
 4. The solicitation or event presents a risk of injury or illness to persons or risk of damage to property;
 5. The sponsor cannot demonstrate adequate compliance with applicable local, state, or federal laws, ordinances, codes, or regulations, or
 6. The sponsor has not complied with the requirements of the application process or this Section.
- L.** At all times, the Department reserves the right to immediately remove or cause to be removed all obstructions or other hazards of the solicitation or event that could damage state property, inhibit egress, or poses a safety risk. The Department also reserves the right to immediately remove or cause to be removed any person damaging state property, inhibiting egress, or posing a threat to public health and safety.
- M.** The Department may revoke approval of a solicitation or event due to emergency circumstances or for failure to comply with this Section.
- N.** The Department shall send written notice of the denial or revocation of an approved permit. The notice shall contain the reason for the denial or revocation.
- O.** A sponsor:
1. Is liable to the Department for damage to Department property and any expense arising out of the sponsor's use of Department property.
 2. Shall post solicitation material only in designated posting areas.
 3. Shall ensure that a solicitation or event on Department property causes the minimum infringement of use to the public and government operation.
 4. Shall modify or terminate a solicitation or event, upon request by the Department, if the Department determines that the solicitation or event unacceptably infringes on the Department's operations or causes an unacceptable risk of liability exposure to the State.
- P.** When conducting an event on Department property, a sponsor shall:
1. Park or direct vehicles in designated parking areas.
 2. Obey all posted requirements and restrictions.
 3. Designate one person to act as a monitor for every 50 persons anticipated to attend the solicitation or event. The monitor shall act as a contact person for the Department for the purposes of the solicitation or event.
 4. Ensure that all safety standards, guidelines, and requirements are followed.
 5. Implement additional safety requirements upon request by the Department.
 6. Ensure all obstructions and hazards are eliminated.
 7. Ensure trash and waste is properly disposed of throughout the solicitation or event.
- Q.** The Department shall revoke or terminate the solicitation or event if a sponsor fails to comply with a Department request or any one of the following minimum safety requirements:
1. All solicitation or event activities shall comply with all applicable federal, state, and local laws, ordinances, codes, statues, rules, and regulations.
 2. The layout of the solicitation or event shall ensure that emergency vehicles will have access at all times.
 3. The Department may conduct periodic safety checks throughout the solicitation or event.
- R.** This Section does not apply to government agencies.

Historical Note

New Section made by emergency rulemaking at 10 A.A.R. 4777, effective November 4, 2004 for 180 days (Supp. 04-4). Emergency expired (Supp. 05-2). New Section renumbered from R12-4-804 and amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

1-215. Definitions

In the statutes and laws of this state, unless the context otherwise requires:

1. "Action" includes any matter or proceeding in a court, civil or criminal.
2. "Adopted rule" means a final rule as defined in section 41-1001.
3. "Adult" means a person who has attained eighteen years of age.
4. "Alternative fuel" means:
 - (a) Electricity.
 - (b) Solar energy.
 - (c) Liquefied petroleum gas, natural gas, hydrogen or a blend of hydrogen with liquefied petroleum or natural gas that complies with any of the following:
 - (i) Is used in an engine that is certified to meet at a minimum the United States environmental protection agency low emission vehicle standard pursuant to 40 Code of Federal Regulations section 88.104-94 or 88.105-94.
 - (ii) Is used in an engine that is certified by the engine modifier to meet the addendum to memorandum 1-A of the United States environmental protection agency as printed in the federal register, volume 62, number 207, October 27, 1997, pages 55635 through 55637.
 - (iii) Is used in an engine that is the subject of a waiver for that specific engine application from the United States environmental protection agency's memorandum 1-A addendum requirements and that waiver is documented to the reasonable satisfaction of the director of the department of environmental quality.
 - (d) Only for vehicles that use alcohol fuels before August 21, 1998, alcohol fuels that contain not less than eighty-five per cent alcohol by volume.
 - (e) A combination of at least seventy per cent alternative fuel and no more than thirty per cent petroleum based fuel that operates in an engine that meets the United States environmental protection agency low emission vehicle standard pursuant to 40 Code of Federal Regulations section 88.104-94 or 88.105-94 and that is certified by the engine manufacturer to consume at least seventy per cent alternative fuel during normal vehicle operations.
5. "Bribe" means anything of value or advantage, present or prospective, asked, offered, given, accepted or promised with a corrupt intent to influence, unlawfully, the person to whom it is given in that person's action, vote or opinion, in any public or official capacity.
6. "Child" or "children" as used in reference to age of persons means persons under eighteen years of age.
7. "Clean burning fuel" means:
 - (a) An emulsion of water-phased hydrocarbon fuel that contains not less than twenty per cent water by volume and that complies with any of the following:
 - (i) Is used in an engine that is certified to meet at a minimum the United States environmental protection agency low emission vehicle standard pursuant to 40 Code of Federal Regulations section 88.104-94 or 88.105-94.
 - (ii) Is used in an engine that is certified by the engine modifier to meet the addendum to memorandum 1-A of the United States environmental protection agency as printed in the federal register, volume 62, number 207, October 27, 1997, pages 55635 through 55637.

(iii) Is used in an engine that is the subject of a waiver for that specific engine application from the United States environmental protection agency's memorandum 1-A addendum requirements and that waiver is documented to the reasonable satisfaction of the director of the department of environmental quality.

(b) A diesel fuel substitute that is produced from nonpetroleum renewable resources if the qualifying volume of the nonpetroleum renewable resources meets the standards for California diesel fuel as adopted by the California air resources board pursuant to 13 California Code of Regulations sections 2281 and 2282 in effect on January 1, 2000, the diesel fuel substitute meets the registration requirement for fuels and additives established by the United States environmental protection agency pursuant to section 211 of the clean air act as defined in section 49-401.01 and the use of the diesel fuel substitute complies with the requirements listed in 10 Code of Federal Regulations part 490, as printed in the federal register, volume 64, number 96, May 19, 1999.

(c) A diesel fuel that complies with all of the following:

(i) Contains a maximum of fifteen parts per million by weight of sulfur.

(ii) Meets ASTM D975.

(iii) Meets the registration requirements for fuels and additives established by the United States environmental protection agency pursuant to section 211 of the clean air act as defined in section 49-401.01.

(iv) Is used in an engine that is equipped or has been retrofitted with a device that has been certified by the California air resources board diesel emission control strategy verification procedure, the United States environmental protection agency voluntary diesel retrofit program or the United States environmental protection agency verification protocol for retrofit catalyst, particulate filter and engine modification control technologies for highway and nonroad use diesel engines.

(d) A blend of unleaded gasoline that contains at minimum eighty-five per cent ethanol by volume or eighty-five per cent methanol by volume.

(e) Neat methanol.

(f) Neat ethanol.

8. "Corruptly" means a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to, or to some other person.

9. "Daytime" means the period between sunrise and sunset.

10. "Depose" includes every manner of written statement under oath or affirmation.

11. "Federal poverty guidelines" means the poverty guidelines as updated annually in the federal register by the United States department of health and human services.

12. "Grantee" includes every person to whom an estate or interest in real property passes, in or by a deed.

13. "Grantor" includes every person from or by whom an estate or interest in real property passes, in or by a deed.

14. "Includes" or "including" means not limited to and is not a term of exclusion.

15. "Inhabitant" means a resident of a city, town, village, district, county or precinct.

16. "Issue" as used in connection with descent of estates includes all lawful, lineal descendants of the ancestor.

17. "Knowingly":

(a) Means only a knowledge that the facts exist that bring the act or omission within the provisions of the statute using such word.

(b) Does not require any knowledge of the unlawfulness of the act or omission.

18. "Magistrate" means an officer having power to issue a warrant for the arrest of a person charged with a public offense and includes the chief justice and justices of the supreme court, judges of the superior court, judges of the court of appeals, justices of the peace and judges of a municipal court.

19. "Majority" or "age of majority" as used in reference to age of persons means eighteen years of age or more.

20. "Malice" and "maliciously" mean a wish to vex, annoy or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law.

21. "Minor" means a person under the age of eighteen years.

22. "Minor children" means persons under the age of eighteen years.

23. "Month" means a calendar month unless otherwise expressed.

24. "Neglect", "negligence", "negligent" and "negligently" import a want of such attention to the nature or probable consequence of the act or omission as a prudent man ordinarily bestows in acting in his own concerns.

25. "Nighttime" means the period between sunset and sunrise.

26. "Oath" includes an affirmation or declaration.

27. "Peace officers" means sheriffs of counties, constables, marshals, policemen of cities and towns, commissioned personnel of the department of public safety, personnel who are employed by the state department of corrections and the department of juvenile corrections and who have received a certificate from the Arizona peace officer standards and training board, peace officers who are appointed by a multicounty water conservation district and who have received a certificate from the Arizona peace officer standards and training board, police officers who are appointed by community college district governing boards and who have received a certificate from the Arizona peace officer standards and training board, police officers who are appointed by the Arizona board of regents and who have received a certificate from the Arizona peace officer standards and training board, police officers who are appointed by the governing body of a public airport pursuant to section 28-8426 and who have received a certificate from the Arizona peace officer standards and training board, peace officers who are appointed by a private postsecondary institution pursuant to section 15-1897 and who have received a certificate from the Arizona peace officer standards and training board and special agents from the office of the attorney general, or of a county attorney, and who have received a certificate from the Arizona peace officer standards and training board.

28. "Person" includes a corporation, company, partnership, firm, association or society, as well as a natural person. When the word "person" is used to designate the party whose property may be the subject of a criminal or public offense, the term includes the United States, this state, or any territory, state or country, or any political subdivision of this state that may lawfully own any property, or a public or private corporation, or partnership or association. When the word "person" is used to designate the violator or offender of any law, it includes corporation, partnership or any association of persons.

29. "Personal property" includes money, goods, chattels, things in action and evidences of debt.

30. "Population" means the population according to the most recent United States decennial census.

31. "Process" means a citation, writ or summons issued in the course of judicial proceedings.

32. "Property" includes both real and personal property.

33. "Real property" is coextensive with lands, tenements and hereditaments.
34. "Registered mail" includes certified mail.
35. "Seal" as used in reference to a paper issuing from a court or public office to which the seal of such court or office is required to be affixed means an impression of the seal on that paper, an impression of the seal affixed to that paper by a wafer or wax, a stamped seal, a printed seal, a screened seal or a computer generated seal.
36. "Signature" or "subscription" includes a mark, if a person cannot write, with the person's name written near it and witnessed by a person who writes the person's own name as witness.
37. "State", as applied to the different parts of the United States, includes the District of Columbia, this state and the territories.
38. "Testify" includes every manner of oral statement under oath or affirmation.
39. "United States" includes the District of Columbia and the territories.
40. "Vessel", as used in reference to shipping, includes ships of all kinds, steamboats, steamships, barges, canal boats and every structure adapted to navigation from place to place for the transportation of persons or property.
41. "Wilfully" means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or believes that the person's conduct is of that nature or that the circumstance exists.
42. "Will" includes codicils.
43. "Workers' compensation" means workmen's compensation as used in article XVIII, section 8, Constitution of Arizona.
44. "Writ" means an order or precept in writing issued in the name of the state or by a court or judicial officer.
45. "Writing" includes printing.

17-101. Definitions

A. In this title, unless the context otherwise requires:

1. "Angling" means the taking of fish by one line and not to exceed two hooks, by one line and one artificial lure, which may have attached more than one hook, or by one line and not to exceed two artificial flies or lures.
2. "Bag limit" means the maximum limit, in number or amount, of wildlife that may lawfully be taken by any one person during a specified period of time.
3. "Closed season" means the time during which wildlife may not be lawfully taken.
4. "Commission" means the Arizona game and fish commission.
5. "Department" means the Arizona game and fish department.
6. "Device" means any net, trap, snare, salt lick, scaffold, deadfall, pit, explosive, poison or stupefying substance, crossbow, firearm, bow and arrow, or other implement used for taking wildlife. Device does not include a raptor or any equipment used in the sport of falconry.
7. "Domicile" means a person's true, fixed and permanent home and principal residence. Proof of domicile in this state may be shown as prescribed by rule by the commission.
8. "Falconry" means the sport of hunting or taking quarry with a trained raptor.
9. "Fishing" means to lure, attract or pursue aquatic wildlife in such a manner that the wildlife may be captured or killed.
10. "Fur dealer" means any person engaged in the business of buying for resale the raw pelts or furs of wild mammals.
11. "Guide" means a person who does any of the following:
 - (a) Advertises for guiding services.
 - (b) Holds himself out to the public for hire as a guide.
 - (c) Is employed by a commercial enterprise as a guide.
 - (d) Accepts compensation in any form commensurate with the market value in this state for guiding services in exchange for aiding, assisting, directing, leading or instructing a person in the field to locate and take wildlife.
 - (e) Is not a landowner or lessee who, without full fair market compensation, allows access to the landowner's or lessee's property and directs and advises a person in taking wildlife.
12. "License classification" means a type of license, permit, tag or stamp authorized under this title and prescribed by the commission by rule to take, handle or possess wildlife.
13. "License year" means the twelve-month period between January 1 and December 31, inclusive, or a different twelve-month period as prescribed by the commission by rule.
14. "Nonresident", for the purposes of applying for a license, permit, tag or stamp, means a citizen of the United States or an alien who is not a resident.
15. "Open season" means the time during which wildlife may be lawfully taken.

16. "Possession limit" means the maximum limit, in number or amount of wildlife, that may be possessed at one time by any one person.
17. "Resident", for the purposes of applying for a license, permit, tag or stamp, means a person who is:
- (a) A member of the armed forces of the United States on active duty and who is stationed in:
- (i) This state for a period of thirty days immediately preceding the date of applying for a license, permit, tag or stamp.
- (ii) Another state or country but who lists this state as the person's home of record at the time of applying for a license, permit, tag or stamp.
- (b) Domiciled in this state for six months immediately preceding the date of applying for a license, permit, tag or stamp and who does not claim residency privileges for any purpose in any other state or jurisdiction.
18. "Road" means any maintained right-of-way for public conveyance.
19. "Statewide" means all lands except those areas lying within the boundaries of state and federal refuges, parks and monuments, unless specifically provided differently by commission order.
20. "Take" means pursuing, shooting, hunting, fishing, trapping, killing, capturing, snaring or netting wildlife or the placing or using of any net or other device or trap in a manner that may result in the capturing or killing of wildlife.
21. "Taxidermist" means any person who engages for hire in the mounting, refurbishing, maintaining, restoring or preserving of any display specimen.
22. "Traps" or "trapping" means taking wildlife in any manner except with a gun or other implement in hand.
23. "Wild" means, in reference to mammals and birds, those species that are normally found in a state of nature.
24. "Wildlife" means all wild mammals, wild birds and the nests or eggs thereof, reptiles, amphibians, mollusks, crustaceans and fish, including their eggs or spawn.
25. "Youth" means a person who is under eighteen years of age.
26. "Zoo" means a commercial facility open to the public where the principal business is holding wildlife in captivity for exhibition purposes.

B. The following definitions of wildlife shall apply:

1. Aquatic wildlife are all fish, amphibians, mollusks, crustaceans and soft-shelled turtles.
2. Game mammals are deer, elk, bear, pronghorn (antelope), bighorn sheep, bison (buffalo), peccary (javelina), mountain lion, tree squirrel and cottontail rabbit.
3. Big game are wild turkey, deer, elk, pronghorn (antelope), bighorn sheep, bison (buffalo), peccary (javelina), bear and mountain lion.
4. "Trophy" means:
 - (a) A mule deer buck with at least four points on one antler, not including the eye-guard point.
 - (b) A whitetail deer buck with at least three points on one antler, not including the eye-guard point.

- (c) A bull elk with at least six points on one antler, including the eye-guard point and the brow tine point.
 - (d) A pronghorn (antelope) buck with at least one horn exceeding or equal to fourteen inches in total length.
 - (e) Any bighorn sheep.
 - (f) Any bison (buffalo).
5. Small game are cottontail rabbits, tree squirrels, upland game birds and migratory game birds.
 6. Fur-bearing animals are muskrats, raccoons, otters, weasels, bobcats, beavers, badgers and ringtail cats.
 7. Predatory animals are foxes, skunks, coyotes and bobcats.
 8. Nongame animals are all wildlife except game mammals, game birds, fur-bearing animals, predatory animals and aquatic wildlife.
 9. Upland game birds are quail, partridge, grouse and pheasants.
 10. Migratory game birds are wild waterfowl, including ducks, geese and swans; sandhill cranes; all coots, all gallinules, common snipe, wild doves and bandtail pigeons.
 11. Nongame birds are all birds except upland game birds and migratory game birds.
 12. Raptors are birds that are members of the order of falconiformes or strigiformes and include falcons, hawks, owls, eagles and other birds that the commission may classify as raptors.
 13. Game fish are trout of all species, bass of all species, catfish of all species, sunfish of all species, northern pike, walleye and yellow perch.
 14. Nongame fish are all the species of fish except game fish.
 15. Trout means all species of the family salmonidae, including grayling.

17-102. Wildlife as state property; exceptions

Wildlife, both resident and migratory, native or introduced, found in this state, except fish and bullfrogs impounded in private ponds or tanks or wildlife and birds reared or held in captivity under permit or license from the commission, are property of the state and may be taken at such times, in such places, in such manner and with such devices as provided by law or rule of the commission.

17-211. Director; selection; removal; powers and duties; employees

A. The commission shall appoint a director of the Arizona game and fish department, who shall be the chief administrative officer of the game and fish department. The director shall receive compensation as determined pursuant to section 38-611. The director shall be selected on the basis of administrative ability and general knowledge of wildlife management. The director shall act as secretary to the commission, and shall serve at the pleasure of the commission. The director shall not hold any other office, and shall devote the entire time to the duties of office.

B. The commission shall prepare an examination for the post of director to comply with the requirements of this title. The examination shall be conducted at the offices of the commission at the capital to establish an active list of eligible applicants. The director shall be selected from those scoring satisfactory grades and having other qualities deemed advisable by the commission. The commission may call for additional examinations from time to time for selection of a new list of eligible applicants to fill a vacancy.

C. Subject to title 41, chapter 4, article 4, the director may appoint employees necessary to carry out the purposes of this title, when funds for the payment of their salaries are appropriated. Department employees shall be located in different sections of the state where their services are most needed. Compensation for persons appointed shall be as determined pursuant to section 38-611.

D. The director shall:

1. Have general supervision and control of all activities, functions and employees of the department.
2. Enforce all provisions of this title, including all commission rules.
3. Collaborate with the state forester in presentations to legislative committees on issues associated with forest management and wildfire prevention and suppression as provided by section 37-1302, subsection B.

E. Game rangers and wildlife managers may, in addition to other duties:

1. Execute all warrants issued for a violation of this title.
2. Execute subpoenas issued in any matter arising under this title.
3. Search without warrant any aircraft, boat, vehicle, box, game bag or other package where there is sufficient cause to believe that wildlife or parts of wildlife are possessed in violation of law.
4. Inspect all wildlife taken or transported and seize all wildlife taken or possessed in violation of law, or showing evidence of illegal taking.
5. Seize as evidence devices used illegally in taking wildlife and hold them subject to the provisions of section 17-240.
6. Generally exercise the powers of peace officers with primary duties the enforcement of this title.
7. Seize devices that cannot be lawfully used for the taking of wildlife and are being so used and hold and dispose of them pursuant to section 17-240.

17-214. Arizona game and fish department reserve; members; powers and duties; compensation

- A. The commission may establish a volunteer organization known as the Arizona game and fish department reserve and prescribe the qualifications for membership. Members of the reserve serve at the pleasure of the director who has general supervision and control of all reserve activities.
- B. The reserve shall assist the department as an auxiliary body and perform such duties in the areas of education, conservation and enforcement as the commission prescribes by rule or regulation. The director may designate qualified reservists as peace officers in the same manner and with the same powers as game rangers and wildlife managers. Such reservists are not entitled to participate in the public safety personnel retirement system pursuant to title 38, chapter 5, article 4.
- C. Members of the reserve are not eligible to receive compensation but are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2. Members of the reserve are deemed to be employees of this state for the purpose of coverage under Arizona workers' compensation pursuant to title 23, chapter 6.

17-231. General powers and duties of the commission

A. The commission shall:

1. Adopt rules and establish services it deems necessary to carry out the provisions and purposes of this title.
2. Establish broad policies and long-range programs for the management, preservation and harvest of wildlife.
3. Establish hunting, trapping and fishing rules and prescribe the manner and methods that may be used in taking wildlife, but the commission shall not limit or restrict the magazine capacity of any authorized firearm.
4. Be responsible for the enforcement of laws for the protection of wildlife.
5. Provide for the assembling and distribution of information to the public relating to wildlife and activities of the department.
6. Prescribe rules for the expenditure, by or under the control of the director, of all funds arising from appropriation, licenses, gifts or other sources.
7. Exercise such powers and duties necessary to carry out fully the provisions of this title and in general exercise powers and duties that relate to adopting and carrying out policies of the department and control of its financial affairs.
8. Prescribe procedures for use of department personnel, facilities, equipment, supplies and other resources in assisting search or rescue operations on request of the director of the division of emergency management.
9. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

B. The commission may:

1. Conduct investigations, inquiries or hearings in the performance of its powers and duties.
2. Establish game management units or refuges for the preservation and management of wildlife.
3. Construct and operate game farms, fish hatcheries, fishing lakes or other facilities for or relating to the preservation or propagation of wildlife.
4. Expend funds to provide training in the safe handling and use of firearms and safe hunting practices.
5. Remove or permit to be removed from public or private waters fish which hinder or prevent propagation of game or food fish and dispose of such fish in such manner as it may designate.
6. Purchase, sell or barter wildlife for the purpose of stocking public or private lands and waters and take at any time in any manner wildlife for research, propagation and restocking purposes or for use at a game farm or fish hatchery and declare wildlife salable when in the public interest or the interest of conservation.
7. Enter into agreements with the federal government, with other states or political subdivisions of the state and with private organizations for the construction and operation of facilities and for management studies, measures or procedures for or relating to the preservation and propagation of wildlife and expend funds for carrying out such agreements.
8. Prescribe rules for the sale, trade, importation, exportation or possession of wildlife.

9. Expend monies for the purpose of producing publications relating to wildlife and activities of the department for sale to the public and establish the price to be paid for annual subscriptions and single copies of such publications. All monies received from the sale of such publications shall be deposited in the game and fish publications revolving fund.

10. Contract with any person or entity to design and produce artwork on terms that, in the commission's judgment, will produce an original and valuable work of art relating to wildlife or wildlife habitat.

11. Sell or distribute the artwork authorized under paragraph 10 of this subsection on such terms and for such price as it deems acceptable.

12. Consider the adverse and beneficial short-term and long-term economic impacts on resource dependent communities, small businesses and the state of Arizona, of policies and programs for the management, preservation and harvest of wildlife by holding a public hearing to receive and consider written comments and public testimony from interested persons.

13. Adopt rules relating to range operations at public shooting ranges operated by and under the jurisdiction of the commission, including the hours of operation, the fees for the use of the range, the regulation of groups and events, the operation of related range facilities, the type of firearms and ammunition that may be used at the range, the safe handling of firearms at the range, the required safety equipment for a person using the range, the sale of firearms, ammunition and shooting supplies at the range, and the authority of range officers to enforce these rules, to remove violators from the premises and to refuse entry for repeat violations.

14. Solicit and accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title.

C. The commission shall confer and coordinate with the director of water resources with respect to the commission's activities, plans and negotiations relating to water development and use, restoration projects under the restoration acts pursuant to chapter 4, article 1 of this title, where water development and use are involved, the abatement of pollution injurious to wildlife and in the formulation of fish and wildlife aspects of the director of water resources' plans to develop and utilize water resources of the state and shall have jurisdiction over fish and wildlife resources and fish and wildlife activities of projects constructed for the state under or pursuant to the jurisdiction of the director of water resources.

D. The commission may enter into one or more agreements with a multi-county water conservation district and other parties for participation in the lower Colorado river multispecies conservation program under section 48-3713.03, including the collection and payment of any monies authorized by law for the purposes of the lower Colorado river multispecies conservation program.

17-233. Acquisition and disposition of buffalo and buffalo meat

The commission may purchase, sell, barter, or give away buffalo or buffalo meat provided the same may be given only to public institutions or charitable institutions and monies derived therefrom shall be deposited in the game and fish fund.

17-234. Open or closed seasons; bag limits; possession limits

The commission shall by order open, close or alter seasons and establish bag and possession limits for wildlife, but a commission order to open a season shall be issued not less than ten days prior to such opening date. The order may apply statewide or to any portion of the state. Closed season shall be in effect unless opened by commission order.

17-239. Wildlife depredations; investigations; corrective measures; disposal; reports; judicial review

A. Any person suffering property damage from wildlife may exercise all reasonable measures to alleviate the damage, except that reasonable measures shall not include injuring or killing game mammals, game birds or wildlife protected by federal law or regulation unless authorized under subsection D of this section. A person may not retain or sell any portion of an animal taken pursuant to this subsection except as provided in section 3-2403.

B. Any person suffering such property damage, after resorting to the relief as is provided in subsection A of this section, may file a written report with the director, advising the director of the damage suffered, and the species of animals causing the damage, and the director shall immediately order an investigation and report by an employee trained in the handling of wild animal depredation.

C. The department shall provide technical advice and assist in the necessary anti-depredation measures recommended in the report, including trapping, capturing and relocating animals.

D. If harvest of animals is found to be necessary to relieve damage, the commission may establish special seasons or special bag limits, and either set reduced fees or waive any or all license fees required by this title, to crop that wildlife. If the commission determines that this cropping by hunters is impractical, it may issue a special permit for taking that wildlife to the landowner, lessee, livestock operator or municipality suffering damage, provided that the edible portions, or other portions as prescribed by the commission, of all the wildlife taken by the person suffering damage are turned over to an agent of the department for delivery to a public institution or charitable organization.

E. Except as provided in section 41-1092.08, subsection H, in the event any person suffering property damage from wildlife is dissatisfied with the final decision of the commission, the person may seek judicial review pursuant to title 12, chapter 7, article 6.

17-240. Disposition of wildlife; devices; unlawful devices; notice of intention to destroy; waiting period; destruction; jurisdiction of recovery actions; disposition of unclaimed property.

A. Wildlife seized under this title may be disposed of in such manner as the commission or the court may prescribe, except that the edible portions shall be given to public institutions or charitable organizations. In consultation with the department of health services and the chief veterinary meat inspector, the commission shall adopt rules for the handling, transportation, processing and storing of game meat given to public institutions and charitable organizations.

B. Devices, excepting firearms, which cannot be used lawfully for the taking of wildlife and being so used at the time seized may be destroyed. Notice of intention to destroy such devices as prescribed in this section must be sent by registered mail to the last known address of the person from whom seized if known and posted in three conspicuous places within the county wherein seized, two of said notices being posted in the customary place for posting public notices about the county courthouse of said county. Such device shall be held by the department for thirty days after such posting and mailing, and if no action is commenced to recover possession of such device within such time, the same shall be summarily destroyed by the department, or if such device shall be held by the court in any such action to have been used for the taking of wildlife, then such device shall be summarily destroyed by the department immediately after the decision of the court has become final. The justice court shall have jurisdiction of any such actions or proceedings commenced to recover the possession of such devices.

C. Devices other than those referred to in subsection B, including firearms seized under this title shall, after final disposition of the case, be returned to the person from whom the device was seized. If the person from whom the device was seized cannot be located or ascertained, the device seized shall be retained by the department at least ninety days after final disposition of the case, and all devices so held by the department may be:

1. Sold annually.

2. Destroyed only if considered a prohibited or defaced weapon, as defined in section 13-3101, except that any seized firearm registered in the national firearms registry and transfer records of the United States treasury department or has been classified as a curio or relic by the United States treasury department shall not be destroyed.

D. If no complaint is filed pursuant to this title, the device shall be returned to the person from whom seized within thirty days from the date seized.

E. A complete report of all wildlife and devices seized by the department showing a description of the items, the person from whom it was seized, if known, and a record of the disposition shall be kept by the department. The money derived from the sale of any devices shall be deposited in the game and fish fund.

17-241. Acquisition and disposition of lands and waters; retention of rights; disposition of proceeds

A. The commission, in the name of the state, with the approval of the governor may:

1. Acquire by purchase, lease, exchange, gift or condemnation lands for use as fish hatcheries, game farms, firing ranges, reservoir sites or rights of way to fishing waters.

2. Acquire by purchase, lease, exchange or gift lands or waters for use as fish hatcheries, game farms, shooting areas, firing ranges or other purposes necessary to carry out the provisions of this title.

3. Acquire by condemnation waters for use as fish hatcheries. The acquisition of land acquired by condemnation shall be limited to a maximum of one hundred sixty acres unless first approved by the legislature.

B. The commission may, with approval of the governor and state land commissioner, lease, sublease, exchange, or sell, in the name of the state, any land acquired by gift, purchase, lease, exchange, or other method.

C. Notwithstanding any other provision of law, the sale or transfer of any lands under the provisions of this section shall be subject to a reservation to the state of all mineral rights and may be subject to the right of entry thereon by the public for hunting and fishing purposes.

D. Money derived from a sale or lease shall be deposited in the game and fish fund.

17-250. Wildlife diseases; order of director; violation; classification; rule making exemption

- A. If a wildlife disease is suspected or documented in freeranging or captive wildlife, the director may issue orders that are necessary to minimize or eliminate the threat from the disease. The director may also order or direct an employee of the department to:
1. After notification of and in coordination with the state veterinarian, establish quarantines and the boundary of the quarantine.
 2. Destroy wildlife as necessary to prevent the spread of any infectious, contagious or communicable disease.
 3. Control the movement of wildlife, wildlife carcasses or wildlife parts that may be directly related to spreading or disseminating diseases that pose a health threat to animals or humans.
 4. Require any individual who has taken wildlife, who is in possession of wildlife or who maintains wildlife under a license issued by the department to submit the wildlife or parts for disease testing.
- B. On finding there is reason to believe an infectious, contagious or communicable disease is present, the director may require an employee of the department to enter any place where wildlife may be located and take custody of the wildlife for purposes of disease testing. If search warrants are required by law, the director shall apply for and obtain warrants for entry to carry out the requirements of this subsection.
- C. A person who violates any lawful order issued under this section is guilty of a class 2 misdemeanor.
- D. An order issued under this section is exempt from title 41, chapter 6, article 3, except that the director shall promptly file a copy of the order with the secretary of state for publication in the Arizona administrative register pursuant to section 41-1013.

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

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

17-309. Violations; classification

A. Unless otherwise prescribed by this title, it is unlawful for a person to:

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

B. Unless a different or other penalty or punishment is specifically prescribed, a person who violates any provision of this title, or who violates or fails to comply with a lawful order or rule of the commission, is guilty

of a class 2 misdemeanor.

C. A person who knowingly takes any big game during a closed season or who knowingly possesses, transports or buys any big game that was unlawfully taken during a closed season is guilty of a class 1 misdemeanor.

D. A person is guilty of a class 6 felony who knowingly:

1. Barter, sells or offers for sale any big game or parts of big game taken unlawfully.
2. Barter, sells or offers for sale any wildlife or parts of wildlife unlawfully taken during a closed season.
3. Barter, sells or offers for sale any wildlife or parts of wildlife imported or purchased in violation of this title or a lawful rule of the commission.
4. Assists another person for monetary gain with the unlawful taking of big game.
5. Takes or possesses wildlife while under permanent revocation under section 17-340, subsection B, paragraph 3.

E. A peace officer who knowingly fails to enforce a lawful rule of the commission or this title is guilty of a class 2 misdemeanor.

17-314. Civil penalty for illegally taking, wounding, killing or possessing wildlife; recovery of civil penalty.

A. The commission may impose a civil penalty against any person unlawfully taking, wounding or killing, or unlawfully in possession of, any of the following wildlife, or part thereof, to recover the following minimum sums:

1. For each turkey or javelina \$ 500.00
2. For each bear, mountain lion, pronghorn (antelope)
or deer, other than trophy \$1,500.00
3. For each elk or eagle, other than trophy or
endangered species \$2,500.00
4. For each predatory, fur-bearing or nongame animal \$ 250.00
5. For each small game or aquatic wildlife animal \$ 50.00
6. For each trophy or endangered species animal \$8,000.00

B. The commission may bring a civil action in the name of this state to enforce the civil penalty. The civil penalty, or a verdict or judgment to enforce the civil penalty, shall not be less than the sum fixed in this section. The minimum sum that the commission may recover from a person pursuant to this section may be doubled for a second violation, verdict or judgment and tripled for a third violation, verdict or judgment. The action to enforce the civil penalty may be joined with an action for possession and recovery had for the possession as well as the civil penalty.

C. The pendency or determination of an action to enforce the civil penalty or for payment of the civil penalty or a judgment, or the pendency or determination of a criminal prosecution for the same taking, wounding, killing or possession, is not a bar to the other, nor does either affect the right of seizure under any other provision of the laws relating to game and fish.

D. All monies recovered pursuant to this section shall be placed in the wildlife theft prevention fund.

17-315. Wildlife theft prevention fund; authorized expenditures

A. The wildlife theft prevention fund is established consisting of:

1. Monies received from civil penalties pursuant to section 17-314.
2. Money received from donations to the fund.
3. Monies appropriated by the legislature for the purposes provided in this article.
4. Monies received as fines, forfeitures and penalties collected for violations of this title.

B. Monies in the wildlife theft prevention fund shall be expended only for the following purposes:

1. The financing of reward payments to persons, other than peace officers, game and fish department personnel and members of their immediate families, responsible for information leading to the arrest of any person for unlawfully taking, wounding or killing, possessing, transporting or selling wildlife and attendant acts of vandalism. The commission shall establish the schedule of rewards to be paid for information received and payment shall be made from monies available for this purpose.
2. The financing of a statewide telephone reporting system under the name of "operation game thief", which shall be established by the director under the guidance of the commission.
3. The promotion of the public recognition and awareness of the wildlife theft prevention program.
4. Investigations of the unlawful taking, possession or use of wildlife.
5. Investigations of fraud related to licenses, permits, tags or stamps.

C. The wildlife theft prevention fund shall be expended in conformity with the laws governing state financial operations. Balances remaining at the end of the fiscal year are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

17-331. License or proof of purchase required; violation of child support order

A. Except as provided by this title, rules prescribed by the commission or commission order, a person shall not take any wildlife in this state without a valid license or a commission approved proof of purchase. The person shall carry the license or proof of purchase and produce it on request to any game ranger, wildlife manager or peace officer.

B. A certificate of noncompliance with a child support order issued pursuant to section 25-518 invalidates any license or proof of purchase issued to the support obligor for taking wildlife in this state and prohibits the support obligor from applying for any additional licenses issued by an automated drawing system under this title.

C. On receipt of a certificate of compliance with a child support order from the court pursuant to section 25-518 and without further action:

1. Any license or proof of purchase issued to the support obligor for taking wildlife that was previously invalidated by a certificate of noncompliance and that has not otherwise expired shall be reinstated.
2. Any ineligibility to apply for any license issued by an automated drawing system shall be removed.

17-332. Form and content of license; duplicate licenses; transfer of license prohibited; exceptions; period of validity.

A. Licenses and license materials shall be prepared by the department and may be furnished and charged to dealers that are authorized to issue licenses. Each license shall be issued in the name of the department and signed in a manner provided by rule adopted by the commission. With each license authorizing the taking of big game, the department shall provide such tags as the commission may prescribe, which the licensee shall attach to the big game animal in the manner prescribed by the commission. The commission shall limit the number of big game permits issued to nonresidents in a random drawing to ten percent or fewer of the total hunt permits, but in extraordinary circumstances, at a public meeting the commission may increase the number of permits issued to nonresidents in a random drawing if, on separate roll call votes, the members of the commission unanimously:

1. Support the finding of a specifically described extraordinary circumstance.
2. Adopt the increased number of nonresident permits for the hunt.

B. The commission shall issue with each license a shipping permit entitling the holder of the license to a shipment of game or fish as provided by article 4 of this chapter.

C. It is unlawful, except as provided by the commission, for any person to apply for or obtain in any one license year more than one original license permitting the taking of big game. A duplicate license or tag may be issued by the department or by a license dealer if the person requesting such a license or tag furnishes the information deemed necessary by the commission.

D. A license or permit is not transferable and may not be used by anyone except the person to whom the license or permit was issued, except that:

1. The commission may prescribe the manner and conditions of transferring and using permits and tags under this paragraph, including an application process for a qualified organization, to allow a person to transfer the person's big game permit or tag to a qualified organization for use by:

(a) A minor child who has a life-threatening medical condition or a permanent physical disability. If a child with a physical disability is under fourteen years of age, the child must satisfactorily complete the Arizona hunter education course or another comparable hunter education course that is approved by the director.

(b) A veteran of the armed forces of the United States who has a service-connected disability. For the purposes of this paragraph:

(i) "Disability" means a permanent physical impairment that substantially limits one or more major life activities and that requires the assistance of another person or a mechanical device for physical mobility.

(ii) "Qualified organization" means a nonprofit organization that is qualified under section 501(c)(3) of the United States internal revenue code and that affords opportunities and experiences to children with life-threatening medical conditions or with physical disabilities or to veterans with service-connected disabilities.

2. A parent, grandparent or legal guardian may allow the parent's, grandparent's or guardian's minor child or minor grandchild to use the parent's, grandparent's or guardian's big game permit or tag to take big game pursuant to the following requirements:

(a) The parent, grandparent or guardian must transfer the permit or tag to the minor child in a manner prescribed by the commission.

(b) The minor child must possess a valid hunting license and, if under fourteen years of age, must satisfactorily complete, before the beginning of the hunt, the Arizona hunter education course or another comparable hunter education course that is approved by the director.

(c) Any big game that is taken counts toward the minor child's bag limit.

E. Refunds may not be made for the purchase of a license or permit.

F. Licenses are valid for a license year as prescribed in rule by the commission. Lifetime licenses and benefactor licenses are valid for the lifetime of the licensee.

17-333. License classifications; fees; reduced-fee and complimentary licenses; annual report; review

- A. The commission shall prescribe by rule license classifications that are valid for the taking or handling of wildlife, fees for licenses, permits, tags and stamps and application fees.
- B. The commission may temporarily reduce or waive any fee prescribed by rule under this title on the recommendation of the director.
- C. The commission may reduce the fees of licenses and issue complimentary licenses, including the following:
1. A complimentary license to a pioneer who is at least seventy years of age and who has been a resident of this state for twenty-five or more consecutive years immediately before applying for the license. The pioneer license is valid for the licensee's lifetime, and the commission may not require renewal of the license.
 2. A complimentary license to a veteran of the armed forces of the United States who has been a resident of this state for one year or more immediately before applying for the license and who receives compensation from the United States government for a permanent service-connected disability rated as one hundred percent disabling.
 3. A license for a reduced fee to a veteran of the United States armed forces who has been a resident of this state for one year or more immediately before applying for the license and who receives compensation from the United States government for a service-connected disability.
 4. A youth license for a reduced fee to a resident of this state who is a member of the boy scouts of America who has attained the rank of eagle scout or a member of the girl scouts of the USA who has received the gold award.
- D. All monies collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the game and fish fund established by section 17-261.
- E. On or before December 31 of each year, the commission shall submit an annual report to the president of the senate, the speaker of the house of representatives, the chairperson of the senate natural resources, energy and water committee and the chairperson of the house of representatives energy, environment and natural resources committee, or their successor committees, that includes information relating to license classifications, fees for licenses, permits, tags and stamps and any other fees that the commission prescribes by rule. The joint legislative audit committee may assign a committee of reference to hold a public hearing and review the annual report submitted by the commission.

17-333.02. Trapping license; education; exemption

A. A person applying for a trapping license must successfully complete a trapping education course conducted or approved by the department before being issued a trapping license. The department shall conduct or approve an educational course of instruction in responsible trapping and environmental ethics. The course shall include instruction on the history of trapping, trapping ethics, trapping laws, techniques in safely releasing nontarget animals, trapping equipment, wildlife management, proper catch handling, trapper health and safety and considerations and ethics intended to avoid conflicts with other public land users. A person must pass a written examination to successfully complete the course. The department shall not approve a trapping education course conducted by any person, agency, corporation or other organization for which a fee is charged greater than an amount the commission determines per person.

B. A person who is born before January 1, 1967 or who has completed, from and after December 31, 1987 and before March 1, 1993, the voluntary trapper education course on responsible trapping conducted in cooperation with the Arizona game and fish department is exempt from subsection A of this section.

17-334. Sale of licenses

Hunting, fishing and other licenses shall be issued by such person as may be designated license dealers by the commission. The commission may suspend or revoke a dealer's license for failure to comply with rules specified by commission order.

17-335.01. Lifetime license and benefactor license

A. For the purposes of this title, the commission may prescribe by rule a lifetime license and a benefactor license and privileges associated with the taking and handling of fish and wildlife in this state pursuant to section 17-333. All monies derived from the sale of lifetime licenses and benefactor licenses shall be deposited, pursuant to sections 35-146 and 35-147, in the wildlife endowment fund established by section 17-271.

B. A lifetime license, benefactor license and trout stamp may be denied or suspended pursuant to, and for the offenses described in, section 17-340.

C. A lifetime license, benefactor license and trout stamp remain valid if the licensee subsequently resides outside this state, but the licensee must pay the nonresident fee to purchase any additional privileges, including stamps, permits and tags required to hunt and fish in this state. Limits set by the commission on issuing nonresident stamps, permits or tags do not apply to stamps, permits or tags sold to a lifetime licensee.

17-338. Remission of fees from sale of licenses and permits; violation; classification

A. License dealers shall transmit to the department all license and permit fees collected and furnish such information as the commission prescribes by rule. The failure to transmit these fees within thirty days after the deadline the commission prescribes by rule is cause to cancel a license dealer's license. The knowing failure to transmit all collected license and permit fees within thirty days is a class 2 misdemeanor.

B. A license dealer may collect and retain a reasonable fee as determined by the license dealer in addition to the fee charged to issue the license or permit.

17-339. Reports and returns by license dealers; noncompliance; classification

A. Each license dealer shall by January 10, or on demand of the commission or department, return to the department:

1. All duplicate stubs, unused licenses, permits and big game tags.
2. All due and unremitted license and permit fees collected.
3. A full and complete report of the licenses, permits and big game tags returned.

B. The failure to make such return within thirty days shall automatically cancel the license dealer's license, and intentional failure to comply with the provisions of this section is a class 1 misdemeanor. Any license dealer who makes a false or fraudulent return or report or who fails to submit returns, reports or all due and unremitted fees as required under this section with the intent of defrauding the department is guilty of a class 6 felony.

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

A. On conviction or after adjudication as a delinquent juvenile as defined in section 8-201 and in addition to other penalties prescribed by this title, the commission, after a public hearing, may revoke or suspend a license issued to any person under this title and deny the person the right to secure another license to take or possess wildlife for a period of not to exceed five years for:

1. Unlawful taking, unlawful selling, unlawful offering for sale, unlawful bartering or unlawful possession of wildlife.
2. Careless use of firearms that resulted in the injury or death of any person.
3. Destroying, injuring or molesting livestock, or damaging or destroying growing crops, personal property, notices or signboards or other improvements while hunting, trapping or fishing.
4. Littering public hunting or fishing areas while taking wildlife.
5. Knowingly allowing another person to use the person's big game tag, except as provided by section 17-332, subsection D.
6. A violation of section 17-303, 17-304, 17-316 or 17-341 or section 17-362, subsection A.
7. A violation of section 17-309, subsection A, paragraph 5 involving a waste of edible portions other than meat damaged due to the method of taking as follows:
 - (a) Upland game birds, migratory game birds and wild turkey: breast.
 - (b) Deer, elk, pronghorn (antelope), bighorn sheep, bison (buffalo) and peccary (javelina): hind quarters, front quarters and loins.
 - (c) Game fish: fillets of the fish.
8. A violation of section 17-309, subsection A, paragraph 1 involving any unlawful use of aircraft to take, assist in taking, harass, chase, drive, locate or assist in locating wildlife.

B. On conviction or after adjudication as a delinquent juvenile and in addition to any other penalties prescribed by this title:

1. For a first conviction or a first adjudication as a delinquent juvenile, for unlawfully taking or wounding wildlife at any time or place, the commission, after a public hearing, may revoke, suspend or deny the person's privilege to take wildlife for a period of up to five years.
2. For a second conviction or a second adjudication as a delinquent juvenile, for unlawfully taking or wounding wildlife at any time or place, the commission, after a public hearing, may revoke, suspend or deny the person's privilege to take wildlife for a period of up to ten years.
3. For a third conviction or a third adjudication as a delinquent juvenile, for unlawfully taking or wounding wildlife at any time or place, the commission, after a public hearing, may revoke, suspend or deny the person's privilege to take wildlife permanently.

C. In accordance with title 41, chapter 6, article 10 and notwithstanding subsection A of this section, a person against whom the commission imposes a civil penalty under section 17-314 for the unlawful taking, wounding, killing or possession of wildlife may be denied the right to obtain a license to take wildlife until the person has made full payment of the civil penalty.

D. On receiving a report from the licensing authority of a state that is a party to the wildlife violator compact adopted under chapter 5 of this title that a resident of this state has failed to comply with the terms of a wildlife citation, the commission, after a public hearing, may suspend any license issued under this title to take wildlife until the licensing authority furnishes satisfactory evidence of compliance with the terms of the wildlife citation.

E. In carrying out this section, the director shall notify the licensee, within one hundred eighty days after conviction, to appear and show cause why the license should not be revoked, suspended or denied. The notice may be served personally or by certified mail sent to the address appearing on the license.

F. The commission shall furnish to license dealers the names and addresses of persons whose licenses have been revoked or suspended, and the periods for which they have been denied the right to secure licenses.

G. The commission may use the services of the office of administrative hearings to conduct hearings and to make recommendations to the commission pursuant to this section.

H. Except for a person who takes or possesses wildlife while under permanent revocation, a person who takes wildlife in this state, or attempts to obtain a license to take wildlife, at a time when the person's privilege to do so is suspended, revoked or denied under this section is guilty of a class 1 misdemeanor.

17-342. Colorado river special use permit

A. A person taking fish or amphibians for purposes other than for profit from or while on a boat or other floating device on all waters of the Colorado river south of the Nevada-Arizona boundary shall have in his possession a valid angling or fishing license issued by either the state of Arizona or the state of California. In addition to one of the above described licenses, such person shall have in his possession a valid California or Arizona-Colorado river special use permit, as provided by sections 17-343 and 17-344, which shall be obtained on payment of a fee to be fixed by the commission at not to exceed four dollars. Such a permit shall not be required to take fish or amphibians from canals, drains or ditches used to carry water from the Colorado river for irrigation or domestic purposes.

B. A person having in his possession a valid Arizona fishing license must have a California-Colorado river special use permit to legally fish the waters described in subsection A of this section. A person having in his possession a valid California angling license must have an Arizona-Colorado river special use permit to legally fish the waters described in subsection A of this section. Such special use permit when accompanied by the proper license will allow the holder to fish in any portion of such waters and permit him to enter the waters from any point.

C. Shore line fishing does not require a Colorado river special use permit as long as the fisherman remains on the shore of the state from which he holds a valid license and does not embark on the water.

17-345. Surcharges; purposes

In addition to any other fees, the commission may impose and collect:

1. A surcharge on a license, permit, tag and stamp as the commission prescribes by rule. Monies collected pursuant to this paragraph shall be segregated from other fees and deposited in the conservation development fund.
2. Surcharges on Arizona-Colorado river special use permits, California-Colorado river special use permits and Nevada-Colorado river special use permits issued in this state as provided by sections 17-342, 17-343 and 17-344. The amount of the surcharges shall be determined by the commission. A surcharge under this paragraph is to be used solely for the purpose of the lower Colorado river multispecies conservation program under section 48-3713.03. Any monies collected pursuant to this paragraph shall be segregated from other revenues and deposited, pursuant to sections 35-146 and 35-147, in a fund designated as the Colorado river special use permit clearing account. Each month, on notification by the department, the state treasurer shall pay all of the monies in the clearing account to an account designated by a multi-county 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.

17-346. Special big game license tags

In addition to any license tags issued under section 17-333, the commission may issue special big game license tags in the name of an incorporated nonprofit organization that is dedicated to wildlife conservation. No more than three special big game license tags may be issued for each species of big game in a license year. Notwithstanding section 17-332, subsection D, an organization that receives special big game license tags issued under this section may sell and transfer them if all proceeds of the sale are used in this state for wildlife management.

17-371. Transportation, possession and sale of wildlife and wildlife parts

A. A person may transport in his possession his legally taken wildlife, or may authorize the transportation of his legally taken big game, provided such big game or any part thereof has attached thereto a valid transportation permit issued by the department. Such wildlife shall be transported in such manner that it may be inspected by authorized persons upon demand until the wildlife is packaged or stored. Species of wildlife, other than game species, may be transported in any manner unless otherwise specified by the commission. A person possessing a valid license may transport lawfully taken wildlife other than big game given to him but in no event shall any person possess more than one bag or possession limit.

B. A holder of a resident license shall not transport from a point within to a point without the state any big game species or parts thereof without first having obtained a special permit issued by the department or its authorized agent.

C. Migratory birds may be possessed and transported in accordance with the migratory bird treaty act (40 Stat. 755; 16 United States Code sections 703 through 711) and regulations under that act.

D. A holder of a sport falconry license may transport one or more raptors that the person lawfully possesses under terms and conditions prescribed by the commission. Regardless of whether a person holds a sport falconry license and as provided by section 17-236, subsection C, the person may transport for sport falconry purposes one or more raptors that are not listed pursuant to the migratory bird treaty act.

E. Heads, horns, antlers, hides, feet or skin of wildlife lawfully taken, or the treated or mounted specimens thereof, may be possessed, sold and transported at any time, except that migratory birds may be possessed and transported only in accordance with federal regulations.

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

A. When the commission determines that the operation of motor vehicles within a certain area, except private land, is or may be damaging to wildlife reproduction, wildlife management or wildlife habitat of such area, the commission, with the concurrence of the land management agency involved and after a public hearing, may order such area closed to motor vehicles for not more than five years from the date of such closure, provided that all roads in such area shall remain open unless specifically closed.

B. The commission may also recommend that particular areas of land be set aside or made available for the use of recreational vehicles.

C. The commission may enter into agreements with landowners and agencies controlling areas that the commission has made recommendations on pursuant to subsection B. Any such agreement shall stipulate the restrictions, prohibitions and permitted uses of motor vehicles in such area and the duties of the commission and such landowner or agency relating to the enforcement of the terms of such agreement.

D. The commission shall adopt rules pursuant to title 41, chapter 6 to carry out the provisions of this section.

17-453. Notices of restrictions; posting; publication

A. For all areas specified under agreements pursuant to section 17-452, the commission shall cause notices of the restrictions, prohibitions or permitted uses of such area to be posted, prior to the effective date of such restrictions, prohibitions or permitted uses, on the main traveled roads and highways entering such area and such locations that the commission deems appropriate.

B. In addition to the posted notices required by subsection A of this section, the commission shall cause a notice of such restrictions, prohibitions or permitted uses, together with a description of the area, to be published three times in a newspaper of general circulation in the state prior to the effective date of such restrictions, prohibitions or permitted uses.

17-454. Prohibition against vehicle travel

No person shall drive a motor operated vehicle cross-country on public or private lands where such cross-country driving is prohibited by rule or regulation or, in the case of private lands, by proper posting.

17-455. Exceptions

- A. The restrictions, prohibitions or permitted uses established pursuant to section 17-452 shall not apply to:
1. Public employees acting in the scope of their employment.
 2. Valid licensees and permittees of state agencies and land management agencies. Holders of such licenses and permits shall be limited to the specific purposes and areas of travel for which such licenses or permits were issued or granted.
 3. Necessary travel within or across restricted or prohibited land by employees and agents of public utilities, subject to Arizona corporation commission (or any successor agency) or federal power commission regulation, of suppliers of water or power acting as agents of the federal government, and employees or agents of mining companies exercising rights pursuant to any state or federal mining law or regulation. Other persons who are regularly engaged in prospecting or mineral exploration shall upon application be issued vehicular access permits by the director.
 4. A licensed hunter who enters an area solely to pick up a big game animal which he has legally killed.
- B. Emergency situations, such as fire or other disasters, or when otherwise necessary to protect life or property shall not require a permit.
- C. Parking and camping shall be allowed along open roads in closed areas, except that no vehicle shall be parked or operated at a distance greater than three hundred feet from such roads.

17-502. Adoption and text of compact

The wildlife violator compact is adopted and enacted into law as follows:

Article 1

Findings, declaration of policy and purpose

(a) The participating states find that:

(1) Wildlife resources are managed in trust by the respective states for the benefit of all residents and visitors.

(2) The protection of the wildlife resources of a state is materially affected by the degree of compliance with state statutes, laws, regulations, ordinances and administrative rules relating to the management of such resources.

(3) The preservation, protection, management and restoration of wildlife contributes immeasurably to the aesthetic, recreational and economic aspects of such natural resources.

(4) Wildlife resources are valuable without regard to political boundaries; therefore, every person should be required to comply with wildlife preservation, protection, management and restoration laws, ordinances, and administrative rules and regulations of the participating states as a condition precedent to the continuance or issuance of any license to hunt, fish, trap or possess wildlife.

(5) Violation of wildlife laws interferes with the management of wildlife resources and may endanger the safety of persons and property.

(6) The mobility of many wildlife law violators necessitates the maintenance of channels of communication among the various states.

(7) In some states, a person who is cited for a wildlife violation in a state other than his home state:

(i) Is required to post collateral or a bond to secure appearance for a trial at a later date; or

(ii) Is taken into custody until the collateral or bond is posted; or

(iii) Is taken directly to court for an immediate appearance.

(8) The purpose of the enforcement practices set forth in paragraph (7) of this article is to ensure compliance with the terms of a wildlife citation by the cited person who, if permitted to continue on his way after receiving the citation, could return to his home state and disregard his duty under the terms of the citation.

(9) In most instances, a person receiving a wildlife citation in his home state is permitted to accept the citation from the officer at the scene of the violation and immediately continue on his way after agreeing or being instructed to comply with the terms of the citation.

(10) The practices described in paragraph (7) of this article cause unnecessary inconvenience and, at times, a hardship for the person who is unable at the time to post collateral, furnish a bond, stand trial or pay a fine, and thus is compelled to remain in custody until some alternative arrangement is made.

(11) The enforcement practices described in paragraph (7) of this article consume an undue amount of law enforcement time.

(b) It is the policy of the participating states to:

- (1) Promote compliance with the statutes, laws, ordinances, regulations and administrative rules relating to management of wildlife resources in their respective states.
- (2) Recognize the suspension of wildlife license privileges of any person whose license privileges have been suspended by a participating state and treat such suspension as if it had occurred in their state provided the violation which resulted in the suspension could have been the basis for suspension in their state.
- (3) Allow a violator, except as provided in paragraph (b) of article III, to accept a wildlife citation and, without delay, proceed on his way, whether or not a resident of the state in which the citation was issued, provided that the violator's home state is party to this compact.
- (4) Report to the appropriate participating state, as provided in the compact manual, any conviction recorded against any person whose home state was not the issuing state.
- (5) Allow the home state to recognize and treat convictions recorded against its residents, which convictions occurred in a participating state, as though they had occurred in the home state.
- (6) Extend cooperation to its fullest extent among the participating states for enforcing compliance with the terms of a wildlife citation issued in one participating state to a resident of another participating state.
- (7) Maximize effective use of law enforcement personnel and information.
- (8) Assist court systems in the efficient disposition of wildlife violations.

(c) The purpose of this compact is to:

- (1) Provide a means through which a participating state may join in a reciprocal program to effectuate the policies enumerated in paragraph (b) of this article in a uniform and orderly manner.
- (2) Provide for the fair and impartial treatment of wildlife violators operating within participating states in recognition of the violator's right to due process and the sovereign status of a participating state.

Article II

Definitions

As used in this compact, unless the context requires otherwise:

- (a) "Citation" means any summons, complaint, summons and complaint, ticket, penalty assessment or other official document issued to a person by a wildlife officer or other peace officer for a wildlife violation which contains an order requiring the person to respond.
- (b) "Collateral" means any cash or other security deposited to secure an appearance for trial in connection with the issuance by a wildlife officer or other peace officer of a citation for a wildlife violation.
- (c) "Compliance" with respect to a citation means the act of answering a citation through an appearance in a court or tribunal, or through the payment of fines, costs and surcharges, if any.
- (d) "Conviction" means a conviction, including any court conviction, for any offense related to the preservation, protection, management or restoration of wildlife which is prohibited by state statute, law, regulation, ordinance or administrative rule, and such conviction shall also include the forfeiture of any bail, bond or other security deposited to secure appearance by a person charged with having committed any such offense, the payment of a penalty assessment, a plea of nolo contendere and the imposition of a deferred or suspended sentence by the court.
- (e) "Court" means a court of law, including magistrate's court and the justice of the peace court.

- (f) "Home state" means the state of primary residence of a person.
- (g) "Issuing state" means the participating state which issues a wildlife citation to the violator.
- (h) "License" means any license, permit or other public document which conveys to the person to whom it was issued the privilege of pursuing, possessing or taking any wildlife regulated by statute, law, regulation, ordinance or administrative rule of a participating state.
- (i) "Licensing authority" means the department or division within each participating state which is authorized by law to issue or approve licenses or permits to hunt, fish, trap or possess wildlife.
- (j) "Participating state" means any state which enacts legislation to become a member of this wildlife compact.
- (k) "Personal recognizance" means an agreement by a person made at the time of issuance of the wildlife citation that such person will comply with the terms of the citation.
- (l) "State" means any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the provinces of Canada and other countries.
- (m) "Suspension" means any revocation, denial or withdrawal of any or all license privileges, including the privilege to apply for, purchase or exercise the benefits conferred by any license.
- (n) "Terms of the citation" means those conditions and options expressly stated upon the citation.
- (o) "Wildlife" means all species of animals including, but not limited to, mammals, birds, fish, reptiles, amphibians, mollusks and crustaceans, which are defined as "wildlife" and are protected or otherwise regulated by statute, law, regulation, ordinance or administrative rule in a participating state. Species included in the definition of "wildlife" vary from state to state and determination of whether a species is "wildlife" for the purposes of this compact shall be based on local law.
- (p) "Wildlife law" means any statute, law, regulation, ordinance or administrative rule developed and enacted for the management of wildlife resources and the uses thereof.
- (q) "Wildlife officer" means any individual authorized by a participating state to issue a citation for a wildlife violation.
- (r) "Wildlife violation" means any cited violation of a statute, law, regulation, ordinance or administrative rule developed and enacted for the management of wildlife resources and the uses thereof.

Article III

Procedures for issuing state

- (a) When issuing a citation for a wildlife violation, a wildlife officer shall issue a citation to any person whose primary residence is in a participating state in the same manner as though the person were a resident of the issuing state and shall not require such person to post collateral to secure appearance, subject to the exception noted in paragraph (b) of this article, if the officer receives the recognizance of such person that he will comply with the terms of the citation.
- (b) Personal recognizance is acceptable (1) if not prohibited by local law or the compact manual and (2) if the violator provides adequate proof of identification to the wildlife officer.
- (c) Upon conviction or failure of a person to comply with the terms of a wildlife citation, the appropriate official shall report the conviction or failure to comply to the licensing authority of the participating state in which the wildlife citation was issued. The report shall be made in accordance with procedures specified by the issuing state.

(d) Upon receipt of the report of conviction or noncompliance pursuant to paragraph (c) of this article, the licensing authority of the issuing state shall transmit to the licensing authority of the home state of the violator the information in form and content as prescribed in the compact manual.

Article IV

Procedure for home state

(a) Upon receipt of a report from the licensing authority of the issuing state reporting the failure of a violator to comply with the terms of a citation, the licensing authority of the home state shall notify the violator and shall initiate a suspension action in accordance with the home state's suspension procedures and shall suspend the violator's license privileges until satisfactory evidence of compliance with the terms of the wildlife citation has been furnished by the issuing state to the home state licensing authority. Due process safeguards will be accorded.

(b) Upon receipt of a report of conviction from the licensing authority of the issuing state, the licensing authority of the home state shall enter such conviction in its records and shall treat such conviction as though it occurred in the home state for the purposes of the suspension of license privileges.

(c) The licensing authority of the home state shall maintain a record of actions taken and shall make reports to issuing states.

Article V

Reciprocal recognition of suspension

(a) All participating states shall recognize the suspension of license privileges of any person by any participating state as though the violation resulting in the suspension had occurred in their state and could have been the basis for suspension of license privileges in their state.

(b) Each participating state shall communicate suspension information to other participating states in form and content as contained in the compact manual.

Article VI

Applicability of other Laws

(a) Except as expressly required by provisions of this compact, nothing herein shall be construed to affect the right of any participating state to apply any of its laws relating to license privileges to any person or circumstance or to invalidate or prevent any agreement or other cooperative arrangement between a participating state and a nonparticipating state concerning wildlife law enforcement.

Article VII

Compact administrator procedures

(a) For the purpose of administering the provisions of this compact and to serve as a governing body for the resolution of all matters relating to the operation of this compact, a board of compact administrators is established. The board shall be composed of one representative from each of the participating states to be known as the compact administrator. The compact administrator shall be appointed by the head of the licensing authority of each participating state and shall serve and be subject to removal in accordance with the laws of the state he represents. A compact administrator may provide for the discharge of his duties and the performance of his function as a board member by an alternate. An alternate shall not be entitled to serve unless written notification of his identity has been given to the board.

- (b) Each member of the board of compact administrators shall be entitled to one vote. No action of the board shall be binding unless taken at a meeting at which a majority of the total number of the board's votes are cast in favor thereof. Action by the board shall be only at a meeting at which a majority of the participating states are represented.
- (c) The board shall elect annually from its membership a chairman and vice-chairman.
- (d) The board shall adopt bylaws not inconsistent with the provisions of this compact or the laws of a participating state for the conduct of its business and shall have the power to amend and rescind its bylaws.
- (e) The board may accept for any of its purposes and functions under this compact any and all donations and grants of monies, equipment, supplies, materials and services conditional or otherwise, from any state, the United States or any governmental agency, and may receive, utilize and dispose of same.
- (f) The board may contract with, or accept services or personnel from, any governmental or intergovernmental agency, individual, firm or corporation, or any private nonprofit organization or institution.
- (g) The board shall formulate all necessary procedures and develop uniform forms and documents for administering the provisions of this compact. All procedures and forms adopted pursuant to board action shall be contained in a compact manual.

Article VIII

Entry into compact and withdrawal

- (a) This compact shall become effective at such time as it is adopted in a substantially similar form by two or more states.
- (b) (1) Entry into the compact shall be made by resolution of ratification executed by the authorized officials of the applying state and submitted to the chairman of the board.
- (2) The resolution shall substantially be in the form and content as provided in the compact manual and shall include the following:
 - (i) A citation of the authority from which the state is empowered to become a party to this compact;
 - (ii) An agreement of compliance with the terms and provisions of this compact;
- (3) The effective date of entry shall be specified by the applying state but shall not be less than sixty days after notice has been given (a) by the chairman of the board of the compact administrators or (b) by the secretary of the board to each participating state that the resolution from the applying state has been received.
- (c) A participating state may withdraw from participation in this compact by official written notice to each participating state, but withdrawal shall not become effective until ninety days after the notice of withdrawal is given. The notice shall be directed to the compact administrator of each member state. No withdrawal of any state shall affect the validity of this compact as to the remaining participating states.

Article IX

Amendments to the compact

- (a) This compact may be amended from time to time. Amendments shall be presented in resolution form to the chairman of the board of compact administrators and shall be initiated by one or more participating states.
- (b) Adoption of an amendment shall require endorsement by all participating states and shall become effective thirty days after the date of the last endorsement.

Article X

Construction and severability

This compact shall be liberally construed so as to effectuate the purposes stated herein. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States, or the applicability thereof to any government, agency, individual or circumstance is held invalid, the validity of the remainder of this compact shall not be affected thereby. If this compact shall be held contrary to the constitution of any participating state, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the participating state affected as to all severable matters.

Article XI

Title

This compact shall be known as the "wildlife violator compact".

25-320. Child support; factors; methods of payment; additional enforcement provisions; definitions

A. In a proceeding for dissolution of marriage, legal separation, maintenance or child support, the court may order either or both parents owing a duty of support to a child, born to or adopted by the parents, to pay an amount reasonable and necessary for support of the child, without regard to marital misconduct.

B. If child support has not been ordered by a child support order and if the court deems child support appropriate, the court shall direct, using a retroactive application of the child support guidelines to the date of filing a dissolution of marriage, legal separation, maintenance or child support proceeding, the amount that the parents shall pay for the past support of the child and the manner in which payment shall be paid, taking into account any amount of temporary or voluntary support that has been paid. Retroactive child support is enforceable in any manner provided by law.

C. If the parties lived apart before the date of the filing for dissolution of marriage, legal separation, maintenance or child support and if child support has not been ordered by a child support order, the court may order child support retroactively to the date of separation, but not more than three years before the date of the filing for dissolution of marriage, legal separation, maintenance or child support. The court must first consider all relevant circumstances, including the conduct or motivation of the parties in that filing and the diligence with which service of process was attempted on the obligor spouse or was frustrated by the obligor spouse. If the court determines that child support is appropriate, the court shall direct, using a retroactive application of the child support guidelines, the amount that the parents must pay for the past support of the child and the manner in which payments must be paid, taking into account any amount of temporary or voluntary support that has been paid.

D. The supreme court shall establish guidelines for determining the amount of child support. The amount resulting from the application of these guidelines is the amount of child support ordered unless a written finding is made, based on criteria approved by the supreme court, that application of the guidelines would be inappropriate or unjust in a particular case. The supreme court shall review the guidelines at least once every four years to ensure that their application results in the determination of appropriate child support amounts. The supreme court shall base the guidelines and criteria for deviation from them on all relevant factors, considered together and weighed in conjunction with each other, including:

1. The financial resources and needs of the child.
2. The financial resources and needs of the custodial parent.
3. The standard of living the child would have enjoyed if the child lived in an intact home with both parents to the extent it is economically feasible considering the resources of each parent and each parent's need to maintain a home and to provide support for the child when the child is with that parent.
4. The physical and emotional condition of the child, and the child's educational needs.
5. The financial resources and needs of the noncustodial parent.
6. The medical support plan for the child. The plan should include the child's medical support needs, the availability of medical insurance or services provided by the Arizona health care cost containment system and whether a cash medical support order is necessary.
7. Excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common.
8. The duration of parenting time and related expenses.

E. Even if a child is over the age of majority when a petition is filed or at the time of the final decree, the court may order support to continue past the age of majority if all of the following are true:

1. The court has considered the factors prescribed in subsection D of this section.
 2. The child has severe mental or physical disabilities as demonstrated by the fact that the child is unable to live independently and be self-supporting.
 3. The child's disability began before the child reached the age of majority.
- F. If a child reaches the age of majority while the child is attending high school or a certified high school equivalency program, support shall continue to be provided during the period in which the child is actually attending high school or the equivalency program but only until the child reaches nineteen years of age unless the court enters an order pursuant to subsection E of this section. Notwithstanding any other law, a parent paying support for a child over the age of majority pursuant to this section is entitled to obtain all records related to the attendance of the child in the high school or equivalency program.
- G. If a personal check for support payments and handling fees is rightfully dishonored by the payor bank or other drawee, the person obligated to pay support shall make any subsequent support payments and handling fees only by cash, money order, cashier's check, traveler's check or certified check. If a person required to pay support other than by personal check demonstrates full and timely payment for twenty-four consecutive months, that person may pay support by personal check if these payments are for the full amount, are timely tendered and are not rightfully dishonored by the payor bank or other drawee.
- H. Subsection G of this section does not apply to payments made by means of an assignment.
- I. If after reasonable efforts to locate the obligee the clerk or support payment clearinghouse is unable to deliver payments for the period prescribed in section 25-503 due to the failure of the person to whom the support has been ordered to be paid to notify the clerk or support payment clearinghouse of a change in address, the clerk or support payment clearinghouse shall not deliver further payments and shall return the payments to the obligor consistent with the requirements of section 25-503.
- J. An order for child support shall assign responsibility for providing medical insurance for the child who is the subject of the support order to one of the parents and shall assign responsibility for the payment of any medical costs of the child that are not covered by insurance according to the child support guidelines. Each parent shall provide information to the court regarding the availability of medical insurance for the child that is accessible and available at a reasonable cost. In title IV-D cases, the parent responsible pursuant to court order for providing medical insurance for the child shall notify the child support enforcement agency in the department of economic security if medical insurance has been obtained or if the child is no longer covered under an insurance plan.
- K. If the court finds that neither parent has the ability to obtain medical insurance for the child that is accessible and available at a reasonable cost, the court shall:
1. In a title IV-D case, in accordance with established title IV-D criteria, establish a reasonable monthly cash medical support order to be paid by the obligor. If medical assistance is being provided to a child under title XIX of the social security act, cash medical support is assigned to the state pursuant to section 46-407. On verification that the obligor has obtained private insurance, the cash medical support order terminates by operation of law on the first day of the month after the policy's effective date or on the date the court, or the department in a title IV-D case, is notified that insurance has been obtained, whichever is later. If the private insurance terminates, the cash medical support order automatically resumes by operation of law on the first day of the month following the termination date of the policy.
 2. Order one parent to provide medical insurance when it becomes accessible and available at a reasonable cost.
 3. Order that medical costs in excess of the cash medical support amount shall be paid by each parent according to the percentage assigned for payment of uninsured costs.

L. In a title IV-D case, if the court orders the noncustodial parent to obtain medical insurance the court shall also set an alternative cash medical support order to be paid by that parent if the child is not covered under an insurance plan within ninety days after entry of the order or if the child is no longer covered by insurance. The court shall not order the custodial parent to pay cash medical support.

M. In title IV-D cases the superior court shall accept for filing any documents that are received through electronic transmission if the electronically reproduced document states that the copy used for the electronic transmission was certified before it was electronically transmitted.

N. The court shall presume, in the absence of contrary testimony, that a parent is capable of full-time employment at least at the applicable state or federal adult minimum wage, whichever is higher. This presumption does not apply to noncustodial parents who are under eighteen years of age and who are attending high school.

O. An order for support shall provide for an assignment pursuant to sections 25-504 and 25-323.

P. Each licensing board or agency that issues professional, recreational or occupational licenses or certificates shall record on the application the social security number of the applicant and shall enter this information in its database in order to aid the department of economic security in locating parents or their assets or to enforce child support orders. This subsection does not apply to a license that is issued pursuant to title 17 and that is not issued by an automated drawing system. If a licensing board or agency allows an applicant to use a number other than the social security number on the face of the license or certificate while the licensing board or agency keeps the social security number on file, the licensing board or agency shall advise an applicant of this fact.

Q. The factors prescribed pursuant to subsection D of this section are stated for direction to the supreme court. Except pursuant to subsection E of this section and sections 25-501 and 25-809, the superior court shall not consider the factors when making child support orders, independent of the child support guidelines.

R. For the purposes of this section:

1. "Accessible" means that insurance is available in the geographic region where the child resides.
2. "Child support guidelines" means the child support guidelines that are adopted by the state supreme court pursuant to 42 United States Code sections 651 through 669B.
3. "Date of separation" means the date the married parents ceased to cohabit.
4. "Reasonable cost" means an amount that does not exceed the higher of five per cent of the gross income of the obligated parent or an income-based numeric standard that is prescribed in the child support guidelines.
5. "Support" has the same meaning prescribed in section 25-500.
6. "Support payments" means the amount of money ordered by the court to be paid for the support of the minor child or children.

25-502. Jurisdiction, venue and procedure; additional enforcement provisions

- A. The superior court has original jurisdiction in proceedings brought by the department, its agents, a person having physical custody of a child or a party to the case to establish, enforce or modify the duties of support as prescribed in this chapter. All such proceedings are civil actions except as provided in section 25-511. Proceedings to enforce the duties of support as prescribed in this chapter may be originated in the county of residence of the respondent or the petitioner or of the child or children who are the subject of the action.
- B. A proceeding to establish support must originate in the county where the child resides or, if the child resides out of state, the county of this state where the party filing the petition to establish support resides, if either of the following applies:
1. An action does not exist under this title.
 2. Paternity was established without a court order pursuant to section 36-334.
- C. A person or the department or its agent must file a petition to establish or modify a child support order in the superior court in the county of the last order issued under this title if an order exists in this state. If a person wishes the case transferred to the county of this state where the child resides or, if the child resides out of state, the county of this state where the party requesting the transfer resides, the person must file a request for transfer with the clerk of the superior court that issued the last order.
- D. A request for transfer pursuant to subsection C of this section must include a petition or motion regarding support, a statement of payments in default, if applicable, and the transmittal fee prescribed in section 12-284. The responding party may object to the transfer by filing an objection and affidavit within twenty days after service of the request to transfer.
- E. If the clerk does not receive an objection and affidavit pursuant to subsection D of this section, the clerk shall issue the transfer order and transfer the proceeding and all related court files to the other county within thirty days after service of the request to transfer. If the clerk receives an objection and affidavit within the time prescribed in subsection D of this section, the clerk shall notify all parties of the date of the hearing at least ten days before the hearing date. The court may hear evidence relevant only to the issue of the transfer. If after that hearing the court orders the transfer, the clerk shall transfer the proceeding and court files within ten days after the order. The county to which the transfer is made retains the court files and venue for all purposes and the transferring county shall not retain a copy of those files.
- F. The county to which a transfer is made pursuant to subsection D or E of this section shall proceed as if the proceeding was brought in that county originally. A judgment from that county has the same effect and may be enforced or modified as a judgment from the original county.
- G. The party who petitioned for transfer must pay the postadjudication fee prescribed in section 12-284 to the county to which the proceeding was transferred within ten days after the date the clerk of the court mails the notice of the requirement to pay the postadjudication fee. If the party does not pay the fee by that date, the transfer order is automatically nullified and the court clerk shall return the proceeding and all related court files to the original county.
- H. Except as provided in section 25-510, in title IV-D cases the superior court shall accept for filing any documents that are received through electronic transmission if the electronically reproduced document states that the copy used for the electronic transmission was certified before it was electronically transmitted.
- I. On filing of the petition and, if applicable, after a transfer is completed, the court shall issue an order requiring the responding party to appear at the time and place set for the hearing on the petition. Service of the order and a copy of the petition shall be as provided in the Arizona rules of family law procedure. If the responding party receives notice of a hearing but fails to appear, the court may issue a child support arrest warrant as provided in article 5 of this chapter and shall require that the responding party pay at the time of arrest an amount set by the

court to secure the responding party's release from custody pending an appearance at the next scheduled hearing. The court also may find the party to be in contempt of court pursuant to section 12-864.01 and set an amount to be paid to purge the contempt. Any purge amount set by the court shall supersede the amount required to be set to secure the responding party's release, and the responding party shall pay only the purge amount as a condition of release from custody. Any amounts paid under this section shall be deposited with the clerk of the court or the support payment clearinghouse and credited first to the responding party's current child support obligation and then to arrearages. The court may grant a default judgment for arrearages on a prima facie showing of the amount due.

J. The department or its agent or a parent, guardian or custodian may file with the clerk of the superior court a request to establish child support. The request must include a proposed order, the worksheet for child support and a notice of the right to request a hearing within twenty days after service in this state or within thirty days after service outside this state. The request, proposed order, worksheet and notice shall be served pursuant to the Arizona rules of family law procedure on all parties, and in a title IV-D case, on the department or its agent. In a title IV-D case, the department or its agent may serve all parties by certified mail, return receipt requested. If a party does not request a hearing within the time prescribed by this subsection, the court shall review the proposed order and worksheet and enter an appropriate order or set the matter for a hearing. In a title IV-D case, the department or its agent shall enforce the order.

K. Each licensing board or agency that issues professional, recreational or occupational licenses or certificates shall record on the application the social security number of the applicant and shall enter this information in its database in order to aid the department of economic security in locating parents or their assets or to enforce child support orders. This subsection does not apply to a license that is issued pursuant to title 17 and that is not issued by an automated drawing system. If a licensing board or agency allows an applicant to use a number other than the social security number on the face of the license or certificate while the licensing board or agency keeps the social security number on file, the licensing board or agency shall advise an applicant of this fact.

25-518. Child support arrearage; license suspension; hearing

A. If a court finds from the evidence presented at a hearing to enforce a child support order that the obligor has wilfully failed to pay child support, continues after notice pursuant to section 25-517, subsection A to wilfully fail to pay child support and is at least six months in arrears, the court shall do either of the following:

1. Send a certificate of noncompliance to the board or agency ordering the suspension or denial of a driver license or recreational license.
2. Send a certificate of noncompliance to the department of transportation that the noncommercial driver license of the obligor be restricted to travel as described in section 28-144.

B. To be eligible for a restricted license pursuant to subsection A, paragraph 2 of this section, the obligor must do all of the following:

1. Be employed for at least thirty hours per week.
2. Have a place of employment or attend a school that is located more than one mile from the obligor's place of residence.
3. Show that the employment or educational endeavor can reasonably be expected to contribute to bringing the obligor into compliance with the support order in a timely manner.
4. Enter into a payment plan with the department of economic security to pay the child support arrearage. If the court finds that the obligor is not in compliance with the agreement at any time, the obligor is subject to license suspension pursuant to this section.

C. If the obligor has complied with the support order since the suspension or denial, the obligor may petition the court for a hearing. If the obligor establishes at the review hearing that the obligor is in compliance with the support order or a court ordered plan for payment of arrearages, the court shall send a certificate of compliance to the board or agency. Except for licenses issued under title 17, the obligor may then apply for license reinstatement and shall pay all applicable fees.

D. In a title IV-D case, the department or its agent may file with the clerk of the superior court an affidavit indicating that the obligor is in compliance with the support order or the child support obligation. Within five business days after the affidavit is filed, the clerk shall send a notice of compliance to the obligor by first class mail. The clerk shall send a copy of the notice of compliance to the department and the licensing board or agency.

E. Except for licenses issued under title 17, the board or agency shall suspend or deny the license of the licensee within thirty days after receiving the notice of noncompliance from the court. The board or agency shall not lift the suspension until the board or agency receives a certificate of compliance from the court. Notwithstanding section 41-1064, subsection C and section 41-1092.11, subsection B, the board or agency is not required to conduct a hearing. The board or agency shall notify the department in writing or by any other means prescribed by the department of all suspensions within ten days after the suspension. The information shall include the name, address, date of birth and social security number of the licensee and the license category.

F. A certificate of noncompliance without further action invalidates a license to take wildlife in this state and prohibits the obligor from applying for a license issued by an automated drawing system under title 17. The court shall send a copy of the certificate of noncompliance to the department of economic security, and the department of economic security shall notify the Arizona game and fish department of all obligors against whom a notice of noncompliance has been issued and who have applied for a license issued by an automated drawing system.

G. Notwithstanding this section, the title IV-D agency or its agent may send a certificate of noncompliance to a board or agency to order it to suspend an obligor's professional or occupational license if the obligor:

1. Has wilfully failed to pay child support, continues after notice pursuant to section 25-517, subsection E to wilfully fail to pay child support and is at least six months in arrears.
2. Requested an administrative review and the determination confirms that the obligor is required to pay child support and has wilfully failed to pay and that either the obligor did not request a hearing on the determination or the determination was upheld after a hearing.
3. Failed to respond to the notice pursuant to section 25-517, subsection E.

H. If the obligor has paid all arrearages or if the obligor has entered into a written agreement with the title IV-D agency or its agent, the title IV-D agency shall issue a notice of compliance to the licensing board or agency.

41-1005. Exemptions

A. This chapter does not apply to any:

1. Rule that relates to the use of public works, including streets and highways, under the jurisdiction of an agency if the effect of the order is indicated to the public by means of signs or signals.
2. Order or rule of the Arizona game and fish commission that does the following:
 - (a) Opens, closes or alters seasons or establishes bag or possession limits for wildlife.
 - (b) Establishes a fee pursuant to section 5-321, 5-322 or 5-327.
 - (c) Establishes a license classification, fee or application fee pursuant to title 17, chapter 3, article 2.
3. Rule relating to section 28-641 or to any rule regulating motor vehicle operation that relates to speed, parking, standing, stopping or passing enacted pursuant to title 28, chapter 3.
4. Rule concerning only the internal management of an agency that does not directly and substantially affect the procedural or substantive rights or duties of any segment of the public.
5. Rule that only establishes specific prices to be charged for particular goods or services sold by an agency.
6. Rule concerning only the physical servicing, maintenance or care of agency owned or operated facilities or property.
7. Rule or substantive policy statement concerning inmates or committed youths of a correctional or detention facility in secure custody or patients admitted to a hospital, if made by the state department of corrections, the department of juvenile corrections, the board of executive clemency or the department of health services or a facility or hospital under the jurisdiction of the state department of corrections, the department of juvenile corrections or the department of health services.
8. Form whose contents or substantive requirements are prescribed by rule or statute, and instructions for the execution or use of the form.
9. Capped fee-for-service schedule adopted by the Arizona health care cost containment system administration pursuant to title 36, chapter 29.
10. Fees prescribed by section 6-125.
11. Order of the director of water resources adopting or modifying a management plan pursuant to title 45, chapter 2, article 9.
12. Fees established under section 3-1086.
13. Fees established under sections 41-4010 and 41-4042.
14. Rule or other matter relating to agency contracts.
15. Fees established under section 32-2067 or 32-2132.
16. Rules made pursuant to section 5-111, subsection A.
17. Rules made by the Arizona state parks board concerning the operation of the Tonto natural bridge state park, the facilities located in the Tonto natural bridge state park and the entrance fees to the Tonto natural bridge state park.

18. Fees or charges established under section 41-511.05.
 19. Emergency medical services protocols except as provided in section 36-2205, subsection B.
 20. Fee schedules established pursuant to section 36-3409.
 21. Procedures of the state transportation board as prescribed in section 28-7048.
 22. Rules made by the state department of corrections.
 23. Fees prescribed pursuant to section 32-1527.
 24. Rules made by the department of economic security pursuant to section 46-805.
 25. Schedule of fees prescribed by section 23-908.
 26. Procedure that is established pursuant to title 23, chapter 6, article 6.
 27. Rules, administrative policies, procedures and guidelines adopted for any purpose by the Arizona commerce authority pursuant to chapter 10 of this title if the authority provides, as appropriate under the circumstances, for notice of an opportunity for comment on the proposed rules, administrative policies, procedures and guidelines.
 28. Rules made by a marketing commission or marketing committee pursuant to section 3-414.
 29. Administration of public assistance program monies authorized for liabilities that are incurred for disasters declared pursuant to sections 26-303 and 35-192.
 30. User charges, tolls, fares, rents, advertising and sponsorship charges, services charges or similar charges established pursuant to section 28-7705.
 31. Administration and implementation of the hospital assessment pursuant to section 36-2901.08, except that the Arizona health care cost containment system administration must provide notice and an opportunity for public comment at least thirty days before establishing or implementing the administration of the assessment.
 32. Rules made by the Arizona department of agriculture to adopt and implement the provisions of the federal milk ordinance as prescribed by section 3-605.
 33. Rules made by the Arizona department of agriculture to adopt, implement and administer the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) and any other federal produce safety regulation, order or guideline or other requirement adopted pursuant to the FDA food safety modernization act (P.L. 111-353; 21 United States Code sections 2201 through 2252) as provided by title 3, chapter 3, article 4.1.
 34. Calculations performed by the department of economic security associated with the adjustment of the sliding fee scale and formula for determining child care assistance pursuant to section 46-805.
- B. Notwithstanding subsection A, paragraph 21 of this section, at such time as the federal highway administration authorizes the privatization of rest areas, the state transportation board shall make rules governing the lease or license by the department of transportation to a private entity for the purposes of privatization of a rest area.
- C. Coincident with the making of a final rule pursuant to an exemption from the applicability of this chapter under this section, another statute or session law, the agency shall:
1. Prepare a notice and follow formatting guidelines prescribed by the secretary of state.

2. Prepare the rulemaking exemption notices pursuant to chapter 6.2 of this title.
 3. File a copy of the rule with the secretary of state for publication pursuant to section 41-1012 and provide a copy to the council.
- D. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the Arizona board of regents and the institutions under its jurisdiction, except that the Arizona board of regents shall make policies or rules for the board and the institutions under its jurisdiction that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies or rules proposed.
- E. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the Arizona state schools for the deaf and the blind, except that the board of directors of all the state schools for the deaf and the blind shall adopt policies for the board and the schools under its jurisdiction that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies proposed for adoption.
- F. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the state board of education, except that the state board of education shall adopt policies or rules for the board and the institutions under its jurisdiction that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies or rules proposed for adoption. In order to implement or change any rule, the state board of education shall provide at least two opportunities for public comment. The state board of education shall consider the fiscal impact of any proposed rule pursuant to this subsection.
- G. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the state board for charter schools, except that the board shall adopt policies or rules for the board and the charter schools sponsored by the board that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies or rules proposed for adoption. In order to implement or change any policy or rule, the board shall provide at least two opportunities for public comment. The state board for charter schools shall consider the fiscal impact of any proposed rule pursuant to this subsection.

41-1072. Definitions

In this article, unless the context otherwise requires:

1. "Administrative completeness review time frame" means the number of days from agency receipt of an application for a license until an agency determines that the application contains all components required by statute or rule, including all information required to be submitted by other government agencies. The administrative completeness review time frame does not include the period of time during which an agency provides public notice of the license application or performs a substantive review of the application.
2. "Overall time frame" means the number of days after receipt of an application for a license during which an agency determines whether to grant or deny a license. The overall time frame consists of both the administrative completeness review time frame and the substantive review time frame.
3. "Substantive review time frame" means the number of days after the completion of the administrative completeness review time frame during which an agency determines whether an application or applicant for a license meets all substantive criteria required by statute or rule. Any public notice and hearings required by law shall fall within the substantive review time frame.

41-1073. Time frames; exception

A. No later than December 31, 1998, an agency that issues licenses shall have in place final rules establishing an overall time frame during which the agency will either grant or deny each type of license that it issues. Agencies shall submit their overall time frame rules to the governor's regulatory review council pursuant to the schedule developed by the council. The council shall schedule each agency's rules so that final overall time frame rules are in place no later than December 31, 1998. The rule regarding the overall time frame for each type of license shall state separately the administrative completeness review time frame and the substantive review time frame.

B. If a statutory licensing time frame already exists for an agency but the statutory time frame does not specify separate time frames for the administrative completeness review and the substantive review, by rule the agency shall establish separate time frames for the administrative completeness review and the substantive review, which together shall not exceed the statutory overall time frame. An agency may establish different time frames for initial licenses, renewal licenses and revisions to existing licenses.

C. The submission by the department of environmental quality of a revised permit to the United States environmental protection agency in response to an objection by that agency shall be given the same effect as a notice granting or denying a permit application for licensing time frame purposes. For the purposes of this subsection, "permit" means a permit required by title 49, chapter 2, article 3.1 or section 49-426.

D. In establishing time frames, agencies shall consider all of the following:

1. The complexity of the licensing subject matter.
2. The resources of the agency granting or denying the license.
3. The economic impact of delay on the regulated community.
4. The impact of the licensing decision on public health and safety.
5. The possible use of volunteers with expertise in the subject matter area.
6. The possible increased use of general licenses for similar types of licensed businesses or facilities.
7. The possible increased cooperation between the agency and the regulated community.
8. Increased agency flexibility in structuring the licensing process and personnel.

E. This article does not apply to licenses issued either:

1. Pursuant to tribal state gaming compacts.
2. Within seven days after receipt of initial application.
3. By a lottery method.

41-2752. State competition with private enterprise prohibited; exceptions; definition

- A. A state agency shall not engage in the manufacturing, processing, sale, offering for sale, rental, leasing, delivery, dispensing, distributing or advertising of goods or services to the public that are also offered by private enterprise unless specifically authorized by law other than administrative law and executive orders.
- B. A state agency shall not offer or provide goods or services to the public for or through another state agency or a local agency, including by intergovernmental or interagency agreement, in violation of this section or section 41-2753.
- C. The restrictions on activities that compete with private enterprise contained in this section do not apply to:
1. The development, operation and management of state parks, historical monuments and hiking or equestrian trails.
 2. Correctional industries established and operated by the state department of corrections if the prices charged for products sold by the correctional industries are not less than the actual cost of producing and marketing the product plus a reasonable allowance for overhead and administrative costs.
 3. The office of tourism.
 4. The Arizona highways magazine, operated by the department of transportation.
 5. Printing and distributing information to the public if the agency is otherwise authorized to do so, and printing or copying public records or other material relating to the public agency's public business and recovering through fees and charges the costs of such printing, copying and distributing.
 6. The department of public safety.
 7. The construction, maintenance and operation of state transportation facilities.
 8. The development, distribution, maintenance, support, licensing, leasing or sale of computer software by the department of transportation.
 9. Agreements executed by the Arizona health care cost containment system administration with other states to design, develop, install and operate information technology systems and related services or other administrative services pursuant to section 36-2925.
 10. Agreements executed by the department of economic security with other states to design, develop, install and operate support collection technology systems and related services. The department shall deposit, pursuant to sections 35-146 and 35-147, monies received pursuant to this paragraph in the public assistance collections fund established by section 46-295.
 11. Educational, vocational, treatment, training or work programs of the department of juvenile corrections and contracts between the department of juvenile corrections and this state, a political subdivision of this state or a private entity in order to provide employment or vocational educational experience.
 12. The aflatoxin control technologies of the cotton research and protection council.
 13. The lease or sublease of lands or buildings by the department of economic security pursuant to section 41-1958.
 14. The Arizona commerce authority.
 15. The Arizona game and fish commission, but only for the sale of goods or services and not firearms.

16. The lease or sublease of lands or buildings by the department of child safety pursuant to section 8-460.
 17. Agreements executed by the department of child safety with other states to design, develop, install and operate support collection technology systems and related services. The department shall deposit, pursuant to sections 35-146 and 35-147, monies received pursuant to this paragraph in the child safety collections fund established by section 8-461.
 18. The lease or sublease of state hospital lands or buildings by the department of health services.
 19. The sale or lease of software, computer systems or intellectual property developed by the department of education or associated services provided for the sale or lease of software, computer systems or intellectual property by the department of education. The department shall deposit, pursuant to sections 35-146 and 35-147, sixty percent of the profit from the monies generated pursuant to this paragraph in the state general fund and the remaining forty percent in the department of education intellectual property fund established by section 15-231.04. The department of education may not transfer or expend monies or personnel resources for the purposes of marketing or soliciting goods or services authorized pursuant to this paragraph that were appropriated and authorized for other functions and programs of the department of education.
- D. The restrictions on activities that compete with private enterprise contained in subsection A of this section do not apply to community colleges and universities under the jurisdiction of a governing board.
- E. For the purposes of this section, "profit" means any monies generated from the sale or lease of goods and services after accounting for the costs paid by this state, including appropriations from the state general fund.

DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS (F19-0613)
Title 8, Chapter 2, Article 7, Registration of Emergency Workers



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 4, 2019

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

FROM: Council Staff

DATE: May 6, 2019

SUBJECT: DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS (F19-0613)
Title 8, Chapter 2, Article 7, Registration of Emergency Workers

This Five Year Review Report (5YRR) from the Department of Emergency and Military Affairs (Department) relates to rules in Title 8, Chapter 2, Article 7, regarding the registration of emergency workers. As the Department indicates in its report, the rules establish procedures for the state, its agencies, and political subdivisions regarding emergency management activities and for performing emergency functions. Registration as an emergency worker is required under A.R.S. § 26-314 to obtain immunity from liability, exemptions from laws, ordinances, and rules, and other employment benefits that apply to emergency workers.

In the previous 5YRR for these rules, the Department recommended two changes: (1) to amend R8-2-704 to include misdemeanor convictions involving moral turpitude as grounds for the denial or revocation of emergency worker registration and (2) to add a definition section to the rules to ensure further clarity. For the reasons identified in the report, the Department did not act on those recommendations. However, the Department indicates that upon approval of this 5YRR, it plans to take action to make these changes.

Proposed Action

As indicated above and in the report, within 12 months of approval of this report, the Department plans to request an exemption from the rulemaking moratorium to amend R8-2-704 and add a definition section at R8-2-705.

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

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

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Article 7 rules establish procedures for the state, its agencies, and its political subdivisions to register emergency workers in support of emergency management activities or performing emergency functions. The Department indicates that the economic impact of these rules does not differ from what was originally determined when the rules were adopted.

The stakeholders include the Department, emergency workers, and the public.

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

The Department indicates that the rules under review provide the least intrusive and least costly method of achieving their regulatory objectives. The Article 7 rules provide the necessary procedures to register emergency workers. Emergency workers benefit from the employment and legal protections specified in A.R.S. § 26-314. The benefits of these rules outweigh the costs.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No. The Department has not received any written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

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

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

Yes. The Department indicates that the rules are enforced as written.

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

Not applicable. There is no corresponding federal law.

8. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

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

9. Conclusion

Council staff finds that the rules are clear, concise, understandable, and effective. Council staff further finds that once the Department amends its rules as indicated in its 5YRR, the resulting rules will better protect public safety and be more effective. Council staff recommends approval of this report.



Douglas A. Ducey
GOVERNOR

STATE OF ARIZONA
DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS

5636 East McDowell Road
Phoenix, Arizona 85008-3495
(602) 267-2700 DSN: 853-2700



Major General Michael T. McGuire
THE ADJUTANT GENERAL

April 15, 2019

Ms. Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

Dear Ms. Sornsin:

Pursuant to A.R.S. § 41-1056 and A.A.C. R1-6-301, the Arizona Department of Emergency and Military Affairs (DEMA) submits the following Five-Year Review Report for Title 8, Chapter 2, Article 7 to the Governor's Regulatory Review Council for its consideration.

Per the requirements of A.A.C. R1-6-301(B),

1. No rules were left out of this Five-Year Review Report with the intention to be expired under A.R.S. § 41-1056(J).
2. There are no rules subject to rescheduling by the Council.
3. DEMA certifies that it is in compliance with A.R.S. § 41-1091 regarding posting of substantive policy statements and rules. DEMA currently does not have a substantive policy statement.

If you have any additional questions or comments regarding this report, please contact Travis Schulte, Legislative Liaison, at (602) 267-2732 or travis.schulte@azdema.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael T. McGuire".

MICHAEL T. MCGUIRE
Major General, AZANG
The Adjutant General

cc: Ms. Jennifer Thomsen, DEMA Policy Advisor



Department of Emergency & Military Affairs

**Governor's Regulatory Review Council
Five-Year Regulatory Review**

**Arizona Administrative Code
Title 8. Emergency and Military Affairs
Chapter 2. Department of Emergency and Military Affairs –
Division of Emergency Management
Article 7**

Submitted April 15, 2019

Pursuant to A.R.S. § 41-1056, the Arizona Department of Emergency and Military Affairs (DEMA) submits the following five-year review report.

Overview of Rules

DEMA has published rules that appear in Arizona Administrative Code at R8-2-701 et seq. (Registration of Emergency Workers) that were formally adopted January 31, 2009.

The Registration of Emergency Workers Rules establishes procedures for the state, its agencies, and political subdivisions to register emergency workers in support of emergency management activities or performing emergency functions. Registration of an emergency worker by the state, its agencies, and political subdivisions is required to extend immunity from liability; exemptions from laws, ordinances and rules; all pensions, relief, and disability workers' compensation; and other benefits that apply to the activity of emergency workers of this state or of any political subdivision when performing their respective functions per A.R.S. § 26-314.

Arizona Department of Emergency and Military Affairs
Title 8, Chapter 2, Article 7
Five-Year Review Report

1. Authorization of the rule by existing statutes:

General Statutory Authority: A.R.S. § 26-301 and § 26-314

Specific Statutory Authority: A.R.S. § 26-314(E), which states, “The division shall adopt rules prescribing the procedures for registration of emergency workers.”

2. The objective of each rule:

Rule	Objective
R8-2-701	To provide the public with the scope of applicability for the rules within Article 7. This will prevent confusion on behalf of the state, political subdivisions of the state, and the public regarding to whom the rules and registration process apply, and what protections the registration procedures provide to registered volunteer emergency workers.
R8-2-702	To specify that an individual must be registered with an entity of the state or political subdivision as an emergency worker in order to qualify for the benefits and legal protections provided by A.R.S. § 26-314, which alleviates confusion and direct volunteers to the appropriate place to register as an emergency worker. The objective of this rule is also to make those intending to register as an emergency worker aware that the information they provide may be used to perform a criminal history and driving record background check. Performing criminal history and driving record background checks on individuals who register as emergency workers protects the public health, safety, and welfare from individuals who may either be unqualified to serve or perform certain activities as an emergency worker, or those considered undesirable to serve as an emergency worker to a potentially vulnerable population. Additionally, the objective is to create the mechanism for maintaining a ready reserve of registered emergency workers by requiring annual reviews of registered workers, and to design the mechanism to provide for the registering of temporary emergency workers to rapidly augment those who are permanently registered and manage the public’s willingness to volunteer and assist during an emergency.
R8-4-703	To establish the minimum amount of information required to register with the state or a political subdivision as an emergency worker that imposed the least burden upon the registrant while identifying eligibility to serve and unique skill-sets that could be potentially applicable. This completed information provides the state or a political subdivision with the appropriate amount of information to register an individual as a temporary emergency worker per the procedures identified in R8-2-702 as well as maintaining the individual as a registered emergency worker that is annually reviewed and updated.

R8-2-704	To identify the circumstances under which the registration of an emergency worker, and the benefits and legal protections that designation entails, may be denied or revoked. These procedures are inherently necessary to protect the public health, safety, and welfare from emergency workers who are unable or unqualified to serve, either due to a health condition that limits their ability to serve in an emergency environment, by being untruthful in completing the application process, or by having a history of conviction for a felony or misdemeanor involving moral turpitude.
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3. Are the rules effective in achieving their objectives? Yes X No ___

The rules have effectively and efficiently provided the guidance necessary for agencies of the state and political subdivisions to register emergency workers and extend to them the benefits and legal protections prescribed under A.R.S. § 26-314.

4. Are the rules consistent with other rules and statutes? Yes X No ___

These are the only set of rules for registering emergency workers, as defined by A.R.S. § 26-301, and extends the benefits and legal protections prescribed by A.R.S. § 26-314. The Division has no intra-agency or inter-agency consistency issues with its regulations. There are no federal statutes governing registration procedures of emergency workers.

5. Are the rules enforced as written? Yes X No ___

The rules are consistently and fairly applied by agencies and political subdivisions of the state to register emergency workers.

6. Are the rules clear, concise, and understandable? Yes X No ___

The rules are clear, concise, and understandable.

7. Written criticisms received within the last five years? Yes ___ No X

The Division has not received any written or verbal criticisms of these rules.

8. Economic, small business, and consumer impact comparison:

There has been minimal to no economic, small business or consumer impact as anticipated in the 2008 EIS from the original making of the rules. State agencies and political subdivisions incur minimal cost to register emergency workers as compared to the benefits directly received from the ability to utilize those emergency workers during a disaster. There is no economic impact to an individual who registers as an emergency worker with an agency of political subdivision of

the state, who in return for registering receives the economic benefit of the worker and legal protections prescribed under A.R.S. § 26-314. The consumer of the services of an emergency worker receives the benefit of those emergency management and response activities, as does a small business.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ___ No X

The Division has not received any analysis by another party comparing the impact of the rules reviewed in this report on this state's business competitiveness or to the impact on business in other states.

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

The prior Five-Year Review Report specified two recommended changes: the first to amend R8-2-704 to include misdemeanor convictions involving moral turpitude as grounds for the denial or revocation of emergency worker registration, and the second to add a definition section to the rules to further ensure clarity. This course of action was not completed with this current review period because an increase in natural disaster activity in other parts of the country over this timeframe led the Division to undertake a separate de novo review of the authorizing statutes and rules to ensure Arizona had the proper policy in place to register and activate emergency workers. The earlier identified changes were thus delayed with the intent to combine any newly identified amendments into one rule-making action so as to best utilize the time of the agency, Council, and Governor's Office. This de novo review identified areas that could benefit for further clarification under statute, but no additional amendments to the rules were identified. The recommended changes in the previous Five-Year Review Report are still planned to be actioned pending Council approval of this Five-Year Review Report and exemption from the 2019 Rulemaking Moratorium by the Governor's Office.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

As written, the rules impose the least burden and cost necessary for the rules to accomplish their regulatory objective to protect the public's health, safety, and welfare. The only burden and cost that may be incurred on the state and its political subdivisions through compliance of

these rules are the cost of forms for registration, maintaining a current database of emergency workers, and for criminal history and driving record background checks required for the registration of emergency workers. These burdens and costs are outweighed by the benefits of registration, including the cost of criminal history and driving record background checks for emergency workers. Criminal background checks ensure registered emergency workers do not have a history of felony convictions or misdemeanor convictions involving moral turpitude, which is a necessary consideration when utilizing an individual's services with a population that is potentially vulnerable during an emergency. Similarly, driving record background checks ensure volunteers with a history of traffic violations or a suspended driver's license are not assigned driving related responsibilities. Maintaining a current database of emergency workers and performing the stated background checks are significantly less expensive for the state and its political subdivisions compared to spending monies to secure outside services and overtime hours of employees during an emergency event.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

Not applicable. There are no federal requirements for the registration of emergency workers.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

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

14. **Proposed course of action**

As stated in question 10, the Division intends to amend R8-2-704 to include misdemeanor convictions involving moral turpitude as grounds for the denial or revocation of emergency worker registration, and to include the ability of the registering authority to deny or revoke registration of an emergency worker at their discretion. ADEM also intends to add R8-2-705 to create a definitions section in the rules to ensure clarity. These two rule amendments will further ensure consistency within the rule language. ADEM intends to submit a rulemaking moratorium exemption request to the Governor's Office within 12 months of approval of this Five-Year Review Report by the Council.

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT
TITLE 8. EMERGENCY AND MILITARY AFFAIRS
CHAPTER 2. DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS,
DIVISION OF EMERGENCY MANAGEMENT

1. Identification of the rulemaking:

These rules are being established for the Department's operational procedures for registering of volunteer emergency workers with the state and political subdivision. The proposed rulemaking is to create new sections R8-2-701, R8-2-702, R8-2-703, R8-2-704. The proposed operational practices will allow those who may be engaged in authorized emergency management activities or performing emergency functions to be register in accordance A.R.S.§ 26-314 . The proposed rulemaking addresses registration procedures; it is expected these rules will have minimal or no economic impact to small business, consumer or volunteers and state agencies or political subdivisions.

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

The rulemaking directly affects the political subdivisions and selective state agencies who will bear the cost of paper forms for registration and maintaining a current database. The database will consist of trained, registered volunteers to fill positions and other duties which may require volunteers with expertise. The state and political subdivisions will directly benefit from this rulemaking by saving monies spent using outside services and overtime hours. This rulemaking will directly affect the Governor's Emergency Fund as well as the political subdivision's budget by saving money spent on additional personnel to perform various tasks. The rulemaking will benefit those volunteers who are registered by allowing individuals to utilize their valuable time and professional experiences. Registering as a volunteer with the state and/or political subdivisions volunteers will be eligible for benefits and legal protection under A.R.S. § 26-314, during an exercise or actual disaster.

3. Cost-Benefit analysis:

a. Cost and benefits to state and political subdivisions directly affected by the rulemaking:

The Department of Emergency and Military Affairs, Division of Emergency

Management is the primary state agency directly affected by the rulemaking. It incurred the cost of making the rules and will have the benefit of having rules that are consistent with statute and clearly delineate the registration procedures. Other state agencies and political subdivisions will bear minimal cost to register volunteers. Both the State and political subdivisions will benefit directly from these rules by having a set of guidelines to follow when registering volunteers.

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

Both the state and political subdivisions will benefit by using registered volunteers as a direct savings on local budgets and the state's emergency funds. Over the past four years it has been estimated that state agencies and political subdivisions used three hundred volunteers which save approximately \$150,000.00 if paid at \$10.00 an hour and thousands of dollars in overtime.

c. Cost and benefits to business directly affected by the rulemaking:

No businesses are directly affected by this rulemaking.

4. Impact on private and public employment:

The rulemaking will have very little to no direct effect on private or public employment. By using trained registered volunteers, the state and political subdivisions will not have to utilize temporary employment agencies to fill required positions.

5. Impact on small businesses:

The rulemaking will have no direct effect on businesses of any size.

6. Cost and benefit to private persons and consumer who are directly affected by the rulemaking:

The rulemaking will have no direct effect to costs on private persons or consumers.

Probable effects on state revenues:

The rulemaking will have no direct effect on the revenues.

7. Less intrusive or less costly alternative methods considered:

Because the rulemaking has no direct effect on businesses, no less intrusive or less costly alternative method was considered.

Responder Awareness Level course or the Hazmat First Responder Operations Level course. The employer of an individual issued Evidence of Completion shall maintain evidence of the individual's competency under 29 CFR 1910.120(Q)(6) and (Q)(8)(ii), published by the United States Government Printing Office and revised July 1, 2001, with no later editions or amendments. This regulation is incorporated by reference and on file with the Division and the Office of the Secretary of State.

Historical Note

Adopted effective March 29, 1988 (Supp. 88-1). Section repealed; new Section made by final rulemaking at 9 A.A.R. 309, effective March 18, 2003 (Supp. 03-1).

R8-2-606. Repealed

Historical Note

Adopted effective March 29, 1988 (Supp. 88-1). Section repealed by final rulemaking at 9 A.A.R. 309, effective March 18, 2003 (Supp. 03-1).

R8-2-607. Repealed

Historical Note

Adopted effective March 29, 1988 (Supp. 88-1). Section repealed by final rulemaking at 9 A.A.R. 309, effective March 18, 2003 (Supp. 03-1).

R8-2-608. Repealed

Historical Note

Adopted effective March 29, 1988 (Supp. 88-1). Section repealed by final rulemaking at 9 A.A.R. 309, effective March 18, 2003 (Supp. 03-1).

R8-2-609. Repealed

Historical Note

Adopted effective March 29, 1988 (Supp. 88-1). Section repealed by final rulemaking at 9 A.A.R. 309, effective March 18, 2003 (Supp. 03-1).

R8-2-610. Repealed

Historical Note

Adopted effective March 29, 1988 (Supp. 88-1). Section repealed by final rulemaking at 9 A.A.R. 309, effective March 18, 2003 (Supp. 03-1).

R8-2-611. Repealed

Historical Note

Adopted effective March 29, 1988 (Supp. 88-1). Section repealed by final rulemaking at 9 A.A.R. 309, effective March 18, 2003 (Supp. 03-1).

R8-2-612. Repealed

Historical Note

Adopted effective March 29, 1988 (Supp. 88-1). Section repealed by final rulemaking at 9 A.A.R. 309, effective March 18, 2003 (Supp. 03-1).

ARTICLE 7. REGISTRATION OF EMERGENCY WORKERS

R8-2-701. Scope

This Article is applicable for the registering of emergency workers in accordance with A.R.S. § 26-314.

Historical Note

Section made by final rulemaking at 14 A.A.R. 4519, effective January 31, 2009 (Supp. 08-4).

R8-2-702. Registration

Except what is provided in A.R.S. § 26-353, registration is a prerequisite for eligibility of emergency workers for benefits and legal protections under A.R.S. § 26-314.

1. Emergency workers shall register with a department or agency of the state or a political subdivision of the state.
2. The information provided during registration may be used to conduct criminal history and driving record background checks.
3. Temporary registration.
 - a. Temporary registration may be used in emergency situations requiring immediate or on-scene recruitment of emergency workers.
 - b. Persons shall be temporarily registered if they have provided the required registration information in accordance with R8-2-703, but have not provided supporting documentation.
 - c. Period of temporary registration ends when the registering participant has been cleared pursuant to R8-2-702(1) and (2) or when the registering agency determines that the emergency for which the registering participant received a temporary registration is closed whichever occurs first.
4. Registration information shall be reviewed and updated annually.

Historical Note

Section made by final rulemaking at 14 A.A.R. 4519, effective January 31, 2009 (Supp. 08-4)

R8-2-703. Required Registration Information

The following information is the minimum information required to register as an emergency worker:

1. Full name;
2. Birth date;
3. Gender;
4. Social Security Number;
5. Citizenship, to include a document verifying citizenship;
6. Provide verification of eligibility to work in the United States;
7. Address;
8. Contact phone number and e-mail address;
9. Driver's license number, issuing state and expiration date;
10. Registering jurisdiction;
11. Registering agency/organization;
12. Employer name, address and phone number;
13. Personal reference name, address and phone number;
14. Emergency contact name, address and phone number;
15. Professional licenses, certificates and registrations, to include numbers and expiration dates (copies will be provided);
16. Court record of felony convictions;
17. Record of misdemeanor convictions involving moral turpitude; and
18. Medical conditions which may limit ability to perform as an emergency worker.

Historical Note

Section made by final rulemaking at 14 A.A.R. 4519, effective January 31, 2009 (Supp. 08-4)

R8-2-704. Registration Denial or Revocation; Denied Compensation

A. Failure to truthfully respond to statements set forth on the registration form may result in the denial of registration, revocation of registration as an emergency worker, or denial of compensation for claims arising under A.R.S. § 23-1028(a).

- B. Registration may be denied or revoked in the event of the following:
1. Failure to satisfactorily provide the information required in Section R8-2-703,
 2. Health conditions that could limit the applicant's performance as an emergency worker, or

3. Felony convictions.

Historical Note

Section made by final rulemaking at 14 A.A.R. 4519, effective January 31, 2009 (Supp. 08-4)

26-301. Definitions

In this chapter, unless the context otherwise requires:

1. "Commercial nuclear generating station" means an electric power generating facility which is owned by a public service corporation, a municipal corporation or a consortium of public service corporations or municipal corporations and which produces electricity by means of a nuclear reactor.
2. "Council" means the state emergency council.
3. "Director" means the director of the division.
4. "Division" means the division of emergency management within the department of emergency and military affairs.
5. "Emergency functions" includes warning and communications services, relocation of persons from stricken areas, radiological defense, temporary restoration of utilities, plant protection, transportation, welfare, public works and engineering, search or rescue, health and medical services, law enforcement, fire fighting, mass care, resource support, urban search or rescue, hazardous materials, food and energy information and planning and other activities necessary or incidental thereto.
6. "Emergency management" means the preparedness, response, recovery and mitigation activities necessary to respond to and recover from disasters, emergencies or contingencies.
7. "Emergency worker" means any person who is registered, whether temporary or permanent, paid or volunteer, with a local or state emergency management organization and certified by the local or state emergency management organization for the purpose of engaging in authorized emergency management activities or performing emergency functions, or who is an officer, agent or employee of this state or a political subdivision of this state and who is called on to perform or support emergency management activities or perform emergency functions.
8. "Hazardous materials" means:
 - (a) Any hazardous material designated pursuant to the hazardous materials transportation act of 1974 (P.L. 93-633; 88 Stat. 2156; 49 United States Code section 1801).
 - (b) Any element, compound, mixture, solution or substance designated pursuant to the comprehensive environmental response, compensation, and liability act of 1980 (P.L. 96-510; 94 Stat. 2767; 42 United States Code section 9602).
 - (c) Any substance designated in the emergency planning and community right-to-know act of 1986 (P.L. 99-499; 100 Stat. 1613; 42 United States Code section 11002).
 - (d) Any substance designated in the water pollution control act (P.L. 92-500; 86 Stat. 816; 33 United States Code sections 1317(a) and 1321(b)(2)(A)).
 - (e) Any hazardous waste having the characteristics identified under or listed pursuant to section 49-922.
 - (f) Any imminently hazardous chemical substance or mixture with respect to which action has been taken pursuant to the toxic substances control act (P.L. 94-469; 90 Stat. 2003; 15 United States Code section 2606).
 - (g) Any material or substance determined to be radioactive pursuant to the atomic energy act of 1954 (68 Stat. 919; 42 United States Code section 2011).
 - (h) Any substance designated as a hazardous substance pursuant to section 49-201.

(i) Any highly hazardous chemical or regulated substance as listed in the clean air act of 1963 (P.L. 88-206; 42 United States Code sections 7401 through 7671).

9. "Hazardous materials incident" means the uncontrolled, unpermitted release or potential release of hazardous materials that may present an imminent and substantial danger to the public health or welfare or to the environment.

10. "Local emergency" means the existence of conditions of disaster or of extreme peril to the safety of persons or property within the territorial limits of a county, city or town, which conditions are or are likely to be beyond the control of the services, personnel, equipment and facilities of such political subdivision as determined by its governing body and which require the combined efforts of other political subdivisions.

11. "Mitigation" means measures taken to reduce the need to respond to a disaster and to reduce the cost of disaster response and recovery.

12. "Preparedness" means actions taken to develop the response capabilities needed for an emergency.

13. "Recovery" means short-term activities necessary to return vital systems and facilities to minimum operating standards and long-term activities required to return life to normal or improved levels.

14. "Response" means activities that are designed to provide emergency assistance, limit the primary effects, reduce the probability of secondary damage and speed recovery operations.

15. "State of emergency" means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons or property within the state caused by air pollution, fire, flood or floodwater, storm, epidemic, riot, earthquake or other causes, except those resulting in a state of war emergency, which are or are likely to be beyond the control of the services, personnel, equipment and facilities of any single county, city or town, and which require the combined efforts of the state and the political subdivision.

16. "State of war emergency" means the condition which exists immediately whenever this nation is attacked or upon receipt by this state of a warning from the federal government indicating that such an attack is imminent.

26-314. Immunity of state, political subdivisions and officers, agents, employees and emergency workers; limitation; rules; definitions

A. This state and its departments, agencies, boards and commissions and all political subdivisions are not liable for any claim based on the exercise or performance, or the failure to exercise or perform, a discretionary function or duty by any emergency worker, except for wilful misconduct, gross negligence or bad faith of the emergency worker, in engaging in emergency management activities or performing emergency functions pursuant to this chapter or title 36, chapter 6, article 9, including operating an unmanned aircraft or a public unmanned aircraft, while engaged in or supporting emergency management activities or performing emergency functions pursuant to this chapter or title 36, chapter 6, article 9.

B. The immunities from liability, exemptions from laws, ordinances and rules, all pensions, relief, disability workers' compensation and other benefits that apply to the activity of officers, agents, employees or emergency workers of this state or of any political subdivision when performing their respective functions within this state or the territorial limits of their respective political subdivisions apply to them to the same degree and extent while engaged in the performance of any of their functions and duties extraterritorially under this chapter or title 36, chapter 6, article 9, except for wilful misconduct, gross negligence or bad faith.

C. Emergency workers engaging in emergency management activities or performing emergency functions under this chapter or title 36, chapter 6, article 9, in carrying out, complying with or attempting to comply with any order or rule issued under this chapter, title 36, chapter 6, article 9 or any local ordinance, or performing any of their authorized functions or duties or training for the performance of their authorized functions or duties have the same degree of responsibility for their actions and enjoy the same immunities and disability workers' compensation benefits as officers, agents and employees of this state and its political subdivisions performing similar work. This state and its departments, agencies, boards and commissions and all political subdivisions that supervise or control emergency workers engaging in emergency management activities or performing emergency functions under this chapter or title 36, chapter 6, article 9 are responsible for providing for liability coverage, including legal defense, of an emergency worker if necessary. Coverage is provided if the emergency worker is acting within the course and scope of assigned duties and is engaged in an authorized activity, except for actions of wilful misconduct, gross negligence or bad faith.

D. Any other state or its officers, agents, emergency workers or employees rendering aid in this state pursuant to any interstate mutual aid arrangement, agreement or compact are not liable on account of any act or omission in good faith on the part of the state or its officers, agents, emergency workers or employees while so engaged or on account of the maintenance or use of any equipment or supplies in connection with an emergency.

E. The division shall adopt rules prescribing the procedures for registration of emergency workers.

F. For the purposes of this section, "public unmanned aircraft" and "unmanned aircraft" have the same meanings prescribed in section 13-3729.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)

Title 9, Chapter 21, All Articles, Behavioral Health Services for Persons with Serious Mental Illness



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 4, 2019

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

FROM: Council Staff

DATE: May 6, 2019

SUBJECT: ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (F19-0612)
Title 9, Chapter 21, All Articles, AHCCCS - Behavioral Health Services for
Persons with Serious Mental Illness

This Five Year Review Report (5YRR) from AHCCCS relates to all of the rules in Title 9, Chapter 21 regarding Behavioral Health Services for Persons with Serious Mental Illness. These rules implicate an Independent Oversight Committee (IOC). In August 2018, legislation renamed the previous Human Rights Committees (HRCs) to Independent Oversight Committees (IOCs). IOCs are now located within the Department of Administration. The IOC mentioned in these rules is authorized under A.R.S. § 41-3803. As indicated in that statute, the IOC is established to "promote the rights of persons who receive behavioral health services pursuant to title 36, chapters 5 and 34."

This is the first 5YRR for these rules because they came under AHCCCS's jurisdiction less than five years ago upon the merger of the Department of Behavioral Health and AHCCCS.

Proposed Action

Upon approval of this report, AHCCCS will initiate a rulemaking within 180 days to make the changes identified below and in the 5YRR.

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

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

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Agency last amended the Chapter 21 rules in July 2016. In the Agency's prior economic, small business, and consumer impact statement (EIS), it indicated that the source of any economic impact were statutes, not rules.

The stakeholders include the Agency, health care providers, social assistance agencies, AHCCCS members, and the general public.

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

The Agency indicates that the rules require minor technical amendments. Once these technical amendments are completed, the rules will impose the least burden and costs to regulated populations.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No. The Agency has not received any written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. The Agency indicates that the rules are mostly clear, concise, understandable, and effective. However, the Agency indicates that in R9-21-101, the term "County Annex" in the definition section should be updated to "MIHS Behavioral Health Annex." The Agency also indicates that in R9-22-401, a reference to the federal IMD rule needs to be added to clarify the reason for rejection of a stay longer than 16 days.

Moreover, the Agency states that to be consistent with statutory changes, the reference to "Human Rights Committees" in Chapter 21 should be changed to "Independent Oversight Committees." The Agency also indicates that the references to "regional authorities" in Chapter 21 should be changed to managed care organizations to reflect ACC integration.

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

Yes. The Department indicates that the rules are enforced as written.

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

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

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable.

9. **Conclusion**

Council staff finds that the rules are mostly clear, concise, understandable, and effective. As indicated above, the Agency plans to make certain necessary changes to the rules upon approval of this report. Council staff recommends approval of this report.

Arizona Health Care Cost Containment System (AHCCCS)

5 YEAR REVIEW REPORT

A.A.C. Title 9, Chapter 21

November 2018

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 36-502

Specific Statutory Authority: A.R.S. §§ 36-504-546.01

2. The objective of each rule:

Rule	Objective
R9-21-101	This rule sets forth definitions applicable to the Article.
R9-21-102	This rule sets forth which agencies these rules apply to.
R9-21-103	This rule describes how time is calculated in this Article.
R9-21-104	This rule describes the roles and responsibilities of the Office of Human Rights and Human Rights Advocates.
R9-21-105	This rule describes the role of Human Rights Committees.
R9-21-106	This rule describes the role of the State Protection and Advocacy System.
R9-21-201	This rule describes the civil and other legal rights of members.
R9-21-202	This rule describes the support and treatment rights of members.
R9-21-203	This rule describes the rights of members to be free from abuse, neglect, exploitation and mistreatment.
R9-21-204	This rule prescribes when and in what manner restraint and seclusion may be used regarding members.
R9-21-205	This rule prescribes when a member may or may not do labor.
R9-21-206	This rule establishes the competency and consent requirements regarding members.
R9-21-206.01	This rule prescribes when and how informed consent of a member must be sought.
R9-21-207	This rule establishes the requirements surrounding administering medicine to members.
R9-21-208	This rule describes the rights of members to their property and possessions while receiving services.
R9-21-209	This rule prescribes how and what records must be kept.
R9-21-210	This rule outlines what policies and procedures service providers are required to develop.
R9-21-211	This rule outlines what must be in the Notice of Rights and how they must be posted.
R9-21-301	This rule outlines the general provisions of AHCCCS and Regional Behavioral Health Agency's responsibilities to members.
R9-21-302	This rule outlines the Identification, Application, and Referral for Services of Persons with Serious Mental Illness (SMI).
R9-21-303	This rule outlines how eligibility is determined and the initial assessment of persons with SMI.
R9-21-304	This rule outlines what interim and emergency services persons with SMI are entitled to.
R9-21-305	This rule outlines how assessments of member's behavioral health needs are carried out.
R9-21-306	This rule outlines how potential service providers are identified.

R9-21-307	This rule outlines how a service plan is developed and what it contains.
R9-21-308	This rule outlines how a member or their guardian may accept or reject a service plan.
R9-21-309	This rule outlines how service providers are selected by a case manager.
R9-21-310	This rule outlines how a service plan is implemented.
R9-21-311	This rule outlines how alternative services to those outlined in the service plan may be implemented.
R9-21-312	This rule outlines when and how an inpatient treatment and discharge plan is developed.
R9-21-313	This rule outlines when a service plan should be reviewed.
R9-21-314	This rule outlines when a service plan may be modified or terminated.
R9-21-401	This rule outlines the rights and procedures for members to appeal.
R9-21-402	This rule outlines the general process of grievances and appeals for persons with SMI.
R9-21-403	This rule explains how a grievance or investigation may be initiated by a member or employee.
R9-21-404	This rule outlines which persons are responsible for resolving grievances and requests for investigation.
R9-21-405	This rule outlines the process of a preliminary disposition of a grievance or investigation.
R9-21-406	This rule explains the process of the Administration conducting an investigation.
R9-21-407	This rule explains the process of an administrative appeal.
R9-21-408	This rule explains how to appeal to an administrative hearing.
R9-21-409	This rule outlines what notices must contain and to whom they must be sent. It also explains what records must be kept and by whom.
R9-21-410	This rule explains disqualifying behavior by individuals involved, as well as procedural irregularities that can be ground for appeal.
R9-21-501	This rule explains when a court-ordered evaluation shall take place.
R9-21-502	This rule outlines when an emergency admission for evaluation is necessary.
R9-21-503	This rule explains the ground for voluntary admission for evaluation.
R9-21-504	This rule outlines the procedures and responsibilities of the Administration in court-ordered treatment.
R9-21-505	This rule outlines coordination of court-ordered treatment plans with service plans and inpatient treatment plans.
R9-21-506	This rule outlines when review of court-ordered treatment plans is necessary.
R9-21-507	This rule outlines when transfers of court-ordered persons are necessary.
R9-21-508	This rule outlines requests for notification and who may request.
R9-21-509	This rule outlines when voluntary admission for treatment may be requested and by whom.
R9-21-510	This rule outlines informed consent in voluntary application for admission and treatment.
R9-21-511	This rule outlines when use of psychotropic medication in court-ordered treatment is permissible.
R9-21-512	This rule outlines when seclusion and restraint in court-ordered treatment is permissible.

3. **Are the rules effective in achieving their objectives?** Yes X No

4. **Are the rules consistent with other rules and statutes?** Yes No X

R9-21-All	All references throughout Chapter 21 to Human Rights Committees should be changed to Independent Oversight Committees to align with statutory change.
R9-21-All	All references throughout Chapter 21 to regional authorities should be changed to include managed care organizations to reflect ACC integration.

5. **Are the rules enforced as written?** Yes No

6. **Are the rules clear, concise, and understandable?** Yes No

Rule	Explanation
R9-21-101	Update county annex to MIHS Behavioral Health Annex.
R9-22-401	Reference needs to be added to the federal IMD rule to make reason for rejection of stay over 16 days clearer.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

8. **Economic, small business, and consumer impact comparison:** These regulations govern the rights of seriously mentally ill members and AHCCCS and other State responsibilities to them. There is no economic, small business or consumer financial impact.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No

10. **Has the agency completed the course of action indicated in the agency’s previous five-year-review report?**

There is no prior 5YRR because these rules came under AHCCCS’s jurisdiction less than five years ago when the Department of Behavior Health and AHCCCS merged.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The underlying regulatory objectives are the most cost-effective means and impose the least burden to regulated persons.

12. **Are the rules more stringent than corresponding federal laws?** Yes No

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

Not applicable.

14. **Proposed course of action**

Following approval of this 5YRR by GRRC, a rulemaking will be initiated within 180 days to make the above changes. Additional technical and clarifying changes may also occur in the rulemaking.



Replacement Check List

For rules filed within the
4th Quarter
October 1 – December 31, 2016

THE ARIZONA ADMINISTRATIVE CODE

Within the stated calendar quarter, this Chapter contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law. These rules were either certified by the Governor's Regulatory Review Council or the Attorney General's Office; or exempt from the rulemaking process, and filed with the Office of the Secretary of State. Refer to the historical notes for more information. Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

Title 9. Health Services

Chapter 21. Arizona Health Care Cost Containment System - Behavioral Health Services for Persons with Serious Mental Illness

Supplement 16-4

Sections, Parts, Exhibits, Tables or Appendices modified

R9-21-101, R9-21-102 through R9-21-106, R9-21-201, R9-21-203 through R9-21-206.01, R9-21-208, R9-21-209, Exhibit A, R9-21-301, R9-21-303, R9-21-307, R9-21-309 through R9-21-311, R9-21-401 through R9-21-410

REMOVE Supp. 03-2
Pages: 1 - 57

REPLACE with Supp. 16-4
Pages: 1 - 61

The agency's contact person who can answer questions about rules in Supp. 16-4:

Name: James Maguire
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Disclaimer: Please be advised the person listed is the contact of record as submitted in the rulemaking package for this supplement. The contact and other information may change and is provided as a public courtesy.

PUBLISHER
Arizona Department of State
Office of the Secretary of State, Public Services Division

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the Administrative Code. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
PUBLIC SERVICES DIVISION
December 31, 2016

RULES

A.R.S. § 41-1001(17) states: “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

THE ADMINISTRATIVE CODE

The Arizona Administrative Code is where the official rules of the state of Arizona are published. The Code is the official codification of rules that govern state agencies, boards, and commissions. Virtually everything in your life is affected in some way by rules published in the Arizona Administrative Code, from the quality of air you breathe to the licensing of your dentist. This chapter is one of more than 230 in the Code compiled in 21 Titles.

ADMINISTRATIVE CODE SUPPLEMENTS

Rules filed by an agency to be published in the Administrative Code are updated quarterly. Supplement release dates are printed on the footers of each chapter:

First Quarter: January 1 - March 31
Second Quarter: April 1 - June 30
Third Quarter: July 1 - September 30
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2016 is cited as Supp. 16-1.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the Arizona Administrative Register for recent updates to rule Sections.

ARTICLES AND SECTIONS

Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering system separated into subsections.

HISTORICAL NOTES AND EFFECTIVE DATES

Historical notes inform the user when the last time a Section was updated in the Administrative Code. Be aware, since the Office publishes each quarter by entire chapters, not all Sections are updated by an agency in a supplement release. Many times just one Section or a few Sections may be updated in the entire chapter.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, www.azleg.gov. An agency’s authority note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in the introduction of a chapter can be found at the Secretary of State’s website, www.azsos.gov/services/legislative-filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the Arizona Administrative Register online at www.azsos.gov/rules, click on the Administrative Register link.

In the Administrative Code the Office includes editor’s notes at the beginning of a chapter indicating that certain rulemaking Sections were made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

EXEMPTIONS AND PAPER COLOR

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

PERSONAL USE/COMMERCIAL USE

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Public Services managing rules editor, Rhonda Paschal, assisted with the editing of this chapter.

TITLE 9. HEALTH SERVICES

CHAPTER 21. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) - BEHAVIORAL HEALTH SERVICES FOR PERSONS WITH SERIOUS MENTAL ILLNESS

Editor’s Note: Laws 2015, Ch. 195 provided for the statutory transfer of behavioral health responsibilities from the Arizona Department of Health Services to the Arizona Health Care Cost Containment System (AHCCCS). Therefore the Chapter name has been amended from Department of Health Services to the Arizona Health Care Cost Containment System at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

Editor’s Note: The Office of the Secretary of State publishes all Chapters on white paper (Supp. 01-3).

Editor’s Note: Title 9, Chapter 21 was adopted and amended by the Department of Health Services under the provisions of Laws 1992, Ch. 301, § 61, which provided for an exemption from the rulemaking process as specified in the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6, § 41-1001 et seq.). Exemption from A.R.S. Title 41, Chapter 6 means that the Department did not submit notice of this rulemaking to the Secretary of State’s Office for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor’s Regulatory Review Council for review; the Department was not required to hold public hearings on these rules; and the Attorney General has not certified these rules. Because this Chapter contains rules which are exempt from the provisions of the Arizona Administrative Procedure Act, the Chapter is printed on blue paper.

Former Title 9, Chapter 21 renumbered to Title 18, Chapter 11.

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ARTICLE 1. GENERAL PROVISIONS

R9-21-101. Definitions and Location of Definitions

A. Location of definitions. Unless the context otherwise requires, terms used in this Chapter that are defined in A.R.S. § 36-501 shall have the same meaning as in A.R.S. § 36-501. In addition, the following definitions applicable to this Chapter are found in the following Section or Citation:

“Abuse”	R9-21-101
“ADHS”	R9-22-101
“Administration”	A.R.S. § 36-2901
“Agency director”	R9-21-101
“AHCCCS”	R9-22-101
“Applicant”	R9-21-101
“ASH”	R9-21-101
“Authorization”	R9-21-101
“Behavioral health issue”	R9-21-101
“Burden of proof”	R9-21-101
“Case manager”	R9-21-101
“Client”	R9-21-101
“Client record”	R9-21-101
“Client who needs special assistance”	R9-21-101
“Clinical team”	R9-21-101
“Community services”	R9-21-101
“Condition requiring investigation”	R9-21-101
“County Annex”	R9-21-101
“Court”	A.R.S. § 36-501
“Court-ordered treatment”	R9-21-101
“Crisis services” or “emergency services”	R9-21-101
“Danger to others”	A.R.S. § 36-501
“Dangerous”	R9-21-101
“Department”	R9-21-101, A.R.S. § 36-501
“Designated representative”	R9-21-101
“Director”	A.R.S. § 36-501
“Discharge plan”	R9-21-101
“Division”	R9-21-101
“Drug used as a restraint”	R9-21-101
“DSM” or “Diagnostic and Statistical Manual of Mental Disorders”	R9-21-101
“Emergency safety situation”	R9-21-101
“Enrolled Children”	R9-21-101
“Evaluation”	A.R.S. § 36-501
“Exploitation”	R9-21-101
“Family member”	A.R.S. § 36-501
“Frivolous”	R9-21-101
“Generic services”	R9-21-101
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“Guardian”	R9-21-101
“Hearing officer”	R9-21-101
“Human rights advocate”	R9-21-101
“Human rights committee”	R9-21-101
“Illegal”	R9-21-101
“Individual service plan” or “ISP”	R9-21-101
“Informed consent”	A.R.S. § 36-501
“Inhumane”	R9-21-101
“Inpatient facility”	R9-21-101
“Inpatient treatment and discharge plan” or “ITDP”	R9-21-101
“Licensed physician”	A.R.S. § 36-501
“Long-term view”	R9-21-101
“Mechanical restraint”	R9-21-101
“Medical practitioner”	R9-21-101
“Meeting”	R9-21-101
“Mental disorder”	A.R.S. § 36-501
“Mental health agency”	R9-21-101
“Mental health provider”	A.R.S. § 36-501
“Nurse”	R9-21-101
“Outpatient treatment”	A.R.S. § 36-501

“Party” or “parties”	R9-21-101
“Persistent or acute disability”	A.R.S. § 36-501
“Personal restraint”	R9-21-101
“PRN order” or “Pro re rata medication”	R9-21-101
“Professional”	A.R.S. § 36-501
“Program director”	R9-21-101
“Proposed patient”	A.R.S. § 36-501
“Psychiatrist”	A.R.S. § 36-501
“Psychologist”	A.R.S. § 36-501
“Qualified clinician”	R9-21-101
“Records”	A.R.S. § 36-501
“Region”	R9-21-101
“Regional authority”	R9-21-101
“Regional Behavioral Health Authority (RBHA)”	A.R.S. § 36-3401
“Restraint”	R9-21-101
“Seclusion”	R9-21-101
“Seriously Mentally Ill (SMI)”	A.R.S. § 36-550
“Service provider”	R9-21-101
“Social worker”	A.R.S. § 36-501
“State Protection and Advocacy System”	R9-21-101
“Title XIX”	R9-21-101
“Treatment team”	R9-21-101

B. In this Chapter, unless the context otherwise requires:

“Abuse” means, with respect to a client, the infliction of, or allowing another person to inflict or cause, physical pain or injury, impairment of bodily function, disfigurement or serious emotional damage which may be evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior. Such abuse may be caused by acts or omissions of an individual having responsibility for the care, custody or control of a client receiving behavioral health services or community services under this Chapter. Abuse shall also include sexual misconduct, assault, molestation, incest, or prostitution of, or with, a client under the care of personnel of a mental health agency.

“Agency director” means the person primarily responsible for the management of an outpatient or inpatient mental health agency, service provider, regional authority or the Administration, or their designees.

“AHCCCS” means the Arizona Health Care Cost Containment System.

“Applicant” means an individual who:

- a. Submits to a regional authority an application for behavioral health services under this Chapter or on whose behalf an application has been submitted; or
- b. Is referred to a regional authority for a determination of eligibility for behavioral health services according to this Chapter.

“ASH” means the Arizona State Hospital.

“Authorization” means written permission for a mental health agency to release or disclose a client’s record or information, containing:

- a. The name of the mental health agency releasing or disclosing the client’s record or information;
- b. The purpose of the release or disclosure;
- c. The individual, mental health agency, or entity requesting or receiving the client’s record or information;
- d. A description of the client’s record or information to be released or disclosed;
- e. A statement:

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- i. Of permission for the mental health agency to release or disclose the client's record or information; and
- ii. That permission may be revoked at any time;
- f. The date when or conditions under which the permission expires;
- g. The date the document is signed; and
- h. The signature of the client or, if applicable, the client's guardian.

"Behavioral health issue" means an individual's condition related to a mental disorder, personality disorder, substance abuse, or a significant psychological or behavioral response to an identifiable stressor or stressors.

"Behavioral health service" means the assessment, diagnosis, or treatment of an individual's behavioral health issue.

"Burden of proof" means the necessity or obligation of affirmatively proving the fact or facts in dispute.

"Case manager" means the person responsible for locating, accessing and monitoring the provision of services to clients in conjunction with a clinical team.

"Client" means an individual who is seriously mentally ill and is being evaluated or treated for a mental disorder by or through a regional authority.

"Client record" means the written compilation of information that describes and documents the evaluation, diagnosis or treatment of a client.

"Client who needs special assistance" means a client who has been:

- a. Deemed by a qualified clinician, case manager, clinical team, or regional authority to need special assistance in participating in the ISP or ITDP process, which may include, but is not limited to:
 - i. A client who requires 24-hour supervision;
 - ii. A client who is, in fact, incapable of making or communicating needs but is without a court-appointed fiduciary; or
 - iii. A client with physical disabilities or language difficulties impacting the client's ability to make or communicate decisions or to prepare or participate in meetings; or
- b. Otherwise deemed by a program director, the Administration, or an Administrative Law Judge to need special assistance to effectively file a written grievance, to understand the grievance and investigation procedure, or to otherwise effectively participate in the grievance process under this Chapter.

"Clinical team" refers to the interdisciplinary team of persons who are responsible for providing continuous treatment and support to a client and for locating, accessing and monitoring the provision of behavioral health services or community services. A clinical team consists of a psychiatrist, case manager, vocational specialist, psychiatric nurse, and other professionals or paraprofessionals, such as a psychologist, social worker, consumer case management aide, or rehabilitation specialist, as needed, based on the client's needs. The team shall also include a team leader who is a certified behavioral health supervisor.

"Community services" means services such as clinical case management, outreach, housing and residential services, crisis intervention and resolution services, mobile

crisis teams, day treatment, vocational training and opportunities, rehabilitation services, peer support, social support, recreation services, advocacy, family support services, outpatient counseling and treatment, transportation, and medication evaluation and maintenance.

"Condition requiring investigation" means, within the context of the grievance and investigation procedure set forth in Article 4 of this Chapter, an incident or condition which appears to be dangerous, illegal, or inhumane, including a client death.

"County Annex" means the Maricopa County Psychiatric Annex of the Maricopa Medical Center.

"Court-ordered treatment" means treatment ordered by the court.

"Court-ordered evaluation" means evaluation ordered by the court.

"Crisis services" or "emergency services" means immediate and intensive, time-limited, crisis intervention and resolution services which are available on a 24-hour basis and may include information and referral, evaluation and counseling to stabilize the situation, triage to an inpatient setting, clinical crisis intervention services, mobile crisis services, emergency crisis shelter services, and follow-up counseling for clients who are experiencing a psychiatric emergency.

"Dangerous" as used in Article 4 of this Chapter means a condition that poses or posed a danger or the potential of danger to the health or safety of any client.

"Department" means the Arizona Department of Health Services.

"Designated representative" means a parent, guardian, relative, advocate, friend, or other person, designated in writing by a client or guardian who, upon the request of the client or guardian, assists the client in protecting the client's rights and voicing the client's service needs.

"Discharge plan" means a hospital or community treatment and discharge plan prepared according to Article 3 of these rules.

"Drug used as a restraint" means a pharmacological restraint as used in A.R.S. § 36-513 that is not standard treatment for a client's medical condition or behavioral health issue and is administered to:

- a. Manage the client's behavior in a way that reduces the safety risk to the client or others,
- b. Temporarily restrict the client's freedom of movement.

"DSM" means the latest edition of the "Diagnostic and Statistical Manual of Mental Disorders," edited by the American Psychiatric Association.

"Emergency safety situation" means unanticipated client behavior that creates a substantial and imminent risk that the client may inflict injury, and has the ability to inflict injury, upon:

- a. The client, as evidenced by threats or attempts to commit suicide or to inflict injury on the client; or
- b. Another individual, as evidenced by threats or attempts to inflict injury on another individual or individuals, previous behavior that has caused injury to another individual or individuals, or behavior that

places another individual or individuals in reasonable fear of sustaining injury.

“Enrolled Children” means persons under the age of 18 who receive behavioral health services by or through a regional authority.

“Exploitation” means the illegal or improper use of a client or a client’s resources for another’s profit or advantage.

“Frivolous” as used in this Chapter, means a grievance that is devoid of merit. Grievances are presumed not to be frivolous unless the grievance:

- a. Involves conduct that is not within the scope of this Chapter,
- b. Is impossible on its face, or
- c. Is substantially similar to conduct alleged in two previous grievances within the past year that have been determined to be unsubstantiated as provided in this Chapter.

“Generic services” means services other than behavioral health services or community services for which clients may have a need and include, but are not limited to, health, dental, vision care, housing arrangements, social organizations, recreational facilities, jobs, and educational institutions.

“Grievance” means a complaint regarding an act, omission or condition, as provided in this Chapter.

“Guardian” means an individual appointed by court order according to A.R.S. Title 14, Chapter 5, or similar proceedings in another state or jurisdiction where said guardianship has been properly domesticated under Arizona law.

“Hearing officer” refers to an impartial person designated by the Office of Administrative Hearing to hear a dispute and render a written decision.

“Human rights advocate” means the human rights advocates appointed by the Administration under R9-21-105.

“Human rights committee” means the human rights committee established under A.R.S. § 41-3803.

“Illegal” means, within the context of the grievance and investigation procedure set forth in Article 4 of this Chapter, an incident or occurrence which is or was likely to constitute a violation of a state or federal statute, regulation, court decision or other law, including the provisions of these Articles.

“Individual service plan” or “ISP” means the written plan for services to a client, prepared in accordance with Article 3 of this Chapter.

“Inhumane” as used in Article 4 of this Chapter means an incident, condition or occurrence that is demeaning to a client, or which is inconsistent with the proper regard for the right of the client to humane treatment.

“Inpatient facility” means the Arizona State Hospital, the County Annex, or any other inpatient treatment facility registered with or funded by or through the Administration to provide behavioral health services, including psychiatric health facilities, psychiatric hospitals, and psychiatric units in general hospitals.

“Inpatient treatment and discharge plan” or “ITDP” means the written plan for services to a client prepared

and implemented by an inpatient facility in accordance with Article 3 of this Chapter.

“Long-term view” means a planning statement that identifies, from the client’s perspective, what the client would like to be doing for work, education, and leisure and where the client would like to be living for up to a three-year period. The long-term view is based on the client’s unique interests, strengths, and personal desires. It includes predicted times for achievement.

“Mechanical restraint” means any, device, article, or garment attached or adjacent to a client’s body that the client cannot easily remove and that restricts the client’s freedom of movement or normal access to the client’s body, but does not include a device, article, or garment:

- a. Used for orthopedic or surgical reasons, or
- b. Necessary to allow a client to heal from a medical condition or to participate in a treatment program for a medical condition.

“Medical practitioner” means a

- a. Physician,
- b. Physician assistant, or
- c. Nurse practitioner.

“Meeting” means an encounter or assembly of individuals which may be conducted in person or by telephone or by video-conferencing.

“Mental health agency” includes a regional authority, service provider, inpatient facility, or an entity that conducts screening and evaluation under Article 5.

“Nurse” means an individual licensed as a registered nurse or a practical nurse according to A.R.S. Title 32, Chapter 15.

“Party” or “parties” as used in Articles 3 and 4 of these rules means the person filing a grievance under this Chapter, the agency director who issued any final resolution or decision of such a grievance, the person whose conduct is complained of in the grievance, any client or applicant who is the subject of the request or grievance, the legal guardian of client or applicant, and, in selected cases, the appropriate human rights committee.

“Personal restraint” means the application of physical force without the use of any device, for the purpose of restricting the free movement of a client’s body, but for a behavioral health agency licensed as a level 1 Residential Treatment Center RTC or a Level I sub-acute agency does not include:

- a. Holding a client for no longer than five minutes, without undue force, in order to calm or comfort the client; or
- b. Holding a client’s hand to escort the client from one area to another.

“PRN order” or “Pro re nata medication” means medication given as needed.

“Program director” means the person with the day-to-day responsibility for the operation of a programmatic component of a service provider, such as a specific residential, vocational, or case management program.

“Qualified clinician” means a behavioral health professional who is licensed or certified under A.R.S. Title 32, or a behavioral health technician who is supervised by a licensed or certified behavioral health professional.

“Region” means the geographical region designated by the Administration in its contract with the regional authority.

“Regional authority” means the Regional Behavioral Health Authority (RBHA) under contract with the Administration to organize and administer the delivery of behavioral health services or community services to clients and enrolled children within a defined geographic area.

“Restraint” means personal restraint, mechanical restraint, or drug used as a restraint.

“Seclusion” means restricting a client to a room or area through the use of locked doors or any other device or method which precludes a client from freely exiting the room or area or which a client reasonably believes precludes his unrestricted exit. In the case of an inpatient facility, confining a client to the facility, the grounds of the facility, or a ward of the facility does not constitute seclusion. In the case of a community residence, restricting a client to the residential site, according to specific provisions of an individual service plan or court order, does not constitute seclusion.

“Seriously mentally ill” means a person 18 years of age or older as defined in A.R.S. § 36-550.

“Service provider” means an agency, inpatient facility or other mental health provider funded by or through, under contract or subcontract with, certified by, approved by, registered with, or supervised by the Administration or receiving funds under Title XIX, to provide behavioral health services or community services.

“State Protection and Advocacy System” means the agency designated as the Protection and Advocacy System for individuals with mental illness, according to 42 U.S.C. 10801-10851.

“Title XIX” means Title XIX of the Social Security Act, 42 U.S.C. 1396 et seq.

“Treatment team” means the multidisciplinary team of persons who are responsible for providing continuous treatment and support to a client who is in an inpatient facility.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 7 A.A.R. 3469, effective July 17, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

R9-21-102. Applicability

With regard to the provision of behavioral health services or community services to clients under A.R.S. Title 36 Chapter 5, this Chapter shall apply to the Administration and to all mental health agencies. This Chapter shall not apply to the Arizona Department of Corrections.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

R9-21-103. Computation of Time

For any period of time prescribed or allowed by this Chapter, the time shall be calculated as follows:

1. The period of time shall not include the day of the act, event or default from which the designated period of time begins to run;
2. If the period of time prescribed or allowed is less than 11 days, the period of time shall not include intermediate Saturdays, Sundays and legal holidays;
3. If the period of time is 11 days or more, the period of time shall include intermediate Saturdays, Sundays and legal holidays;
4. If the last day of the period of time is a Saturday, Sunday, or legal holiday, the period of time shall extend until the end of the next day that is not a Saturday, Sunday or legal holiday.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Section repealed; new Section R9-21-103 renumbered from R9-21-104 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

R9-21-104. Office of Human Rights; Human Rights Advocates

- A. An Office of Human Rights shall be established within the Administration. The office shall have its own chief officer who shall be responsible for the management and control of the office, as well as the hiring, training, supervision, and coordination of human rights advocates.
- B. The chief officer shall appoint at least one human rights advocate for each 2,500 clients in each region. Each region shall have at least one human rights advocate. The chief officer shall appoint at least one human rights advocate for ASH. All clients shall have the right of access to a human rights advocate in order to understand, exercise, and protect their rights. The human rights advocate shall advocate on behalf of clients and shall assist clients in understanding and protecting their rights and obtaining needed services. The human rights advocate shall also assist clients in resolving appeals and grievances under Article 4 of this Chapter and shall coordinate and assist the human rights committees in performing their duties.
- C. The human rights advocates shall be given access to all:
 1. Clients; and
 2. Client records from a service provider, regional authority, or the Administration, except as prohibited by federal or state law.
- D. Staff of inpatient facilities, regional authorities, and service providers shall cooperate with the advocate by providing relevant information, reports, investigations, and access to meetings, staff persons, and facilities except as prohibited by federal or state law and the client’s right to privacy.

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- E. An agency director shall notify the Office of Human Rights and the applicable human rights committee of each client who needs special assistance.
- F. The Office of Human Rights shall:
1. Maintain a list that contains the names of each client who needs special assistance and, if applicable, the name and address of the residential program providing behavioral services to the client; and
 2. Provide each human rights committee with a list of all clients who need special assistance who reside in the respective jurisdiction of the human rights committee.
- G. The Office of Human Rights shall promptly distribute to all appropriate human rights committees copies of all reports received according to this Chapter (e.g., reports regarding clients who need special assistance, allegations of mistreatment, denial of rights, restraint, and seclusion).
- Historical Note**
- Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-104 renumbered to R9-21-103; new Section R9-21-104 renumbered from R9-21-105 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).
- R9-21-105. Human Rights Committees**
- A. According to A.R.S. §§ 41-3803 and 41-3804, the Administration shall establish human rights committees to provide independent oversight to ensure that the rights of clients and enrolled children are protected. The Administration shall establish at least one human rights committee for each region and the Arizona State Hospital. Upon the establishment of a human rights committee, if more than 2,500 clients reside within a region, the Administration shall establish additional human rights committees until there is one human rights committee for each 2,500 clients in a region.
- B. Each human rights committee shall be composed of at least seven and not more than 15 members. At least two members of the committee shall be clients or former clients, at least two members shall be relatives of clients, two members shall be parents of enrolled children and at least three members shall have expertise in one of the following areas: psychology, law, medicine, education, special education, social work, or behavioral health services.
- C. The Administration shall appoint the initial members to each regional committee and the human rights committee for the Arizona State Hospital. Members shall be appointed to fill vacancies on a human rights committee, subject to the approval of the committee.
- D. Each committee shall meet at least four times each year. Within three months of its formation, each committee shall establish written guidelines governing the committee's operations. These guidelines shall be consistent with A.R.S. §§ 41-3803 and 41-3804. The adoption and amendment of the committee's guidelines shall be by a majority vote of the committee and shall be submitted to the Administration for approval.
- E. No employee or individual under contract with the Administration, regional authority, or service provider may be a voting member of a committee.
- F. If a member of a human rights committee or the human rights committee determines that a member has a conflict of interest regarding an agenda item, the member shall refrain from:
1. Participating in a discussion regarding the agenda item, and
 2. Voting on the agenda item.
- G. Each committee shall, within its respective jurisdiction, provide independent oversight and review of:
1. Allegations of illegal, dangerous, or inhumane treatment of clients and enrolled children;
 2. Reports filed with the committee under R9-21-203 and R9-21-204 concerning the use of seclusion, restraint, abuse, neglect, exploitation, mistreatment, accidents, or injuries;
 3. The provision of services to clients identified under R9-21-301 in need of special assistance
 4. Violations of rights of clients and enrolled children and conditions requiring investigation under Article 4 of this Chapter;
 5. Research in the field of mental health according to A.R.S. § 41-3804(E)(2); and
 6. Any other issue affecting the human rights of clients and enrolled children.
- H. Within its jurisdiction, each human rights committee shall, for a client who needs special assistance, and may, for other clients and enrolled children:
1. Make regular site visits to residential environments;
 2. Meet with the client, including a client who needs special assistance, in residential environments to determine satisfaction of the clients with the residential environments; and
 3. Inspect client records, including client records for clients who need special assistance, except as prohibited by federal or state law and a client's right to privacy.
- I. A committee may request the services of a consultant or staff person to advise the committee on specific issues. The cost of the consultant or staff person shall be assumed by the Administration or regional authority subject to the availability of funds specifically allocated for that purpose. A consultant or staff person may, in the sole discretion of the committee, be a member of another committee or an employee of the Administration, regional authority, or service provider. No committee consultant or staff person shall vote or otherwise direct the committee's decisions.
- J. Committee members and committee consultants and staff persons shall have access to client records according to A.R.S. §§ 36-509(A)(11) and 41-3804(I). If a human rights committee's request for information or records is denied, the committee may request a review of the decision to deny the request according to A.R.S. § 41-3804(J). Nothing in this rule shall be construed to require the disclosure of records or information to the extent that such information is protected by A.R.S. § 36-445 et seq.
- K. On the first day of the months of January, April, July, and October of each year, each committee shall issue a quarterly report summarizing its activities for the prior quarter, including any written objections to the Administration according to A.R.S. § 41-3804(F), and make any recommendations for changes it believes the Administration or regional authorities should implement. In addition, the committee may, as it deems appropriate, issue reports on specific problems or violations of client's rights. The report of a regional committee shall be delivered to the regional authority and the Administration.
- L. The Administration shall provide training and support to human rights committees.
- M. A human rights committee may request:
1. An investigation for a client according to Article 4 of this Chapter, or
 2. A regional authority or the Arizona State Hospital, as applicable, to conduct an investigation for an enrolled child.

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- N. The regional authority or the Arizona State Hospital, as applicable, when requested by a human rights committee, shall conduct an investigation concerning:
1. A client as provided in Article 4 of this Chapter, and
 2. An enrolled child.
- O. A human rights committee shall submit an annual report of the human rights committee's activities and recommendations to the Director at the end of each calendar year according to A.R.S. § 41-3804(G).

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Former Section R9-21-105 renumbered to R9-21-104; new Section R9-21-105 renumbered from R9-21-106 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

R9-21-106. State Protection and Advocacy System

Staff of mental health agencies shall cooperate with the State Protection and Advocacy System in its investigations and advocacy for clients and shall provide the System access to clients, records and facilities to the extent permitted and required by federal law, 42 U.S.C. 10801-10851. Nothing in this rule shall be construed to create an independent cause of action that does not already exist for the State Protection and Advocacy System either in state court or any administrative proceeding provided by these rules.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 7 A.A.R. 3469, effective July 17, 2001 (Supp. 01-3). Former Section R9-21-106 renumbered to R9-21-105; new Section R9-21-106 renumbered from R9-21-107 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

R9-21-107. Renumbered**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Renumbered to R9-21-106 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

ARTICLE 2. RIGHTS OF PERSONS WITH SERIOUS MENTAL ILLNESS**R9-21-201. Civil and Other Legal Rights**

- A. Clients shall have all rights accorded by applicable law, including but not limited to those prescribed in A.R.S. §§ 36-504 through 36-517.02. Any individual or agency providing behavioral health services or community services as defined in R9-21-101 shall not abridge these rights, including the following:
1. Those civil rights set forth in A.R.S. § 36-506;

2. The right to acquire and dispose of property, to execute instruments, to enter into contractual relationships, to hold professional or occupational or vehicle operator's licenses, unless the client has been adjudicated incompetent or there has been a judicial order or finding that such client is unable to exercise the specific right or category of rights. In the case of a client adjudicated incompetent, these rights may be exercised by the client's guardian, in accordance with applicable law;
3. The right to be free from unlawful discrimination by the Administration or by any mental health agency on the basis of race, creed, religion, sex, sexual preference, age, physical or mental handicap or degree of handicap; provided, however, classifications based on age, sex, category or degree of handicap shall not be considered discriminatory, if based on written criteria of client selection developed by a mental health agency and approved by the Administration as necessary to the safe operation of the mental health agency and in the best interests of the clients involved;
4. The right to equal access to all existing behavioral health services, community services, and generic services provided by or through the state of Arizona;
5. The right to religious freedom and practice, without compulsion and according to the preference of the client;
6. The right to vote, unless under guardianship, including reasonable assistance when desired in registering and voting in a nonpartisan and noncoercive manner;
7. The right to communicate including:
 - a. The right to have reasonable access to a telephone and reasonable opportunities to make and receive confidential calls and to have assistance when desired and necessary to implement this right;
 - b. The unrestricted right to send and receive uncensored and unopened mail, to be provided with stationery and postage in reasonable amounts, and to receive assistance when desired and necessary to implement this right;
8. The right to be visited and visit with others, provided that reasonable restrictions may be placed on the time and place of the visit but only to protect the privacy of other clients or to avoid serious disruptions in the normal functioning of the mental health agency;
9. The right to associate with anyone of the client's choosing, to form associations, and to discuss as a group, with those responsible for the program, matters of general interest to the client, provided that these do not result in serious disruptions in the normal functioning of the mental health agency. Clients shall receive cooperation from the mental health agency if they desire to publicize and hold meetings and clients shall be entitled to invite visitors to attend and participate in such meetings, provided that they do not result in serious disruptions in the normal functioning of the mental health agency;
10. The right to privacy, including the right not to be fingerprinted and photographed without authorization, except as provided by A.R.S. § 36-507(2);
11. The right to be informed, in appropriate language and terms, of client rights;
12. The right to assert grievances with respect to infringement of these rights, including the right to have such grievances considered in a fair, timely, and impartial procedure, as set forth in Article 4 of these rules, and the right not to be retaliated against for filing a grievance;
13. The right of access to a human rights advocate in order to understand, exercise, and protect a client's rights;

14. The right to be assisted by an attorney or designated representative of the client's own choice, including the right to meet in a private area at the program or facility with an attorney or designated representative. Nothing in this Chapter shall be construed to require the Administration or any mental health agency to pay for the services of an attorney who consults with or represents a client;
 15. The right to exercise all other rights, entitlements, privileges, immunities provided by law, and specifically those rights of consumers of behavioral health services or community services set forth in A.R.S. §§ 36-504 through 36-517.02;
 16. The same civil rights as all other citizens of Arizona, including the right to marry and to obtain a divorce, to have a family, and to live in the community of their choice without constraints upon their independence, except those constraints to which all citizens are subject.
- B.** Nothing in this Article shall be interpreted to:
1. Give the power, right, or authority to any person or mental health agency to authorize sterilization, abortion, or psychosurgery with respect to any client, except as may otherwise be provided by law; or
 2. Restrict the right of physicians, nurses, and emergency medical technicians to render emergency care or treatment in accordance with A.R.S. § 36-512; or
 3. Construe this rule to confer constitutional or statutory rights not already present.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

R9-21-202. Right to Support and Treatment

- A.** A client has the following rights with respect to the client's support and treatment:
1. The right to behavioral health services or community services:
 - a. Under conditions that support the client's personal liberty and restrict personal liberty only as provided by law or in this Chapter;
 - b. From a flexible service system that responds to the client's needs by increasing, decreasing and changing services as needs change;
 - c. Provided in a way that:
 - i. Preserves the client's human dignity;
 - ii. Respects the client's individuality, abilities, needs, and aspirations without regard to the client's psychiatric condition;
 - iii. Encourages the client's self-determination, freedom of choice, and participation in treatment to the client's fullest capacity;
 - iv. Ensures the client's freedom from the discomfort, distress and deprivation that arise from an unresponsive and inhumane environment;
 - v. Protects and promotes the client's privacy, including an opportunity whenever possible to be provided clearly defined private living, sleeping and personal care spaces; and
 2. Maximizes integration of the client into the client's community through housing and residential services which are located in residential neighborhoods, rely as much as possible on generic support services to provide training and assistance in ordinary community experiences, and utilize specialized mental health programs that are situated in or near generic community services;
 3. Offers the client humane and adequate support and treatment that is responsive to the client's needs, recognizes that the client's needs may vary, and is capable of adjusting to the client's changing needs; and
 4. That provide the client with an opportunity to:
 - i. Receive services that are adequate, appropriate, consistent with the client's individual needs, and least restrictive of the client's freedom;
 - ii. Receive treatment and services that are culturally sensitive in structure, process and content;
 - iii. Receive services on a voluntary basis to the maximum extent possible and entirely if possible;
 - iv. Live in the client's own home;
 - v. Undergo normal experiences, even though the experiences may entail an element of risk, unless the client's safety or well-being or that of others is unreasonably jeopardized; and
 - vi. Engage in activities and styles of living, consistent with the client's interests, which encourage and maintain the integration of the client into the community.
 5. The right to ongoing participation in the planning of services as well as participation in the development and periodic revision of the individual service plan;
 6. The right to be provided with a reasonable explanation of all aspects of one's condition and treatment;
 7. The right to give informed consent to all behavioral health services and the right to refuse behavioral health services in accordance with A.R.S. §§ 36-512 and 36-513, except as provided for in A.R.S. §§ 36-520 through 36-544 and 13-3994;
 8. The right not to participate in experimental treatment without voluntary, written informed consent; the right to appropriate protection associated with such participation; and the right and opportunity to revoke such consent;
 9. The right to a humane treatment environment that affords protection from harm, appropriate privacy, and freedom from verbal or physical abuse;
 10. The right to enjoy basic goods and services without threat of denial or delay. For residential service providers, these basic goods and services include at least the following:
 - a. A nutritionally sound diet of wholesome and tasteful food available at appropriate times and in as normal a manner as possible;
 - b. Arrangements for or provision of an adequate allowance of neat, clean, appropriate, and seasonable clothing that is individually chosen and owned;
 - c. Assistance in securing prompt and adequate medical care, including family planning services, through community medical facilities;
 - d. Opportunities for social contact in the client's home, work or schooling environments;
 - e. Opportunities for daily activities, recreation and physical exercise;

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- f. The opportunity to keep and use personal possessions; and
 - g. Access to individual storage space for personal possessions;
 - 8. The right to be informed, in advance, of charges for services;
 - 9. The right to a continuum of care in a unified and cohesive system of community services that is well integrated, facilitates the movement of clients among programs, and ensures continuity of care;
 - 10. The right to a continuum of care that consists of, but is not limited to, clinical case management, outreach, housing and residential services, crisis intervention and resolution services, mobile crisis teams, vocational training and opportunities, day treatment, rehabilitation services, peer support, social support, recreation services, advocacy, family support services, outpatient counseling and treatment, transportation, and medication evaluation and maintenance;
 - 11. The right to a continuum of care with programs that offer different levels of intensity of services in order to meet the individual needs of each client;
 - 12. The right to appropriate mental health treatment, based on each client's individual and unique needs, and to those community services from which the client would reasonably benefit;
 - 13. The right to community services provided in the most normal and least restrictive setting, according to the least restrictive means appropriate to the client's needs;
 - 14. The right to clinical case management services and a case manager. The clinical team negotiates and oversees the provision of services and ensures the client's smooth transition with service providers and among agencies;
 - 15. The right to participate in treatment decisions and in the development and implementation of the client's ISP, and the right to participate in choosing the type and location of services, consistent with the ISP;
 - 16. The right to prompt consideration of discharge from an inpatient facility and the identification of the steps necessary to secure a client's discharge as part of an ISP;
 - 17. The rights prescribed in Articles 3 and 4 of this Chapter, including the right to:
 - a. A written individual service plan;
 - b. Assert grievances; and
 - c. Be represented by a qualified advocate or other designated representative of the client's choosing in the development of the ISP and the inpatient treatment and discharge plan and in the grievance process, in order to understand, exercise and protect the client's rights.
- B.** Subsection (A) shall not be construed to confer constitutional or statutory rights not already present.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-203. Protection from Abuse, Neglect, Exploitation, and Mistreatment

- A.** No mental health agency shall mistreat a client or permit the mistreatment of a client by staff subject to its direction. Mistreatment includes any intentional, reckless or negligent action

or omission which exposes a client to a serious risk of physical or emotional harm. Mistreatment includes but is not limited to:

1. Abuse, neglect, or exploitation;
 2. Corporal punishment;
 3. Any other unreasonable use or degree of force or threat of force not necessary to protect the client or another person from bodily harm;
 4. Infliction of mental or verbal abuse, such as screaming, ridicule, or name calling;
 5. Incitement or encouragement of clients or others to mistreat a client;
 6. Transfer or the threat of transfer of a client for punitive reasons;
 7. Restraint or seclusion used as a means of coercion, discipline, convenience, or retaliation;
 8. Any act in retaliation against a client for reporting any violation of the provisions of this Chapter to the Administration; or
 9. Commercial exploitation.
- B.** The following special sanctions shall be available to the Department and/or the Administration, in addition to those set forth in 9 A.A.C. 10, Article 10 of the Department's rules, to protect the interests of the client involved as well as other current and former clients of the mental health agency.
1. Mistreatment of a client by staff or persons subject to the direction of a mental health agency may be grounds for suspension or revocation of the license of the mental health agency or the provision of financial assistance, and, with respect to employees of the mental health agency, grounds for disciplinary action, which may include dismissal.
 2. Failure of an employee of the Administration to report any instance of mistreatment within any mental health agency subject to this Chapter shall be grounds for disciplinary action, which may include dismissal.
 3. Failure of a mental health agency to report client deaths and allegations of sexual and physical abuse to the Administration and to comply with the procedures described in Article 4 of this Chapter for the processing and investigation of grievances and reports shall be grounds for suspension of the license of the mental health agency or the provision of financial assistance, and, with respect to a service provider directly operated by the Department, grounds for disciplinary action, which may include dismissal.
 4. A mental health agency shall report all allegations of mistreatment and denial of rights to the Office of Human Rights and the regional authority for review and monitoring in accordance with R9-21-105.
- C.** A mental health agency shall report all incidents of abuse, neglect, or exploitation to the appropriate authorities as required by A.R.S. § 46-454 and shall document all such reports in the mental health agency's records.
- D.** If a mental health agency has reasonable cause to believe that a felony relevant to the functioning of the program has been committed by staff persons subject to the agency's direction, a report shall be filed with the county attorney.
- E.** The identity of persons making reports of abuse, neglect, exploitation, or mistreatment shall not be disclosed by the mental health agency or by the Administration, except as necessary to investigate the subject matter of the report.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under

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an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

R9-21-204. Restraint and Seclusion

- A.** A mental health agency shall only use restraint or seclusion to the extent permitted by and in compliance with this Chapter, and other applicable federal or state law.
- B.** A mental health agency shall only use restraint or seclusion:
1. To ensure the safety of the client or another individual in an emergency safety situation;
 2. After other available less restrictive methods to control the client's behavior have been tried and were unsuccessful;
 3. Until the emergency safety situation ceases and the client's safety and the safety of others can be ensured, even if the restraint or seclusion order has not expired; and
 4. In a manner that:
 - a. Prevents physical injury to the client,
 - b. Minimizes the client's physical discomfort and mental distress, and
 - c. Complies with the mental health agency's policies and procedures required in subsection (E) and with this Section.
- C.** A mental health agency shall not use restraint or seclusion as a means of coercion, discipline, convenience, or retaliation.
- D.** A service provider shall at all times have staff qualified on duty to provide:
1. Restraint and seclusion according to this Section, and
 2. The behavioral health services the mental health agency is authorized to provide.
- E.** A mental health agency shall develop and implement written policies and procedures for the use of restraint and seclusion that are consistent with this Section and other applicable federal or state law and include:
1. Methods of controlling behavior that may prevent the need for restraint or seclusion,
 2. Appropriate techniques for placing a client in each type of restraint or seclusion; used at the mental health agency, and
 3. Immediate release of a client during an emergency.
- F.** A mental health agency shall develop and implement a training program on the policies and procedures in subsection (E).
- G.** A mental health agency shall only use restraint or seclusion according to:
1. A written order given:
 - a. By a physician providing treatment to a client; or
 - b. If a physician providing treatment to a client is not present on the premises or on-call:
 - i. If the agency is licensed as a level 1 psychiatric acute hospital, by a physician or a nurse practitioner; or
 - ii. If the agency is licensed as a level 1 subacute agency or a level 1 RTC, by a medical practitioner.
 2. An oral order given to a nurse by:
 - a. A physician providing treatment to a client, or
 - b. If a physician providing treatment to a client is not present on the premises or on-call:
 - i. If the agency is licensed as a level 1 psychiatric acute hospital, by a physician or a nurse practitioner; or
 - ii. If the agency is licensed as a level 1 sub-acute agency or a level 1 RTC, by a medical practitioner.
- H.** If a restraint or seclusion is used according to subsection (G)(2), the individual giving the order shall, at the time of the oral order in consultation with the nurse, determine whether, based upon the client's current and past medical, physical and psychiatric condition, it is clinically necessary for:
1. If the agency is licensed as a level 1 psychiatric acute hospital, a physician to examine the client as soon as possible and, if applicable, the physician shall examine the client as soon as possible; or
 2. If the agency is licensed as a level 1 sub-acute agency or a level 1 RTC, a medical practitioner to examine the client as soon as possible and, if applicable, the medical practitioner shall examine the client as soon as possible.
- I.** An individual who gives an order for restraint or seclusion shall:
1. Order the least restrictive restraint or seclusion that may resolve the client's behavior that is creating the emergency safety situation, based upon consultation with a staff member at the agency;
 2. Be available to the agency for consultation, at least by telephone, throughout the period of the restraint or seclusion;
 3. Include the following information on the order:
 - a. The name of the individual ordering the restraint or seclusion,
 - b. The date and time that the restraint or seclusion was ordered,
 - c. The restraint or seclusion ordered,
 - d. The criteria for release from restraint or seclusion without an additional order, and
 - e. The maximum duration for the restraint or seclusion;
 4. If the order is for mechanical restraint or seclusion, limit the order to a period of time not to exceed three hours.
 5. If the order is for a drug used as a restraint, limit the:
 - a. Dosage to that necessary to achieve the desired effect, and
 - b. Drug ordered to a drug other than a time-released drug designed to be effective for more than three hours; and
 6. If the individual ordering the use of restraint or seclusion is not a physician providing treatment to the client:
 - a. After ordering the restraint or seclusion, consult with the physician providing treatment as soon as possible, and
 - b. Inform the physician providing treatment of the client's behavior that created the emergency safety situation and required the client to be restrained or placed in seclusion.
- J.** PRN orders shall not be used for any form of restraint or seclusion.
- K.** If an individual has not examined the client according to subsection (H), the following individual shall conduct a face-to-face assessment of a client's physical and psychological well-being within one hour after the initiation of restraint or seclusion:
1. For a behavioral health agency licensed as a level 1 psychiatric acute hospital, a physician or nurse practitioner who is either on-site or on-call at the time the mental health agency initiates the restraint or seclusion; or
 2. For a behavioral health agency licensed as a level 1 RTC or a level 1 sub-acute agency a medical practitioner or a registered nurse with at least one year of full time behavioral health work experience, who is either on-site or on-

- call at the time the mental health agency initiates the restraint or seclusion.
- L.** A face-to-face assessment of a client according to subsection (K) shall include a determination of:
1. The client's physical and psychological status,
 2. The client's behavior,
 3. The appropriateness of the restraint or seclusion used,
 4. Whether the emergency safety situation has passed, and
 5. Any complication resulting from the restraint or seclusion used.
- M.** For each restraint or seclusion of a client, a mental health agency shall include in the client's record the order and any renewal order for the restraint or seclusion, and shall document in the client's record:
1. The nature of the restraint or seclusion;
 2. The reason for the restraint or seclusion, including the facts and behaviors justifying it;
 3. The types of less restrictive alternatives that were attempted and the reasons for the failure of the less restrictive alternatives;
 4. The name of each individual authorizing the use of restraint or seclusion and each individual restraining or secluding a client or monitoring a client who is in restraint or seclusion;
 5. The evaluation and assessment of the need for seclusion or restraint conducted by the individual who ordered the restraint or seclusion;
 6. The determination and the reasons for the determination made according to subsection (H);
 7. The specific and measurable criteria for client release from mechanical restraint or seclusion with documentation to support that the client was notified of the release criteria and the client's response;
 8. The date and times the restraint or seclusion actually began and ended;
 9. The time and results of the face-to-face assessment required in subsection (L);
 10. For the monitoring of a client in restraint or seclusion required by subsection (P):
 - a. The time of the monitoring,
 - b. The name of the staff member who conducted the monitoring, and
 - c. The observations made by the staff member during the monitoring; and
 11. The outcome of the restraint or seclusion.
- N.** If, at any time during a seclusion or restraint, a medical practitioner or registered nurse determines that the emergency which justified the seclusion or restraint has subsided, or if the required documentation reflects that the criteria for release have been met, the client shall be released and the order terminated. The client shall be released no later than the end of the period of time ordered for the restraint or seclusion, unless a the order for restraint or seclusion is renewed according to subsection (Q).
- O.** For any client in restraint, the individual ordering the restraint shall determine whether one-to-one supervision is clinically necessary and shall document the determination and the reasons for the determination in the client's record.
- P.** A mental health agency shall monitor a client in restraint or seclusion as follows:
1. The client shall be personally examined at least every 15 minutes for the purpose of ensuring the client's general comfort and safety and determining the client's need for food, fluid, bathing, and access to the toilet. Personal examinations shall be conducted by staff members with documented training in the appropriate use of restraint and seclusion and who are working under the supervision of a licensed physician, nurse practitioner or registered nurse.
 2. A registered nurse shall personally examine the client every hour to assess the status of the client's mental and physical condition and to ensure the client's continued well-being.
 3. If the client has any medical condition that may be adversely affected by the restraint or seclusion, the client shall be monitored every five minutes, until the medical condition resolves, if applicable.
 4. If other clients have access to a client being restrained or secluded or, if the individual ordering the restraint or seclusion determines that one-to-one supervision is clinically necessary according to subsection (O), a staff member shall continuously supervise the client on a one-to-one basis.
 5. If a mental health agency maintains a client in a mechanical restraint, a staff member shall loosen the mechanical restraints every 15 minutes.
 6. Nutritious meals shall not be withheld from a client who is restrained or secluded, if mealtimes fall during the period of restraint. Staff shall supervise all meals provided to the client while in restraint or seclusion.
 7. At least once every two hours, a client who is restrained or secluded shall be given the opportunity to use a toilet.
- Q.** An order for restraint or seclusion may be renewed as follows:
1. For the first renewal order, the order shall meet the requirements of subsection (G)(1) or (G)(2); and
 2. For a renewal order subsequent to the first renewal order:
 - a. The individual in (G)(1) or (G)(2) shall personally examine the client before giving the renewal order, and
 - b. The order shall not permit the continuation of the restraint or seclusion for more than 12 consecutive hours unless the requirements of subsection (P) are met.
- R.** No restraint or seclusion shall continue for more than 12 consecutive hours without the review and approval by the medical director or designee of the mental health agency in consultation with the client and relevant staff to discuss and evaluate the needs of the client. The review and approval, if any, and the reasons justifying any continued restraint or seclusion shall be documented in the client's record.
- S.** If a client requires the repeated or continuous use of restraint or seclusion during a 24-hour period, a review process shall be initiated immediately and shall include the client and all relevant staff persons and clinical consultants who are available to evaluate the need for an alternative treatment setting and the needs of the client. The review and its findings and recommendations shall be documented in the client's record.
- T.** Whenever a client is subjected to extended or repeated orders for restraint or seclusion during a 30-day period, the medical director shall require a special meeting of the client's clinical team according to R9-21-314 to determine whether other treatment interventions would be useful and whether modifications of the ISP or ITDP are required.
- U.** As part of a mental health agency's quality assurance program, an audit will be conducted and a report filed with the agency's medical director within 24 hours, or the first working day, for every episode of the use of restraint or seclusion to ensure that the agency's use of seclusion or restraint is in full compliance with the rules set forth in this Article.
- V.** Not later than the tenth day of every month, the program director shall prepare and file with the Administration and the Office of Human Rights a written report describing the use of

any form of restraint or seclusion during the preceding month in the mental health agency or by any employees of the agency. In the case of an inpatient facility, the report shall also be filed with any patient or human rights committee for that facility.

- W. The Office of Human Rights, and any applicable human rights committee shall review such reports to determine if there has been any inappropriate or unlawful use of restraint or seclusion and to determine if restraint or seclusion may be used in a more effective or appropriate fashion.
- X. If any human rights committee or the Office of Human Rights determines that restraint or seclusion has been used in violation of any applicable law or rule, the committee or Office may take whatever action is appropriate, including investigating the matter itself or referring the matter to the Administration for remedial action.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

R9-21-205. Labor

- A. No client shall be required to perform labor which involves the essential operation and maintenance of the service provider or the regular care, treatment or supervision of other clients, provided however, that:
 1. Only a residential service provider may require clients to perform activities related to maintaining their bedrooms, other personal areas, and their clothing and personal possessions in a neat and clean manner.
 2. Clients may perform labor in accordance with a planned and supervised program of vocational and rehabilitation training as set forth in an ISP or ITDP developed according to Article 3 of this Chapter.
- B. Any client may voluntarily perform any labor available.
- C. The requirements of federal and state laws relating to wages, hours of work, workers' compensation and other labor standards shall be met with respect to all labor.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-206. Competency and Consent

- A. A client shall not be deemed incompetent to manage the client's affairs, to contract, to hold professional, occupational or vehicle operator's licenses, to make wills, to vote or to exercise any other civil or legal right solely by reason of admission to a mental health agency.
- B. An applicant or client is presumed to be legally competent to conduct the client's personal and financial affairs, unless otherwise determined by a court in a guardianship or conservatorship proceeding.
- C. Only an applicant or client who is competent may provide informed consent, authorization, or permission as required in this Chapter. A mental health agency shall use the following

criteria to determine if an applicant or client is competent and the appropriateness of establishing or removing a guardianship, temporary guardianship, conservatorship, or guardianship ad litem for the client:

1. An applicant or client shall be determined to be in need of guardianship or conservatorship only if the applicant's or client's ability to make important decisions concerning the applicant or client or the applicant's or client's property is so limited that the absence of a person with legal authority to make such decisions for the applicant or client creates a serious risk to the applicant's or client's health, welfare or safety.
 2. Although the capability of the applicant or client to make important decisions is the central factor in determining the need for guardianship, the capabilities of the applicant's or client's family, the applicant's or client's living circumstances, the probability that available treatment will improve the applicant's or client's ability to make decisions on the applicant's or client's behalf, and the availability and utility of nonjudicial alternatives to guardianships such as trusts, representative payees, citizen advocacy programs, or community support services should also be considered.
 3. If the applicant or client has been determined to be incapable of making important decisions with regard to the applicant's or client's personal or financial affairs, and if nonjudicial, less restrictive alternatives such as trusts, representative payees, cosignatory bank accounts, and citizen advocates are inadequate to protect the applicant or client from a substantial and unreasonable risk to the applicant's or client's health, safety, welfare, or property, the applicant's or client's nearest living relatives shall be notified with an accompanying recommendation that a guardian or conservator be appointed.
 4. If the applicant or client is capable of making important decisions concerning the applicant's or client's health, welfare, and property, either independently or through other less restrictive alternatives such as trusts, representative payees, cosignatory bank accounts, and citizen advocates, the applicant's or client's nearest living relative shall be notified with an accompanying recommendation that any existing guardian or conservator be removed.
 5. If the client has been determined to require or no longer require assistance in the management of financial or personal affairs, and the nearest living relative cannot be found or is incapable of or not interested in caring for the client's interest, the mental health agency shall assist in the recruitment or removal of a trustee, representative payee, advocate, conservator, or guardian. Nothing in this Chapter shall be construed to require the Administration or any regional authority or service provider to pay for the recruitment, appointment or removal of a trustee, representative payee, advocate, conservator, or guardian.
 6. The assessment or periodic review shall identify the specific area or areas of the client's functioning that forms the basis of the recommendation for the appointment or removal of a guardian or conservator, such as an inability to respond appropriately to health problems or consent to medical care, or an inability to manage savings or routine expenses.
- D. Mental health agencies shall devise and implement procedures to ensure that suspected improprieties of a guardian, conservator, trustee, representative payee, or other fiduciary are reported to the court or other appropriate authorities.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

R9-21-206.01. Informed Consent

- A.** Except in an emergency according to A.R.S. §§ 36-512 or 36-513 or R9-21-204, or a court order according to A.R.S. Title 36, Chapter 5, Articles 4 and 5, a mental health agency shall obtain written informed consent in at least the following circumstances:
1. Before providing a client a treatment with known risks or side effects, including:
 - a. Psychotropic medication,
 - b. Electro-convulsive therapy, or
 - c. Telemedicine;
 2. Before a client participates in research activities; and
 3. Before admitting a client to any medical detoxification, inpatient facility, or residential program operated by a mental health agency.
- B.** The informed consent in subsection (A) shall be voluntary and shall be obtained from:
1. The client, if the client is determined to be competent according to R9-21-206; or
 2. The client's guardian, if a court of competent jurisdiction has adjudicated the client incompetent.
- C.** If informed consent is required according to subsection (A), a medical practitioner or a registered nurse with at least one year of behavioral health experience shall, before obtaining the informed consent, provide a client or, if applicable, the client's guardian with the following information:
1. The client's diagnosis;
 2. The nature of and procedures involved with the proposed treatment, the client's participation in a research activity, or the client's admission to a program operated by a mental health agency;
 3. The intended outcome of the proposed treatment, the client's participation in a research activity, or the client's admission to a program operated by a mental health agency;
 4. The risks, including any side effects, of the proposed treatment, the client's participation in a research activity, or the client's admission to a program operated by a mental health agency;
 5. The risks of not proceeding with the proposed treatment, the client's participation in a research activity, or the client's admission to a program operated by a mental health agency;
 6. The alternatives to the proposed treatment, the client's participation in a research activity, or the client's admission to a program operated by a mental health agency, particularly alternatives offering less risk or other adverse effects;
 7. That any informed consent given may be withheld or revoked orally or in writing at any time, with no punitive action taken against the client;
 8. The potential consequences of revoking the informed consent; and
 9. A description of any clinical indications that might require suspension or termination of the proposed treatment, research activity, or program operated by a mental health agency.

- D.** A client or, if applicable, the client's guardian who gives informed consent for a treatment, participation in a research activity, or admission in a program operated by a mental health agency, shall give the informed consent by:
1. Signing and dating an acknowledgment that the client or, if applicable, the client's guardian has received the information in subsection (C) and gives informed consent to the proposed treatment, participation in a research activity, or admission of the client to the program operated by a mental health agency; or
 2. If the informed consent is for use of psychotropic medication or telemedicine and the client or, if applicable the client's guardian, refuses to sign an acknowledgement according to subsection (D)(1), giving verbal informed consent.
- E.** If a client or, if applicable, a client's guardian gives verbal informed consent according to subsection (D)(2), a medical practitioner shall document in the client's record that:
1. The information in subsection (C) was given to the client or, if applicable, the client's guardian;
 2. The client or, if applicable, the client's guardian refused to sign an acknowledgement according to subsection (D)(1); and
 3. The client or, if applicable, the client's guardian gives informed consent to the use of the psychotropic medication or telemedicine.
- F.** A client or, if applicable, the client's guardian may revoke informed consent at any time orally or by submitting a written statement revoking the informed consent.
- G.** If informed consent is revoked according to subsection (F):
1. The treatment, the client's participation in a research activity, or the applicant's or client's admission to a program operated by a mental health agency shall be immediately discontinued, or
 2. If abrupt discontinuation of a treatment poses an imminent risk to a client, the treatment shall be phased out to avoid any harmful effects.
- H.** If a client or, if applicable, the client's guardian needs assistance with revoking informed consent according to subsection (F), the client or, if applicable, the client's guardian shall receive the assistance.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

R9-21-207. Medication

- A.** Medication shall only be administered with the informed consent of the client or Title 36 guardian. Information relating to common risks and side effects of the medication, the procedures to be taken to minimize such risks, and a description of any clinical indications that might require suspension or termination of the drug therapy shall be available to the client, guardian, if any, and the staff in every mental health agency. Such information shall be available to family members in accordance with A.R.S. §§ 36-504, 36-509, and 36-517.01.
- B.** All clients have a right to be free from unnecessary or excessive medication.
- C.** Medication shall not be used as punishment, for the convenience of the staff, or as a substitute for other behavioral health services and shall be given in the least amount medically necessary with particular emphasis placed on minimizing side effects which otherwise would interfere with aspects of treatment.

- D.** Medication administered by a mental health agency shall be prescribed by a licensed physician, certified physician assistant, or a licensed nurse practitioner.
1. Psychotropic medication shall be prescribed by:
 - a. A psychiatrist who is a licensed physician; or
 - b. A licensed nurse practitioner, certified physician assistant, or physician trained or experienced in the use of psychotropic medication, who has seen the client and is familiar with the client's medical history or, in an emergency, is at least familiar with the client's medical history.
 2. Each client receiving psychotropic medication shall be seen monthly or as indicated in the client's ISP by a licensed nurse practitioner, certified physician's assistant or physician prescribing the medication, who shall note in the client's record:
 - a. The appropriateness of the current dosage,
 - b. All medication being taken by the client and the appropriateness of the mixture of medications,
 - c. Any signs of tardive dyskinesia or other side effects,
 - d. The reason for the use of the medication, and
 - e. The effectiveness of the medication.
 3. When a client on psychotropic medication receives a yearly physical examination, the results of the examination shall be reviewed by the physician prescribing the medication. The physician shall note any adverse effects of the continued use of the prescribed psychotropic medication in the client's record.
 4. Whenever a prescription for medication is written or changed, a notation of the medication, dosage, frequency of administration, and the reason why the medication was ordered or changed shall be entered in the client's record.
- E.** Self-administration of medication by clients shall be permitted unless otherwise restricted by the responsible physician or licensed nurse practitioner. Such clients shall be trained in self-administration of medication and, if necessary, shall be monitored by trained staff.
- F.** Drugs shall be stored under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation and security.
- G.** PRN orders for medication shall not be given for a drug used as a restraint.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-208. Property and Possessions

- A.** No mental health agency shall interfere with a client's right to acquire, retain and dispose of personal property, including the right to maintain an individual bank account, except where:
1. The client is under guardianship, conservatorship, or has a representative payee;
 2. Otherwise ordered by court; or
 3. A particular object, other than money or personal funds, poses an imminent threat of serious physical harm to the client or others. Any restriction on the client's control of property deemed to pose an imminent threat of serious physical harm shall be recorded in the client's record together with the reasons the particular object poses an imminent threat of serious physical harm to the client or others.
- B.** If a mental health agency, which offers assistance to its clients in managing their funds, takes possession or control of a client's funds at the request of the client, guardian, or by court order, the mental health agency shall issue a receipt to the client or guardian for each transaction involving such funds. If deposited funds in excess of \$250 are held by the mental health agency, where the likelihood of the client's stay will exceed 30 days, an individual bank account or an amalgamated client trust account shall be maintained for the benefit of the client. All interest shall become the property of the client or the fair allocation of the interest in the case of an amalgamated client trust account. The mental health agency shall provide a bond to cover client funds held.
1. Unless a guardian, conservator, or representative payee has been appointed, the client shall have an unrestricted right to manage and spend deposited funds.
 2. The mental health agency shall obtain prior written permission from the client, the guardian or conservator for any arrangement involving shared or delegated management responsibilities. The permission shall set forth the terms and conditions of the arrangement.
 3. Where the mental health agency has shared or delegated management responsibilities, the mental health agency shall meet the following requirements:
 - a. Client funds shall not be applied to goods or services which the mental health agency is obligated by law or funded by contract to provide, except as permitted by a client fee schedule authorized by the Administration;
 - b. The mental health agency and its staff shall have no direct or indirect ownership or survivorship interest in the funds;
 - c. Such arrangements shall be accompanied by a training program, documented in the ISP, to eliminate the need for such assistance;
 - d. Staff shall not participate in arrangements for shared or delegated management of the client's funds except as representatives of the mental health agency;
 - e. Any arrangements made to transfer a client from one mental health agency to another shall include provisions for transferring shared or delegated management responsibilities to the receiving mental health agency;
 - f. The client shall be informed of all proposed expenditures and any expression of preference within reason shall be honored; and
 - g. Expenditures shall be made only for purposes which directly benefit the client in accordance with the client's interests and desires.
 4. A record shall be kept of every transaction involving deposited funds, including the date and amount received or disbursed, and the name of the person to or from whom the funds are received or disbursed. The client, guardian, conservator, mental health agency or regional human rights advocate or other representative may demand an accounting at any reasonable time, including at the time of the client's transfer, discharge or death.
 5. Any funds so deposited shall be treated for the purpose of collecting charges for care the same as any other property held by or on behalf of the client. The client or guardian shall be informed of any possible charges before the onset of services.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

R9-21-209. Records

- A.** Records of a client who is currently receiving or has received services from a mental health agency are private and shall be disclosed only to those individuals authorized according to federal and state law.
- B.** Inspection by the client, the client's guardian, attorney, paralegal working under the supervision of an attorney, or any other designated representative shall be permitted as follows:
1. Except as prohibited by federal and state law, the client and, if applicable, the client's guardian shall be permitted to inspect and copy the client's record as soon as possible after a request, and no later than 10 working days after a request. If any portion of the client record is withheld under federal or state law, the mental health agency shall provide written notice to the client or, if applicable, the client's guardian including:
 - a. The reason the mental health agency is withholding a portion of the client's record,
 - b. An explanation of the client's right to a review of the decision to withhold a portion of the client's record, and
 - c. An explanation of the client's right to file a grievance according to Article 4 of this Chapter.
 2. An attorney, paralegal working under the supervision of an attorney, or other designated representative of the client shall be permitted to inspect and copy the record, if such attorney or representative furnishes written authorization from the client or guardian.
 3. When necessary for the understanding of the client or guardian and, if the client or the client's guardian provides authorization, when necessary for the understanding of an attorney, paralegal working under the supervision of an attorney, or designated representative, staff of the mental health agency possessing the records shall read or interpret the record for the client, guardian, attorney, paralegal working under the supervision of an attorney, or designated representative.
- C.** Inspection by specially authorized persons or entities shall be permitted as follows unless otherwise prohibited by federal or state law:
1. Records of a client may be available to those individuals and agencies listed in A.R.S. § 36-509.
 2. Records of a client shall be open to inspection upon proper judicial order, whether or not such order is made in connection with pending judicial proceedings.
 3. Records of a client shall be made available to a physician who requests such records in the treatment of a medical emergency, provided that the client is given notice of such access as soon as possible.
 4. Records of a client shall be made available to staff authorized by the Administration to monitor the quality of services being provided by the mental health agency to the client.
 5. Records of a client shall be made available to guardians and family members actively participating in the client's care, treatment or supervision as provided by A.R.S. §§ 36-504, 36-509(A)(8) and (B). Except when inspection of a client's record is required under a proper judicial order

or by a physician in a medical emergency, a client, guardian or family member may challenge the decision to allow or deny inspection of the record by filing a request for administrative and judicial review in accordance with the provisions of A.R.S. § 36-517.01 or other applicable federal or state law. Once a request is filed, no further disclosure of records shall be made until the review has been completed.

- D.** Unless otherwise permitted by federal or state law, records shall be open to inspection by other third parties only upon the authorization of the client or guardian. Before authorization is given, the client or guardian shall be offered an opportunity to examine the information to be disclosed and be provided with the name of the recipient and uses to be made of the information.
- E.** The fee for copying records obtained under this rule shall be no more than the actual expense of reproducing the record or the requested parts and may be limited further by A.R.S. § 12-2295.
- F.** A client or guardian shall be informed of a court order or subpoena commanding production of a client's record as soon as possible and in any event prior to the date for production and of the client's or guardian's right to request the court to quash or modify the order or subpoena.
- G.** The records maintained by the mental health agency shall contain accurate, complete, timely, pertinent, and relevant information.
 1. If a client or guardian believes that the record contains inaccurate or misleading information, the client or guardian may prepare, with assistance if requested, a statement of disagreement which shall be entered in the record.
 2. If a client or guardian objects to the collection of the information in the record, the client or guardian may file a grievance according to Article 4 of this Chapter.
- H.** A list shall be kept of every person or organization who inspects the client's records, other than the client's clinical team, the uses to be made of that information, and the person authorizing access. A list of such access shall be placed in the client's record and shall be made available to the client or other designated representative.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

R9-21-210. Policies and Procedures of Service Providers

- A.** A mental health agency may establish policies and procedures for the provision of behavioral health services or community services that are consistent with Articles 1 through 5 of these rules and with all other requirements of Arizona law. No policy or procedure may restrict any right protected by these rules.
- B.** The mental health agency shall inform all prospective clients of its policies and procedures prior to the client or, if applicable, the client's guardian giving informed consent to the client's admission to the program according to R9-21-206.01(A)(3).
- C.** If a client acts in a manner that is seriously in disregard of a reasonable policy, the agency director shall make all reason-

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able efforts to respond to the situation, including making reasonable accommodation to the program's policy if the client's failure to conform to a reasonable policy is due to the client's disability.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-211. Notice of Rights

- A.** Every mental health agency shall provide written notice of the civil and legal rights of its clients by posting a copy of ADHS Form MH-211, "Notice of Client's Rights," set forth in Exhibit A, in one or more areas of the agency so that it is readily visible to clients and visitors.
- B.** In addition to posting as required by subsection (A), a copy of ADHS Form MH-211, set forth in Exhibit B, shall be given to each client, or guardian if any, at the time of admission to the agency for evaluation or treatment. The person receiving the notice shall be required to acknowledge in writing receipt of the notice and the acknowledgment shall be retained in the client's record.
- C.** Every mental health agency shall provide written notice of the terms of A.R.S. § 36-506 to each client upon discharge by giving the client a copy of ADHS Form MH-209, "Discrimination Prohibited".
- D.** All notices required by this rule shall be provided and posted in both English and Spanish.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4).

Exhibit A. Notice of Legal Rights for Persons with Serious Mental Illness

If you have a serious or chronic mental illness, you have legal rights under federal and state law. Some of these rights include:

- The right to appropriate mental health services based on your individual needs;
- The right to participate in all phases of your mental health treatment, including individual service plan (ISP) meetings;
- The right to a discharge plan upon discharge from a hospital;
- The right to consent to or refuse treatment (except in an emergency or by court order);
- The right to treatment in the least restrictive setting;
- The right to freedom from unnecessary seclusion or restraint;
- The right not to be physically, sexually, or verbally abused;
- The right to privacy (mail, visits, telephone conversations);
- The right to file an appeal or grievance when you disagree with the services you receive or your rights are violated;
- The right to choose a designated representative(s) to assist you in ISP meetings and in filing grievances;
- The right to a case manager to work with you in obtaining the services you need;
- The right to a written ISP that sets forth the services you will receive;

- The right to associate with others;
- The right to confidentiality of your psychiatric records;
- The right to obtain copies of your own psychiatric records (unless it would not be in your best interests to have them);
- The right to appeal a court-ordered involuntary commitment and to consult with an attorney and to request judicial review of court-ordered commitment every 60 days;
- The right not to be discriminated against in employment or housing.

If you would like information about your rights, you may request a copy of the "Your Rights in Arizona as an Individual with Serious Mental Illness" brochure or you may also call Administration, Office of Human Rights at 1-800-421-2124.

ADHS/BHS Form MH-211 (9/93)

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 21, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

Exhibit B. Notice of Legal Rights for Persons with Serious Mental Illness**NOTICE****Discrimination Prohibited**

Pursuant to A.R.S. § 36-506 and R9-21-101(B)

- A.** Persons undergoing evaluation or treatment pursuant to this Chapter shall not be denied any civil right, including, but not limited to, the right to dispose of property, sue and be sued, enter into contractual relationships and vote. Court-ordered treatment or evaluation pursuant to this Chapter is not a determination of legal incompetency, except to the extent provided in A.R.S. § 36-512.
- B.** A person who is or has been evaluated or treated in an agency for a mental disorder shall not be discriminated against in any manner, including but not limited to:
1. Seeking employment.
 2. Resuming or continuing professional practice or previous occupation.
 3. Obtaining or retaining housing.
 4. Obtaining or retaining licenses or permits, including but not limited to, motor vehicle licenses, motor vehicle operator's and chauffeur's licenses and professional or occupational licenses.
- C.** "Discrimination" for purposes of this Section means any denial of civil rights on the grounds of hospitalization or outpatient care and treatment unrelated to a person's present capacity to meet the standards applicable to all persons. Applications for positions, licenses and housing shall contain no requests for information which encourage such discrimination.
- D.** Upon discharge from any treatment or evaluation agency, the patient shall be given written notice of the provisions of this Section.

AVISO**Discriminacion Prohibida**

Conforme a A.R.S. § 36-506 y R9-21-101(B)

- A.** A las personas que estan bajo evaluacion o tratamiento conforme a este capitulo, no se les negara ningun derecho civil, incluyendo pero no limitado a, el derecho a disponer de propiedad, a demandar y ser demandado, a tomar parte en rela-

ciones contractuales y a votar. El tratamiento o evaluacion ordenado por la corte conforme a este capitulo no es una determinacion de incompetencia legal, excepto hasta el punto proveido en la seccion 36-512.

- B.** No se haran discriminaciones de ninguna clase, en contra de una persona que ha sido o esta siendo evaluada o tratada en una agencia debido a un desorden mental, incluyendo pero no limitado a:
1. Buscar trabajo.
 2. Reasumir o continuar una practica profesional u ocupacion previa.
 3. Obtener o retener vivienda.
 4. Obtener o retener licencias o permisos, incluyendo pero no limitado a, licencias para vehiculo de motor, licencias de operador de vehiculo de motor y de chofer, y licencias ocupacionales o profesionales.
- C.** "Discriminacion" para propositos de esta seccion quiere decir cualquier denegacion de derechos civiles por motivos de hospitalizacion o tratamiento externo no relacionado a la capacidad actual de la persona para cumplir con las normas aplicables a toda persona. Las solicitudes para posiciones, licencias y vivienda no contendran peticion de informacion que pueda fomentar tal discriminacion.
- D.** Al ser dado de alta de cualquier agencia de tratamiento o evaluacion, se dara al paciente notificacion por escrito sobre las provisiones de esta seccion.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4).

ARTICLE 3. INDIVIDUAL SERVICE PLANNING FOR BEHAVIORAL HEALTH SERVICES FOR PERSONS WITH SERIOUS MENTAL ILLNESS

R9-21-301. General Provisions

- A.** Responsibilities of the regional authority, clinical team, and case manager.
1. The regional authority is responsible for providing, purchasing, or arranging for all services identified in ISPs.
 - a. The regional authority shall perform all intake and case management for its region. The regional authority may contract with a mental health agency to perform intake or case management but only with the written approval of the Administration, which may be given in its sole discretion.
 - b. Other services may be provided directly by programs operated by the Administration or by the regional authority through contracts with service providers, or through arrangements with other agencies or generic providers.
 2. The regional authority and the clinical team shall work diligently to ensure equal access to generic services for its clients in order to integrate the client into the mainstream of society.
 3. The initial clinical team shall work to meet the individual's needs from the date of application or referral for services until such time as eligibility is established and an ISP is developed.
 4. The assigned clinical team shall be primarily responsible for providing continuous treatment, outreach and support to a client, for identifying appropriate behavioral health services or community services, and for developing, implementing and monitoring ISPs for clients.
 5. The case manager, in conjunction with the clinical team, shall:

- a. Locate services identified in the ISP;
 - b. Confirm the selection of service providers and include the names of such providers in the ISP;
 - c. Obtain a written client service agreement from each provider;
 - d. Be responsible for ensuring that services are actually delivered in accordance with the ISP; and
 - e. Monitor the delivery of services rendered to clients. Monitoring shall consider, at a minimum, the consistency of the services with the goals and objectives of the ISP.
6. The case manager shall also be responsible to:
- a. Initiate and maintain close contact with clients and service providers;
 - b. Provide support and assistance to a client, with the client's permission and consistent with the client's individual needs;
 - c. Ensure that each service provider participates in the development of the ISP for each client of the service provider;
 - d. Ensure that each inpatient facility, according to R9-21-312, develops an ITDP that is integrated in and consistent with the ISP;
 - e. Assess progress toward, and identify impediments to, the achievement of the client's goals and objectives identified in the ISP;
 - f. Promote client involvement in the development, review, and implementation of the ISP;
 - g. Attempt to resolve problems and disagreements with respect to any component of the ISP;
 - h. Assist in resolving emergencies concerning the implementation of the ISP;
 - i. Attend all periodic reviews of the ISP and ITDP meetings;
 - j. Assist in the exploration of less restrictive alternatives to hospitalization or involuntary commitment; and
 - k. Otherwise coordinate services provided to the client.
7. If a case manager is assigned to a client who, at any time, is admitted to an inpatient facility, the case manager shall ensure the development, modification or revision of a client's ISP and the integration of the ITDP according to this Article.
- a. The inpatient facility clinician responsible for coordinating the ITDP shall immediately notify the client's case manager of the time of the admission and ensure that all treatment and discharge planning includes the case manager.
 - b. The case manager shall be provided notice of all treatment and discharge meetings, shall participate as a full member of the inpatient facility treatment team in such meetings, shall receive periodic and other reports concerning the client's treatment, and shall be responsible for identifying and securing appropriate community services to facilitate the client's discharge.
 - c. If no case manager has been assigned, the inpatient facility clinician primarily responsible for the client's inpatient care shall, within three days of admission, make a referral to the appropriate regional authority for the appointment of a case manager.
 - d. Delays in the assignment of a case manager or in the development or modification of an ISP or ITDP shall not be construed to prevent the clinically appropriate discharge of a client from an inpatient facility.

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- e. Inpatient facilities shall establish a mechanism for the credentialing of case managers and other members of the clinical team in order that they may participate in ITDP meetings.
- B. Client participation in service planning.**
1. It is the responsibility of the regional authority and its service providers to engage in service planning, including the provision of assessments, case management, ISPs, ITDPs, and service referrals, according to the provisions of these rules for the benefit of clients requesting, receiving or referred for behavioral health services or community services. Clients and the clients' guardians may refuse to participate in or to receive any service planning. In the event of such refusal, service planning shall not be provided unless:
 - a. There is an emergency in which a qualified clinician determines that immediate intervention is necessary to prevent serious harm to the client or others; or
 - b. The client is subject to court-ordered evaluation or treatment.
 2. A client's refusal to accept a particular service, including case management services, or a particular mode or course of treatment, shall not be grounds for refusing a client's access to other services that the client accepts.
 3. A physical examination shall not be conducted over a client's refusal unless the examination is consented to by the client's guardian, or the examination is otherwise required by court order.
 4. A decision to provide services, including assessment, service planning, and case management services, to a client who is refusing such services, or a decision not to provide such services to such an individual, may be appealed according to the provisions of R9-21-401. This subsection does not limit the rights of a client to accept, reject, or appeal particular results of the service planning process as identified in other applicable provisions of these rules.
- C. Clients with special needs.**
1. Whenever, according to an assessment or in the development or review of any plan prepared under this Article, it is determined that a client is a client who needs special assistance or a client who needs counsel or advice in making treatment decisions or in enforcing the client's rights, the case manager shall:
 - a. Notify the regional authority, the Office of Human Rights, and the appropriate human rights committee of the client's need so that the client can be provided special assistance from the human rights advocate or special review by the human rights committee; and
 - b. If the client does not have a guardian, identify a friend, relative, or other person who is willing to serve as a designated representative of the client.
 2. The clinical team shall make arrangements to have qualified interpreters or other reasonable accommodations, including qualified interpreters for the deaf, present at any assessment, meeting, service delivery, notice, review, or grievance for clients who cannot converse adequately in spoken English.
 3. Clients who are incarcerated in jails shall receive ISPs in accordance with R9-21-307. If legitimate security requirements of any jail in which a client is incarcerated require a reasonable modification of a specific procedure set forth in this rule, the clinical team may modify the method for preparing the ISP only to the extent necessary to accommodate the legitimate security concerns.
 - a. No modification may unreasonably restrict the client's right to participate in the ISP process;
 - b. No modification may alter the standards for developing an ISP, the client's right to obtain services identified in the ISP, as provided in this Article, or the client's right to appeal any aspect of treatment planning according to R9-21-401, including the decision to modify the process for security reasons.
- D. Notices to the individual.**
1. Any individual or mental health agency required to give notice to an individual of any documents, including eligibility determinations, assessment reports, ISPs, and ITDPs according to this rule shall do so by:
 - a. Providing a copy of the document to the individual;
 - b. Providing copies to any designated representative and guardian;
 - c. Personally explaining to the individual and designated representative and/or guardian any right to accept, reject, or appeal the contents of the document and the procedures for doing so under this Article.
 2. Individuals requesting or receiving behavioral health services or community services shall be informed:
 - a. Of the right to request an assessment;
 - b. Of the right to have a designated representative assist the client at any stage of the service planning process;
 - c. Of the right to participate in the development of any plan prepared under this Article, including the right to attend all planning meetings;
 - d. Of the right to appeal any portion of any assessment, plan, or modification to an assessment or plan, according to R9-21-401;
 - e. Of the Administration's authority to require necessary and relevant information about the individual's needs, income, and resources;
 - f. Of the availability of assistance from the regional authority in obtaining information necessary to determine the need for behavioral health services or community services;
 - g. Of the Administration's or mental health agency's authority to charge for services and assessments;
 - h. That if the individual declines the services of a case manager or an ISP, the individual has the right to apply for services at a subsequent time; and
 - i. That if the individual declines any particular service or treatment modality, it will not jeopardize other accepted services.
- E. Extensions of time.**
1. The time to initiate or complete eligibility determinations, assessments, ISPs, and other actions according to this Chapter may be extended if:
 - a. There is substantial difficulty in scheduling a meeting at which all necessary participants can attend;
 - b. The client fails to keep an appointment for assessment, evaluation, or any other necessary meeting;
 - c. The client is capable of but temporarily refuses to cooperate in the preparation of the plan or completion of an assessment or evaluation;
 - d. The client or the client's guardian and/or designated representative requests an extension of time or
 - e. Additional documentation has been requested but has not yet been received.
 2. An extension under this rule shall not exceed the number of days incurred by the delay and in no event may exceed

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20 days, unless the whereabouts of the client are unknown.

3. For an SMI eligibility determination, an extension of time shall only apply if an applicant agrees to the extension.

F. Meeting attendance through telecommunications link. Attendance by any person at any meeting that is required or recommended according to this Article may be accomplished through a telecommunications link that is contemporaneous with the meeting.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

R9-21-302. Identification, Application, and Referral for Services of Persons with Serious Mental Illness

- A.** Each regional authority shall develop and implement outreach programs that identify individuals within the authority's geographic area, including persons who reside in jails, homeless shelters, or other settings, who are seriously mentally ill.
1. Inpatient facilities shall identify individuals in their respective facilities who are seriously mentally ill.
 2. An individual identified under this subsection shall be referred in writing to the appropriate regional authority for a determination of eligibility as provided in this Article.
- B.** An individual desiring behavioral health services or community services under this Article may apply to the appropriate regional authority for a determination of eligibility. Application may be made by the individual or on the individual's behalf by the person's guardian, designated representative, or other appropriate individuals such as a family member or staff of a mental health agency. Individuals may apply for behavioral health services or community services regardless of whether they reside in the community, an inpatient facility, a county jail, a homeless shelter, or any other location within the state of Arizona.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-303. Eligibility Determination and Initial Assessment

- A.** Upon receipt of a request or referral for a determination of whether an individual is eligible for services under this Chapter, a regional authority shall schedule an appointment for an initial meeting with the applicant by a qualified clinician, to occur no later than seven days after the regional authority receives the request or referral.
- B.** During the initial meeting with an applicant by a qualified clinician, the qualified clinician shall:
1. Obtain consent to an assessment of the applicant from the applicant or, if applicable, the applicant's guardian;
 2. Provide to the applicant and, if applicable, the applicant's guardian, the information required in R9-21-301(D)(2), a

client rights brochure, and the notice required by R9-21-401(B);

3. Determine whether the applicant is competent, according to R9-21-206;
 4. If, during the initial meeting with an applicant by a qualified clinician, the qualified clinician is unable to obtain sufficient information to determine whether the applicant is eligible for services under this Chapter:
 - a. Obtain authorization from the applicant or, if applicable, the applicant's guardian, for release of information, if applicable;
 - b. Request the additional information the qualified clinician needs in order to make a determination of whether the applicant is eligible for services under this Chapter; and
 5. Initiate an assessment according to R9-21-305.
- C.** The qualified clinician in subsection (B) shall obtain information necessary to make an eligibility determination, including:
1. Identifying data and residence, including a social security number if available;
 2. The reasons for the request or referral for services;
 3. The individual's psychiatric diagnosis;
 4. The individual's present level of functioning, based upon the criteria set forth in the definition of "seriously mentally ill";
 5. The individual's history of mental health treatment;
 6. The individual's abilities, needs, and preferences for services; and
 7. A preliminary determination as to the individual's need for special assistance.
- D.** If at any time during the course of the eligibility process the qualified clinician determines that the individual has a current case manager, a current assessment, or an ISP, the clinician shall notify the client's case manager and terminate the eligibility process.
- E.** To be eligible for behavioral health services or community services according to this Chapter the individual must be:
1. A resident of the state of Arizona, and
 2. Seriously mentally ill.
- F.** The qualified clinician in subsection (B) shall determine whether an applicant is eligible for services under this Chapter and provide written notice of the SMI eligibility determination to the applicant or, if applicable, the applicant's guardian according to the following time-frames:
1. If the qualified clinician obtains sufficient information during the initial meeting with the applicant to determine whether the applicant is eligible for services under this Chapter, within three days of the initial meeting with the applicant by the qualified clinician;
 2. If the qualified clinician does not obtain sufficient information during the initial meeting with the applicant to determine whether the applicant is eligible for services under this Chapter, at the earliest of:
 - a. Within three days of obtaining sufficient information to determine whether the applicant is eligible for services under this Chapter, or
 - b. The time provided according to R9-21-301(E).
- G.** At the time a qualified clinician provides an applicant with written notice of an SMI eligibility determination according to subsection (F), the qualified clinician shall:
1. Provide written notice to the applicant:
 - a. That the applicant has the right to appeal the SMI eligibility determination according to R9-21-401, including the right to an administrative hearing according to A.R.S. § 41-1092.03; and

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- b. That, if the applicant is not eligible for services according to this Chapter, the applicant may reapply at any time; and
- 2. If the applicant is eligible for services under this Chapter:
 - a. Serve as the client's case manager or arrange for the provision of case management services for the client; and
 - b. Initiate with the client the development of a clinical team that may include:
 - i. Behavioral health professionals,
 - ii. Professionals other than behavioral health professionals,
 - iii. Behavioral health technicians,
 - iv. Family members,
 - v. Paraprofessionals, and
 - vi. Any individual whom the qualified clinician and the client deem appropriate and necessary to ensure that the assessment is comprehensive and meets the needs of the client.
- H. Nothing in this rule shall be construed to require the qualified clinician to make the determination of whether the applicant is eligible for services under the Arizona Health Care Cost Containment System Administration (AHCCCSA) according to A.R.S. Title 36, Chapter 29.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

R9-21-304. Interim and Emergency Services

- A. At an applicant's first visit with a qualified clinician and after a determination of eligibility the qualified clinician shall:
 - 1. Determine whether the applicant or client needs interim services prior to the development and acceptance of the ISP;
 - 2. If the applicant or client needs interim services, identify the interim services that are consistent with the applicant's or client's preferences and needs and the findings in the assessment;
 - 3. Arrange for the provision of the interim services identified by the qualified clinician; and
 - 4. Document in the client's record the interim services that shall be provided to the applicant or client.
- B. If a qualified clinician determines that an emergency exists necessitating immediate intervention, emergency or crisis services shall be provided immediately.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-305. Assessments

- A. The following individuals may participate in and contribute to the assessment of a client:
 - 1. The client;
 - 2. The qualified clinician in R9-21-303(B);

- 3. The client's case manager;
- 4. Each individual on the client's clinical team, including:
 - a. Behavioral health professionals,
 - b. Professionals other than behavioral health professionals,
 - c. Behavioral health technicians,
 - d. Family members,
 - e. Paraprofessionals, and
 - f. Any individual whom the qualified clinician and the client deem appropriate and necessary to ensure that the assessment is comprehensive and meets the needs of the client.
- B. The individuals contributing to the assessment of a client shall not consider the availability of services, but shall consider the client's circumstances and evaluate all available information including:
 - 1. The information obtained during the initial meeting with the client by a qualified clinician according to R9-21-303(B);
 - 2. Written information such as the client's clinical history, records, tests, and other evaluations;
 - 3. Information from family, friends, and other individuals.
- C. An assessment shall include:
 - 1. An evaluation of the client's:
 - a. Presenting concerns;
 - b. Behavioral health treatment;
 - c. Medical conditions and treatment;
 - d. Sexual behavior and, if applicable, sexual abuse;
 - e. Substance abuse, if applicable;
 - f. Living environment;
 - g. Educational and vocational training;
 - h. Employment;
 - i. Interpersonal, social, and cultural skills;
 - j. Developmental history;
 - k. Criminal justice history;
 - l. Public and private resources;
 - m. Legal status and apparent capacity;
 - n. Need for special assistance; and
 - o. Language and communication capabilities;
 - 2. A risk assessment of the client;
 - 3. A mental status examination of the client;
 - 4. A summary, impressions, and observations;
 - 5. Recommendations for next steps;
 - 6. Diagnostic impressions of the qualified clinician; and
 - 7. Other information determined to be relevant.
- D. Within 45 days of a request or referral for an SMI eligibility determination, a qualified clinician shall prepare an assessment report based on the information obtained according to R9-21-303 and this Section, including:
 - 1. The development of a long-term view by the client with assistance from the clinical team that establishes a method of integration for living, employment and social conditions that the client wishes to achieve over the next three years;
 - 2. A summary of the information gathered during the eligibility and assessment processes;
 - 3. An identification of the client's legal status, resources, and assessed strengths and actual needs, regardless of the availability of services to meet that need, in each area of assessment identified in subsection (C) above;
 - 4. An analysis of the major findings of the mental health assessment, including a description of the nature and severity of any illness and a diagnosis in terms set forth in the DSM;
 - 5. The client's preferences regarding services to be provided;

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6. A description of any additional interim services which are required and plans for the referral of the client to additional interim services or the continuation of interim services already provided;
 7. An identification of further evaluations which the clinical team deem necessary to determine the services appropriate to the client's needs;
 8. An identification of information that could not be obtained due to the client's circumstances or unavailability; and
 9. A functional assessment of the client's current status in terms of independent living, employment (or retirement), and social integration and analysis of the support or skills, if any, necessary to achieve the client's long-term view.
- E.** The qualified clinician shall arrange for any further evaluations recommended by the clinical team. If the client needs assessment in an area beyond the ability or expertise of the clinical team, such assessment shall be conducted by professionals with appropriate credentials, with the client's consent. The need for further evaluations shall not unreasonably delay the preparation of the ISP.
- F.** If a qualified clinician determines that the client is a client who needs special assistance, the case manager shall:
1. Notify the regional authority, the Office of Human Rights, and the appropriate human rights committees of the client's need so that the client can be provided special assistance from the human rights advocate or special review by the human rights committee; and
 2. If the client does not have a guardian, identify a friend, relative or other person who is willing to serve as a designated representative of the client.
- G.** Upon completion of the assessment report, copies shall be sent to the client, the designated representative, if any, the guardian, and all service providers who have been identified by the case manager or regional authority to serve the client.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-306. Identification of Potential Service Providers

- A.** As soon as needs of the client for particular services are identified through the eligibility determination, assessment, or further evaluation processes, the clinical team in conjunction with the client shall begin considering and choosing potential service providers to participate in the development of the client's ISP.
1. Within five days of the completion of the assessment report, the clinical team and the client shall complete the identification of service providers most appropriate to meet the client's needs.
 2. The case manager shall promptly contact the identified providers to determine their ability to serve the client.
 3. Within 10 days of the completion of the assessment report, the case manager shall request identified providers able to serve the client to participate in the development of the client's Individual Service Plan. All identified providers shall be provided notice of the time and place of the ISP meeting.
- B.** The clinical team, in conjunction with the client, shall determine which provider(s) are the most appropriate to serve the client. The determination of appropriateness shall consider:
1. The client's preferences for the type, intensity, and location of services;
 2. The capacity and experience of the provider in meeting the client's assessed needs;
 3. The proximity of the provider to the client's family and home community;
 4. The availability and quality of services offered by the provider; and
 5. Other factors deemed relevant by the case manager and clinical team.
- C.** The clinical team shall provide sufficient information to the identified service providers to allow them to understand the client's long-term view, strengths, needs, and required services and to take an active role in the ISP meeting.
- D.** All mental health agencies currently providing services to the client shall bring to the ISP meeting a written description of the nature, type, and frequency of services provided or to be provided by the agency.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-307. The Individual Service Plan

- A.** General provisions.
1. An individual service plan (ISP) shall be developed by the clinical team and each client.
 2. The ISP shall include the most appropriate and least restrictive services, consistent with the client's needs and preferences, as identified in the assessment conducted according to R9-21-305, and without regard to the availability of services or resources.
 3. The ISP shall identify those services which maximize the client's strengths, independence, and integration into the community.
 4. Generic services available to the general public should be utilized, to the maximum extent possible, when adequate to meet the client's needs and if access can be arranged by the case manager or client.
 5. If all needed services are not available, a plan for alternative services shall detail those services which are, to the maximum extent possible, adequate, appropriate, consistent with the client's needs, and least restrictive of the client's freedom.
 6. The clinical team shall solicit and actively encourage the participation of the client and guardian.
 7. The clinical team shall inform the client of the right to have a designated representative throughout the ISP process and to invite family members or other persons who could contribute to the development of the ISP. The case manager shall seek to obtain a representative for clients who need special assistance or otherwise have limited capacity to articulate their own preferences and to protect their own interests in the ISP process and shall advise the relevant human rights committee that the client has been determined to need special assistance.

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8. The ISP shall contain goals and objectives which are measurable and which facilitate meaningful evaluation of the progress toward attaining those goals and objectives.
 9. The ISP shall incorporate a specific description of the client objectives, services, and interventions for each mental health agency which will provide services to the client. Each existing service provider will bring to the ISP meeting a detailed written description of the objectives and services currently in effect for the client.
 10. For residents of an inpatient facility, the facility's treatment and discharge plan shall be developed according to R9-21-312 and shall be incorporated in the ISP.
 11. Prior to the planned discharge of a new client from an inpatient facility, the clinical team shall develop an ISP which describes the community services, including alternative housing and residential supports, that will be provided when the client leaves the facility.
 12. The ISP shall be written in language which can be easily understood by a lay person.
 13. In developing the ISP, the case manager shall facilitate resolution of differences among service providers and, if resolution is not achieved, shall refer the matter to the regional authority, which shall resolve the matter in accordance with the Administration's policy.
- B. The individual service plan meeting.**
1. Within 20 days of the completion of the assessment report, the case manager shall convene an ISP meeting at a convenient time and place for the client, guardian, clinical team, and potential service providers.
 2. The case manager shall arrange for the client's transportation, if needed, to the ISP meeting.
 3. The case manager shall notify in writing the following persons of the time, date and location of the ISP meeting at least 10 days prior:
 - a. The client, any designated representative and guardian, including an invitation to submit relevant information in writing if their attendance is impossible;
 - b. Clinicians involved in the assessment or further evaluation;
 - c. All current and potential service providers;
 - d. All members of the client's clinical team;
 - e. Family members, with the client's permission;
 - f. Other persons familiar with the client whose presence at the meeting is requested by the client;
 - g. Any other person whose participation is not objected to by the client and who, in the judgment of the case manager, will contribute to the ISP.
 4. The case manager shall chair the ISP meeting which shall include a discussion of:
 - a. The client's supports or skills necessary to achieve the client's long-term view in each of the areas listed in R9-21-305(B);
 - b. The findings and conclusions obtained during the assessment, further evaluations, including a list of further evaluations to be completed, and any interim services provided;
 - c. Any existing ITDP according to R9-21-312;
 - d. The client's preferences regarding services;
 - e. Recommended long-term or alternative services;
 - f. Current or proposed service providers, including the need to have service providers with staff who have language and communications skills other than English if necessary to communicate with the client;
 - g. Recommended dates for commencement of each service or date each service commenced;
- h. The methods and persons to ensure that services are provided as set forth in the ISP, adequately coordinated, and regularly monitored for effectiveness;
 - i. The procedure for completion and implementation of the ISP process, including the procedures for accepting, rejecting, or appealing the ISP; and
 - j. The procedure for clients or service providers to request changes in the ISP.
- C. The individual service plan shall include:**
1. A description of the client's long-term view and the client's preferences, strengths, and needs in all relevant areas listed in R9-21-305(C), including present functioning level and medical condition, with documentation of any chronic medical condition which requires regular monitoring or intervention.
 2. A description of the most appropriate and least restrictive services consistent with the client's needs and without reference to existing resources.
 3. A statement of whether the client requires service providers with staff who are competent in any language other than English in order to communicate with the client.
 4. Target dates for commencement of each service or date each service commenced and their anticipated duration.
 5. Long range goals for each service which will assist the client in attaining the most self-fulfilling, age-appropriate, and independent style of living possible for the client, consistent with the client's preference, stated in terms which allow objective measurement of progress and which the client, to the maximum extent possible, both understands and adopts.
 6. Short-term objectives that lead to attainment of overall goals stated in terms which allow objective measurement of progress and which the client, to the maximum extent possible, both understands and accepts.
 7. Expected dates of completion for each objective;
 8. Persons and service providers responsible for each objective.
 9. Identification of each generic or service provider responsible for providing the specific service required to meet each of the client's needs, including the name and address and telephone number of the provider and the location where the service will be provided.
 10. A detailed description of the client objectives and services for each mental health agency which will provide services to the client.
 11. Identification of any need for alternative housing or residential setting, including the support and monitoring to be provided after any change in housing or residential setting as provided in R9-21-310(D).
 12. Based upon assessments and other available information, a determination of:
 - a. The client's capacity to:
 - i. Make competent decisions on matters such as medical and mental health treatment, finances, and releasing confidential information;
 - ii. Participate in the development of the ISP; and
 - iii. Independently exercise the client's rights under this Chapter.
 - b. The client's need for guardianship or other protective services or assistance.
 - c. The client's need for special assistance.
 13. A list of the assessments which were not completed due to the client's current mental or physical condition or due to the clinical team's inability to access records together with a statement of the causes and plans to obtain these assessments.

14. A description of the methods and persons responsible for ensuring that services are:
 - a. Provided as set forth in the ISP;
 - b. Adequately coordinated; and
 - c. Regularly monitored for effectiveness.
 15. A statement of the right of the client, designated representative, or guardian to accept or reject the ISP, request other services, or appeal the ISP or any aspect of the ISP.
 16. A statement that the client's acceptance of the ISP constitutes consent to the services enumerated in the ISP.
- D. Preparation and distribution of the individual service plan.**
1. Within seven days of the ISP meeting, but no later than 90 days from the date of a referral or request for an SMI eligibility determination, the case manager shall prepare and distribute the ISP as provided herein.
 2. The case manager or other clinical team member shall personally deliver to and review the ISP with the client.
 3. The ISP shall be mailed or otherwise distributed to the following persons:
 - a. The client's designated representative and/or guardian;
 - b. The members of the clinical team; and
 - c. All existing or potential service providers.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

R9-21-308. Acceptance or Rejection of the Individual Service Plan

- A.** Within seven days of the distribution of the ISP, the case manager shall contact the client concerning acceptance or rejection of all or any portion of the ISP, or request for other services, if there has not been acceptance, rejection or a request prior to that date.
- B.** If the client or guardian does not object to the ISP within 30 days of receipt of the plan, the client shall be deemed to have accepted the ISP.
- C.** If the client or guardian rejects some or all of the services identified in the ISP, or requests other services, the case manager shall provide written notice to the client or guardian of the right to immediately appeal the ISP according to R9-21-401 or to meet with the clinical team within seven days of the rejection to discuss the plan and suggest modifications. The case manager shall arrange the meeting at a convenient time and place for the client, any designated representative and/or guardian, and the clinical team.
- D.** If the client's proposed modifications are adopted by the clinical team, the case manager shall arrange for approval of the modifications by all service providers.
- E.** If the matter is not resolved to the client's or guardian's satisfaction, the case manager shall again inform the client or guardian of the right to appeal the ISP.
- F.** A client or guardian who rejects the ISP may accept some or all of the identified services pending the outcome of the meeting with the clinical team or an appeal.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective

October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-309. Selection of Service Providers

- A.** Within seven days of the distribution of the ISP to the service providers identified in the ISP, the case manager, after consultation with the clinical team and the provider, shall determine whether each of these providers are capable of serving the client.
 1. A contracted service provider shall not refuse to serve a client except for good cause related to the inability of the service provider to safely and professionally meet the client's needs as identified in the ISP.
 2. If a contracted service provider believes it is incapable of meeting the client's needs or of implementing the ISP, the provider shall inform the case manager in writing within five days of receipt of the ISP. A contracted service provider shall specify the reasons for its conclusion.
- B.** If the clinical team determines that a housing, residential or vocational service provider identified in the ISP is not capable of serving the client, the case manager shall, with the approval of the clinical team, identify another provider who is qualified to provide the services identified in the client's ISP, introduce the client to the new service provider, and modify the ISP as needed.
- C.** If the clinical team determines that an identified provider, other than a housing, residential or vocational service provider, is not capable of serving a client, the case manager shall, with the approval of the clinical team, identify another provider that is qualified to provide the services identified in the client's ISP. The case manager shall promptly distribute the ISP to the alternative service provider.
- D.** All selected service providers shall sign the ISP and implement the identified services.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

R9-21-310. Implementation of the Individual Service Plan

- A.** Upon acceptance of the ISP by the client or as defined in a court order, services shall be initiated in accordance with the timetable identified in the ISP.
- B.** If all or a portion of the ISP is rejected by the client or guardian, the plan shall not be implemented and services shall not be provided unless the client or guardian consents to specific services.
- C.** For each client who is identified as needing alternative housing, a new residential setting, or a residential support service, the case manager shall inform the client of the need for an alternative living arrangement and shall use the case manager's best efforts to obtain appropriate housing or residential supports. These efforts may include showing the client the house or apartment in which the client could reside, introducing the client to other residents of the residential setting, as appropriate, and permitting the client to live in the alternative setting on a trial basis. All clients shall be informed that they may elect to move at any time in the future subject to the terms

- of any lease, mortgage, contract, or other legal agreement between the client and the housing provider.
- D.** For at least the first two months after a client moves to a new residential setting, the case manager shall coordinate and monitor support services, as identified in the client's ISP, in order to foster the maintenance of the client's key relationships with others, to provide necessary orientation, and to ensure a smooth and successful transition into the new setting.
- E.** All contracts with service providers shall include:
1. A provision that the service provider shall abide by the rules contained in this Chapter and shall not alter, terminate, or otherwise interrupt services required under the ISP except parts of the ISP that have been modified according to R9-21-314;
 2. A provision that the service provider shall cooperate with the Administration in collecting data necessary to determine if the Administration is meeting its obligations under this Chapter and A.R.S. Title 36, Chapter 5, Article 10; and
 3. A provision that the service provider agrees to maintain current client records that document progress toward achievement of ISP goals and objectives and that meet applicable requirements of law, contract, and professional standards.
- F.** Forward a description of the unmet service need to the Administration, if the appropriate service cannot be located or developed through existing services or reallocated resources; and
- G.** Nothing in this rule shall effect or modify any provision of Arizona law with respect to a client's right to appropriate services.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

R9-21-312. Inpatient Treatment and Discharge Plan

- A.** General provisions.
1. Every client of an inpatient facility shall have an Inpatient Treatment and Discharge Plan (ITDP).
 2. An ITDP shall be developed by the inpatient facility's treatment team, the case manager and other members of the clinical team, as appropriate.
 3. The ITDP shall include the most appropriate and least restrictive services available at the inpatient facility, as well as a plan for the client's discharge to the community.
 4. The ITDP shall identify those treatment interventions and services which maximize the client's strengths, independence, and integration into the community.
 5. The ITDP shall be developed with the fullest possible participation of the client and any designated representative and/or guardian.
 6. The ITDP shall contain goals and objectives which are measurable and which facilitate meaningful evaluation of the progress toward attaining those goals and objectives.
 7. The ITDP shall be written in language which can be easily understood by a lay person.
 8. Delays in the assignment of a case manager or in the development or modification of an ISP or ITDP shall not be construed to prevent the appropriate discharge of a client from an inpatient facility.
- B.** The individual treatment and discharge plan meeting.
1. The case manager shall encourage the client to have a designated representative assist the client at the meeting and to have other persons, including family members, attend the meeting. The case manager shall ensure that the human rights advocate is notified of the time and date of the ITDP for clients who need special assistance.
 2. The following persons shall be invited to attend the ITDP meeting:
 - a. The client;
 - b. Any designated representative and/or guardian;
 - c. Family members, with the client's permission;
 - d. Members of the client's inpatient facility treatment team;
 - e. The case manager and other members of the clinical team, as appropriate;
- R9-21-311. Alternative Services**
- A.** If the services identified in the ISP are not currently available, the clinical team shall develop an alternative plan for alternative services, based upon the client's strengths, needs, and preferences as set forth in the assessment conducted according to R9-21-305. The plan for alternative services shall be developed after the preparation of the ISP.
- B.** The plan for alternative services shall be developed according to the same procedures for the preparation of an ISP and may be developed at the same meeting with the ISP if the clinical team is aware that appropriate services are not currently available. If at an ISP meeting the clinical team does not know whether the appropriate services are available, the clinical team shall use diligent efforts to locate the identified services. If appropriate services are determined to be unavailable, the ISP meeting shall be reconvened to develop an ISP for alternative services.
- C.** The plan for alternative services shall identify those available mental health and generic services which are, to the maximum extent possible, adequate, appropriate, consistent with the client's needs and least restrictive of the client's freedom.
- D.** The plan for alternative services shall contain a list of appropriate but unavailable services and the projected date for the initiation of each service.
- E.** If the clinical team determines that a recommended service is unavailable or does not exist, it shall forward a description of that service to the director of the regional authority. The director shall:
1. Use best efforts to locate the needed service through existing services or reallocated resources;

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- f. Other persons familiar with the client whose presence at the meeting is requested by the client; and
 - g. Any other person whose participation is not objected to by the client and who will, in the judgment of the case manager, contribute to the ITDP meeting.
3. The ITDP meeting shall include a discussion of:
- a. A review of the ISP's long-term view;
 - b. If necessary, a new functional assessment of the supports or skills necessary to achieve the client's long-term view;
 - c. The client's needs in terms of assessed strengths and needs;
 - d. The client's preferences regarding services;
 - e. Existing services if any;
 - f. The procedure for completion and implementation of the ITDP process, including the procedures for accepting, rejecting, or appealing the ITDP;
 - g. The procedure for clients or the inpatient facility to request changes in the ITDP; and
 - h. The methods to ensure that services are provided as set forth in the ITDP and regularly monitored for effectiveness.
- C. Inpatient treatment and discharge plan.**
1. The facility treatment team, the case manager, and other representatives of the clinical team, as appropriate, shall develop a preliminary ITDP within three days, and a full ITDP within seven days thereafter, of the client's admission. Where a client's anticipated stay is less than seven days, an acute inpatient facility shall develop a preliminary ITDP within one day and a full ITDP within three days of a client's admission.
 2. The ITDP shall be consistent with the goals, objectives, and services set forth in the client's ISP and shall be incorporated into the ISP.
 3. The ITDP shall include:
 - a. The client's preferences, strengths, and needs;
 - b. A description of appropriate services to meet the client's needs;
 - c. For non-acute facilities, long-range goals which will assist the client in attaining the most self-fulfilling, age-appropriate, and independent style of living possible, stated in terms which allow objective measurement of progress and which the client, to the maximum extent possible, both understands and accepts;
 - d. Short-term objectives that lead to attainment of overall goals stated in terms which allow objective measurement of progress and which the client, to the maximum extent possible, both understands and accepts;
 - e. Expected dates of completion for each objective;
 - f. Persons responsible for each objective;
 - g. The person responsible for ensuring that services are actually provided and are regularly monitored; and
 - h. The right of the client or guardian to accept or reject the ITDP, request other services, or appeal the ITDP or any aspect of the ITDP.
- D. Preparation and distribution of the ITDP.**
1. Within three days of the ITDP meeting, the treatment team coordinator shall prepare and distribute the ITDP.
 2. The ITDP shall be personally presented and explained to the client by the case manager.
 3. The ITDP shall be mailed or otherwise distributed to the following persons:
 - a. The client's designated representative and guardian, if any;
 - b. The case manager and members of the clinical team; and
 - c. The members of the inpatient facility's treatment team.
- E. Acceptance or rejection of the ITDP.**
1. Within two days of the date when the ITDP was distributed, the client shall be contacted by the case manager concerning acceptance or rejection of the ITDP, if there has not been acceptance or rejection prior to that date.
 2. If the client or guardian does not object to the ITDP within 10 days of the date when the ITDP was distributed, the client shall be deemed to have accepted the ITDP.
 3. If the client or guardian rejects some or all of the treatment interventions or services identified in the ITDP or requests other services, the case manager shall provide written notice to the client of the right to meet with the treatment team coordinator within five days of the rejection to discuss the plan and to suggest modifications, or to immediately appeal the plan according to R9-21-401.
 4. If modifications are agreed to by the treatment team coordinator and the client or guardian, the treatment team coordinator shall arrange for approval of the modifications by all members of the inpatient facility's treatment team, the case manager, and members of the clinical team, as appropriate.
 5. If the matter is not resolved to the client's or guardian's satisfaction, the case manager shall again inform the client and guardian of the right to appeal according to R9-21-401. The client or guardian may appeal findings or recommendations in the ITDP within 30 days of receipt of the plan.
 6. A client or guardian who rejects the ITDP may accept some or all of the identified treatment interventions or services pending the outcome of the meeting with the treatment team coordinator or an appeal.
- F. The updated ITDP.** The facility treatment team, the case manager, and other representatives of the clinical team, as appropriate, shall review the ITDP as frequently as necessary, but at least once within the first 30 days of completing the plan, every 60 days thereafter during the first year, and every 90 days thereafter during any subsequent years that the client remains a resident of the facility.
- G. Incorporation into the individual service plan.**
1. If the clinical team determines that the ITDP is appropriate to meet the client's needs, least restrictive of the client's freedom, and consistent with the ISP, it shall approve the ITDP by incorporating it into the ISP. If the clinical team disapproves the ITDP, it shall convene an ISP meeting, which includes the inpatient facility treatment team, to prepare a revised ITDP.
 2. The clinical team, with the assistance of the inpatient facility's treatment team, shall be responsible for implementing the plan for the client's discharge.
 3. The case manager will provide notice to those providers identified in the client's ISP three days prior to the client's actual discharge, except that the failure to provide such notice shall not delay discharge.
 4. The case manager shall meet with the client within five days of the client's discharge to ensure that the ISP is being implemented.
 5. The case manager shall review the ISP with the clinical team within 30 days of the discharge to determine whether any modifications are appropriate, consistent with the standards and requirements set forth in R9-21-314.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-313. Periodic Review of Individual Service Plans**A. General provisions.**

1. Where an ISP includes residential, vocational, or other primary service providers that do not currently serve the client, the first ISP review shall be held within 30 days from the date on which all such providers have initiated services to client. Each service provider shall bring to the review a detailed description of the objectives and services currently in effect for the client.
2. Where the ISP includes only primary service providers that currently serve the client, the first ISP review shall be held within six months of the date the ISP is accepted by the client or the date on which any appeal is concluded.
3. Thereafter, ISP reviews shall be conducted at least every six months and more frequently as needed. The ISP review shall be chaired by the case manager.
4. The purpose of the ISP review is to ensure that services continue to be, to the maximum extent possible, appropriate to the client's needs and least restrictive of the client's freedom.
5. The review shall be conducted with the fullest possible participation of the client and any designated representative and/or guardian.

B. The ISP review.

1. At least 10 days prior to the ISP review meeting, the case manager shall invite, in writing, the following persons to attend the meeting:
 - a. The client and any designated representative and/or guardian;
 - b. Family members, with the permission of the client;
 - c. Members of the client's clinical team;
 - d. Representatives of each of the client's service providers;
 - e. Any other person familiar with the client whose participation is requested by the client; and
 - f. Any other person whose participation is not refused by the client and who, in the judgment of the case manager, will contribute to the ISP review.
2. The ISP review shall, to the extent possible given the circumstances of the client and the availability of information, consider:
 - a. Whether there has been any change in the clinical, social, training, medical, vocational, educational and personal needs of the client;
 - b. Whether the client needs any further assessment or evaluations;
 - c. Whether the services being provided to the client continue to be appropriate to meet the client's needs, least restrictive of the client's freedom, consistent with the client's preferences, and as integrated as possible in the client's home community;
 - d. Whether there has been progress towards attainment of the long-term view, and each of the goals and objectives stated in the ISP;
 - e. Whether to reaffirm, modify or delete each goal and objective, together with the reasons for these actions;

- f. Whether there has been any change in the legal status of the client, in the necessity or advisability of having a guardian or conservator appointed or removed, or in the client's need for special assistance;
- g. Whether any change in the client's circumstances should result in a modification of the client's priority of need for services not currently provided; and
- h. Whether there has been any change in the availability of services formerly determined to be needed but not then available.

3. The client, any designated representative and/or guardian, and clinical team will review each service provider's detailed description of current objectives and services to determine whether it is consistent with client's needs, least restrictive of the client's freedom, and designed to maximize the client's independence and integration into the community.
 - a. If the detailed description is approved and accepted by the client, any designated representative and/or guardian, and the clinical team, it shall be incorporated into the updated ISP.
 - b. If the description of services is rejected, it shall be revised with the assistance of the service provider and, as revised, incorporated into the updated ISP.

C. The updated ISP.

1. Within seven days of the ISP review meeting, the case manager shall prepare an updated ISP which includes all of the elements set forth in R9-21-307(C).
2. The case manager shall personally meet with the client or guardian to explain the updated ISP. The updated ISP shall be mailed or otherwise distributed to the other participants of the review meeting.
3. The updated ISP is subject to the client acceptance, rejection, and requests for other service provisions of R9-21-308 and the appeal provisions of R9-21-401.
4. The updated ISP shall be implemented consistent with the provisions of R9-21-310.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-314. Modification or Termination of Plans

- A.** Requests for modifications or termination of an ISP or any portion of an ISP may be initiated at the ISP review or at any other time by:
 1. The client;
 2. Any designated representative and/or guardian;
 3. A service provider; or
 4. Any member of the clinical team.
- B.** A request for modification or termination of an ISP shall be directed to the case manager.
- C.** The case manager shall give the client, the client's guardian and designated representative, appropriate service providers, and the client's clinical team written notice of any request for modification or termination of the ISP.
- D.** An ISP may be modified in order to more appropriately meet the client's needs, goals, and objectives. An ISP shall be modified where:

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1. The client withdraws consent to the ISP or any portion of the ISP;
 2. The client consents to services recommended as more suitable but previously refused by the client;
 3. The needs of the client have changed due to progress or lack of progress in meeting the client's goals and objectives;
 4. The proposed change will permit the client to receive services which are more consistent with the client's needs, less restrictive of the client's freedom, more integrated in the community, or more likely to maximize the client's ability to live independently;
 5. The client wants to change the long-term view and the focus of the ISP or no longer needs a service or services; or
 6. The client is no longer eligible for services according to R9-21-303.
- E.** The clinical team shall:
1. Be notified by a service provider of any proposed termination or modification of services in the ISP as soon as possible and always prior to its implementation;
 2. Promptly inform the client and any designated representative and/or guardian of the requested modification and seek the client's consent to implement such modification or termination; and
 3. Within 20 days of any request for modification or termination of an ISP, approve the request only if the request meets the requirements of subsection (D).
 4. Provide written notice of the right to appeal to the client and any designated representative and guardian in accordance with R9-21-401(B) whenever service to the client is to be terminated, suspended or reduced.
- F.** The case manager shall:
1. Incorporate the approved modification in the current ISP or prepare a revised ISP, as appropriate.
 2. Within five days of any approval by the clinical team, distribute the modified or revised ISP to the client, any designated representative and/or guardian, the members of the clinical team, and all service providers.
 3. Meet with the client or guardian to explain the modification or revision and the client's right to appeal according to R9-21-401.
- G.** If the client or any designated representative and/or guardian does not reject or appeal the termination or modification within 30 days of the date the modified ISP is distributed, the client shall be deemed to have accepted the termination or modification.
- H.** The client for whom a modification or termination is proposed or any designated representative and/or guardian may appeal a modification or termination according to R9-21-401.
- I.** If the clinical team denies the client's or guardian's request to modify or terminate an ISP, the client or the designated representative and/or guardian may appeal the denial according to R9-21-401.
- J.** No modification or termination of an ISP shall be made without the acceptance of the client or any designated representative and/or guardian, unless a qualified clinician determines that the modification or termination is required to avoid a serious or immediate threat to the health or safety of the client or others.
1. Except in an emergency, no requested termination of a client from a particular service or provider may be considered unless the standards and procedures set forth in R9-21-210 and the provisions of this rule are satisfied.
 2. The client may not be transferred from one program or location to another while an appeal is pending.
- K.** If a qualified clinician determines that the client is no longer eligible for services according to R9-21-303, the qualified clinician shall make a determination of non-eligibility, move to terminate services under the ISP and this rule, and notify in writing the client of the non-eligibility determination and of the right to appeal such determination, in accordance with R9-21-401. When appropriate, referral and provision for further treatment shall be made by the case manager or clinical team.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-315. Renumbered**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Renumbered to R9-21-401 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

ARTICLE 4. APPEALS, GRIEVANCES, AND REQUESTS FOR INVESTIGATION FOR PERSONS WITH SERIOUS MENTAL ILLNESS**R9-21-401. Appeals**

- A.** A client or an applicant may file an appeal concerning decisions regarding eligibility for behavioral health services, including Title XIX services, fees and waivers; assessments and further evaluations; service and treatment plans and planning decisions; and the implementation of those decisions. Appeals regarding a determination of categorical ineligibility for Title XIX shall be directed to the agency that made the determination.
1. Disagreements among employees of the Administration, the regional authority, clinical teams, and service providers concerning services, placement, or other issues are to be resolved using the Administration's guidelines, rather than this Article.
 2. The case manager shall attempt to resolve disagreements prior to utilizing this appeal procedure; however, the client's right to file an appeal shall not be interfered with by any mental health agency or the Administration.
 3. The Office of Human Rights shall assist clients in resolving appeals according to R9-21-104.
 4. If a client or, if applicable, an individual on behalf of the client, files an appeal of a modification to or termination of a behavioral health service according to this Section, the client's service shall continue while the appeal is pending unless:
 - a. A qualified clinician determines that the modification or termination is necessary to avoid a serious or immediate threat to the health or safety of the client or another individual; or
 - b. The client or, if applicable, the client's guardian agrees in writing to the modification or termination.
- B.** Applicants and clients shall be informed of their right to appeal at the time an application for services is made, when an

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eligibility determination is made, when a decision regarding fees or the waiver of fees is made, upon receipt of the assessment report, during the ISP, ITDP, and review meetings, at the time an ISP, ITDP, and any modification to the ISP or ITDP is distributed, when any service is suspended or terminated, and at any other time provided by this Chapter. The notice shall be in writing in English and Spanish and shall include:

1. The client's right to appeal and to an administrative hearing according to A.R.S. § 41-1092.03;
 2. The method by which an appeal and an administrative hearing may be obtained;
 3. That the client may represent himself or use legal counsel or other appropriate representative;
 4. The services available to assist the client from the Office of Human Rights, Human Rights Committees, State Protection and Advocacy System, and other peer support and advocacy services;
 5. What action the mental health agency or regional authority intends to take;
 6. The reasons for the intended action;
 7. The specific rules or laws that support such action; and
 8. An explanation of the circumstances under which services will continue if an appeal or an administrative hearing is requested.
- C. The right to appeal in this Section does not include the right to appeal a court order entered according to A.R.S. Title 36, Chapter 5, Articles 4 and 5. The following issues may be appealed:
1. Decisions regarding the individual's eligibility for behavioral health services;
 2. The sufficiency or appropriateness of the assessment or any further evaluation;
 3. The long-term view, service goals, objectives, or timelines stated in the ISP or ITDP;
 4. The recommended services identified in the assessment report, ISP, or ITDP;
 5. The actual services to be provided, as described in the ISP, plan for interim services, or ITDP;
 6. The access to or prompt provision of services provided under Title XIX;
 7. The findings of the clinical team with regard to the client's competency, capacity to make decisions, need for guardianship or other protective services, or need for special assistance;
 8. A denial of a request for a review of, the outcome of a review of, a modification to or failure to modify, or a termination of an ISP, ITDP, or portion of an ISP or ITDP;
 9. The application of the procedures and timetables as set forth in this Chapter for developing the ISP or ITDP;
 10. The implementation of the ISP or ITDP;
 11. The decision to provide service planning, including the provision of assessment or case management services, to a client who is refusing such services, or a decision not to provide such services to such a client; or
 12. Decisions regarding a client's fee assessment or the denial of a request for a waiver of fees;
 13. Denial of payment for a client; and
 14. Failure of the regional authority or the Administration to act within the time frames for appeal established in this Chapter.
- D. Initiation of the appeal.
1. An appeal may be initiated by the client or by any of the following persons on behalf of a client or applicant requesting behavioral health services or community services:
 - a. The client's or applicant's guardian,
 - b. The client's or applicant's designated representative, or
 - c. A service provider of the client, if the client or, if applicable, the client's guardian gives permission to the service provider;
 2. An appeal is initiated by notifying the director of the regional authority or the director designee orally or in writing of the decision, report, plan or action being appealed, including a brief statement of the reasons for the appeal and the current address and telephone number, if available, of the applicant or client and designated representative.
 3. An appeal shall be initiated within 60 days of the decision, report, plan, or action being appealed. However, the director of the regional authority or the director designee shall accept a late appeal for good cause. If the regional authority director or the director designee refuses to accept a late appeal, the director or director designee shall notify the individual or client in writing, with a statement of reasons for the decision. Within 10 days of the notification, the client or applicant may request review of that decision by the Administration, who shall act within 15 days of receipt of the request for review. The decision of the Administration shall be final.
 4. Within five days of receipt of an appeal, the director of the regional authority shall inform the client in writing that the appeal has been received and of the procedures that shall be followed during the appeal.
- E. Informal conference with the regional authority.
1. Within seven days of receipt of the notice of appeal, the director of the regional authority or the director designee shall hold an informal conference with the client, any designated representative and/or guardian, the case manager and representatives of the clinical team, and a representative of the service provider, if appropriate.
 - a. The regional authority director or the director's designee shall schedule the conference at a convenient time and place and shall inform all participants in writing of the time, date, and location two days before the conference.
 - b. Individuals may participate in the conference by telephone.
 2. The director of the regional authority or the director's designee shall chair the informal conference and shall seek to mediate and resolve the issues in dispute. To the extent that resolution satisfactory to the client or guardian is not achieved, the regional authority director or director's designee shall clarify issues for further appeal and shall determine the agreement, if any, of the participants as to the material facts of the case.
 3. Except to the extent that statements of the participants are reduced to an agreed statement of facts, all statements made during the informal conference shall be considered as offers in compromise and shall be inadmissible in any subsequent hearing or court proceedings under this rule.
 4. If the informal conference with the director of the regional authority or the director's designee does not resolve the issues in dispute to the satisfaction of the client or, if applicable, the client's guardian, and the issues in dispute are not related to the client's eligibility for behavioral health services, the client or, if applicable, the client's guardian shall be informed that the matter may be further appealed to the Administration, and of the procedure for requesting a waiver of the informal conference with the Administration.

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5. If a client or, if applicable, the client's guardian waives the right to an informal conference with the Administration according to subsection (E)(4) or, if the informal conference with the director of the regional authority or the director designee does not resolve the issues in dispute to the satisfaction of the client or, if applicable, the client's guardian, and the issues in dispute are related to the client's eligibility for behavioral health services, the regional authority shall, at the informal conference:
 - a. Provide written notice to the client or, if applicable, the client's guardian according to A.R.S. § 41-1092.03, and
 - b. Ask the client or, if applicable, the client's guardian whether the client or, if applicable, the client's guardian would like the regional authority to request an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client.
 - c. For a client who needs special assistance, send a copy of the notice in subsection (5)(a) to the appropriate human rights committee.
 6. If, at the informal conference, a client or, if applicable, the client's guardian requests that the regional authority file a request for an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client, the regional authority shall file the request within three days of the informal conference.
 7. If resolution satisfactory to the client or guardian is achieved, the director of the regional authority or the director designee shall issue a dated written notice to all parties which shall include a statement of the nature of the appeal, the issues involved, the resolution achieved and the date by which the resolution will be implemented.
- F. Informal conference with the Administration.**
1. Within three days of the conclusion of an informal conference with the regional authority according to subsection (E)(4), the director of the regional authority or the director designee shall notify the Administration and shall immediately forward the client's notice of appeal, all documents relevant to the resolution of the appeal and any agreed statements of fact.
 2. Within 15 days of the notification from the regional authority director or the director designee, the Administration shall hold an informal conference with the client, any designated representative and/or guardian, the case manager, and representatives of the clinical team, the service provider, if appropriate, for the purpose of mediating and resolving the issues being appealed.
 - a. The Administration shall schedule the conference at a convenient time and place and shall inform the participants in writing of the time, date, and location five days prior to the conference.
 - b. Individuals may participate in the conference by telephone.
 - c. If a client is unrepresented at the conference but needs assistance, or if for any other reason the Administration determines the appointment of a representative to be in the client's best interest, the Administration may designate a human rights advocate or other person to assist the client in the appeal.
 3. To the extent that resolution satisfactory to the client or guardian is not achieved, the Administration shall clarify issues for further appeal and shall determine the agreement, if any, of the participants as to the material facts of the case.
 4. If resolution satisfactory to the client or guardian is achieved, the Administration shall issue a dated written notice to all parties which shall include a statement of the nature of the appeal, the issues involved, the resolution achieved, and the date by which the resolution will be implemented.
 5. Except to the extent that statements of the participants are reduced to an agreed statement of facts, all statements made during the informal conference shall be considered as offers in compromise and shall be inadmissible in any subsequent hearing or court proceedings under this rule.
 6. If all issues in dispute are not resolved to the satisfaction of the client or guardian at the informal conference with the Administration, the Administration shall, at the informal conference:
 - a. Provide written notice to the client or, if applicable, the client's guardian according to A.R.S. § 41-1092.03, and
 - b. Ask the client or, if applicable, the client's guardian whether the client or, if applicable, the client's guardian would like the Administration to file a request for an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client.
 - c. For all clients including clients who needs special assistance, send a copy of the notice in subsection (6)(a) to the Office of Human Rights and the appropriate human rights committee.
 7. If, at the informal conference, a client or, if applicable, the client's guardian requests that the Administration file a request for an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client, the Administration shall file the request within three days of the informal conference according to subsection (G).
- G. The fair hearing.**
1. Within three days of the informal conference with the Administration, if the conference failed to resolve the appeal, or within five days of the date the conference was waived, the Administration shall forward a request to schedule a fair hearing.
 2. Within five days of the notification, the Administration shall send a written notice of fair hearing to all parties, informing them of the time and place of the hearing, the name, address, and telephone number of the Administrative Law Judge, and the issues to be resolved. The notice shall also be sent to the appropriate human rights committee and the Office of Human Rights for all clients, including clients who need special assistance.
 3. A fair hearing shall be held on the appeal in a manner consistent with A.R.S. § 41-1092 et seq., and those portions of 9 A.A.C. 1 which are consistent with this Article.
 4. During the pendency of the appeal, the client, any designated representative and/or guardian, the clinical team, and representatives of any service providers may agree to implement any part of the ISP or ITDP or other matter under appeal without prejudice to the appeal.
 5. The client or applicant shall have the right to be represented at the hearing by a person chosen by the client or applicant at the client's or applicant's own expense, in accordance with Rule 31, Rules of the Supreme Court.
 6. The client, any designated representative and/or guardian, and the opposing party shall have the right to present any evidence relevant to the issues under appeal and to call and examine witnesses. The Administration shall have the right to appear to present legal argument.

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7. The client and any designated representative and/or guardian shall have the right to examine and copy at a reasonable time prior to the hearing all records held by the Administration, regional authority, or service provider pertaining to the client and the issues under appeal, including all records upon which the ISP or ITDP decisions were based.
 8. Any portion of the hearing may be closed to the public if the client requests or if the Administrative Law Judge determines that it is necessary to prevent the unwarranted invasion of a client's privacy or that public disclosure would pose a substantial risk of harm to a client.
- H. Expedited appeal.**
1. At the time an appeal is initiated, the applicant, client, or mental health agency may request orally or in writing an expedited appeal on issues related to crisis or emergency services or for good cause. Any appeal from a decision denying admission to or continued stay at an inpatient psychiatric facility due to lack of medical necessity shall be accompanied by all medical information necessary to resolution of the appeal and shall be expedited.
 2. An expedited appeal shall be conducted in accordance with the provisions of this Section, except as provided for in this subsection.
 3. Within one day of receipt of an expedited appeal, the director of the regional authority shall inform the client in writing that the appeal has been received.
 4. The director of the regional authority shall accept an expedited appeal on issues related to crisis or emergency services. The regional authority shall also accept an expedited appeal for good cause. If the regional authority refuses to expedite the appeal based on a determination that good cause does not exist, the director shall notify the applicant or client in writing within one day of the initiation of the appeal, with a statement of reasons for the decision, and shall proceed with the appeal in accordance with the provisions of this Section. Within three days of the notification of refusal to expedite the appeal for good cause, the client or applicant may request review of the decision by the Administration, who shall act within one day. The decision of the Administration shall be final.
 5. If the regional authority accepts the appeal for expedited consideration, the director shall hold the informal conference according to R9-21-401(E) within two days of the initiation of the appeal. The regional authority shall schedule the conference at a convenient time and place and shall inform all participants of the time, date and location prior to the conference.
 6. If the informal conference with the director of the regional authority or the director's designee does not resolve the issues in dispute to the satisfaction of the client or, if applicable, the client's guardian, and the issues in dispute are not related to the client's eligibility for behavioral health services, the client or, if applicable, the client's guardian shall be informed that the matter may be further appealed to the Administration, and of the procedure for requesting waiver of the informal conference with the Administration.
 7. If a client or, if applicable, the client's guardian waives the right to an informal conference with the Administration or, if the informal conference with the director of the regional authority or the director's designee does not resolve the issues in dispute to the satisfaction of the client or, if applicable, the client's guardian, and the issues in dispute are related to the client's eligibility for behavioral health services, the regional authority shall, at the informal conference:
 - a. Provide written notice to the client or, if applicable, the client's guardian according to A.R.S. § 41-1092.03, and
 - b. Ask the client or, if applicable, the client's guardian whether the client or, if applicable, the client's guardian would like the regional authority to request an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client.
 - c. Send a copy of the notice in subsection (H)(7)(a) to the Office of Human Rights and the appropriate human rights committee.
 8. If, at the informal conference, a client or, if applicable, the client's guardian requests that the regional authority file a request for an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client, the Administration shall file the request within one day of the informal conference.
 9. Within one day of the conclusion of an informal conference with the regional authority, the director of the regional authority shall notify the Administration if the informal conference failed to resolve the appeal and shall immediately forward the client's notice of appeal and any agreed statements of fact unless the client or, if applicable, the client's guardian waived the client's right to an informal conference with the Administration or the issues in dispute are related to the client's eligibility for behavioral health services.
 10. Within two days of the notification from the regional authority, the Administration shall hold the informal conference pursuant to subsection (F).
 11. If all issues in dispute are not resolved to the satisfaction of the client or if applicable, the client's guardian at the informal conference with the Administration, the Administration shall, at the informal conference:
 - a. Provide written notice to the client or, if applicable, the client's guardian according to A.R.S. § 41-1092.03, and
 - b. Ask the client or, if applicable, the client's guardian whether the client or, if applicable, the client's guardian would like the Administration to file a request for an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client.
 - c. For a client who needs special assistance, send a copy of the notice in subsection (H)(11)(a) to the Office of Human Rights and the appropriate human rights committee.
 12. If, at the informal conference, a client or, if applicable, the client's guardian requests that the Administration file a request for an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client, the Administration shall file the request within one day of the informal conference.
 13. Within one day of the informal conference with the Administration, if the conference failed to resolve the appeal, or within two days of the date the conference was waived, the Administration shall forward a request to schedule a fair hearing.
 14. Within one day of notification, the Administration shall send a written notice of an expedited fair hearing in accordance with subsection (G)(2) and A.R.S. 41-1092, et seq.
 15. An expedited fair hearing shall be held on the appeal in accordance with subsection (G)(3) and A.R.S. 41-1092, et seq.

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- I.** Standard and burden of proof.
1. The standard of proof on all issues shall be by a preponderance of the evidence.
 2. The burden of proof on the issue of the need for or appropriateness of behavioral health services or community services shall be on the person appealing.
 3. The burden of proof on the issue of the sufficiency of the assessment and further evaluation, and the need for guardianship, conservatorship, or special assistance shall be on the agency which made the decision.
 4. The burden of proof on issues relating to services or placements shall be on the party advocating the more restrictive alternative.
- J.** Implementation of final decision. Within five days after a satisfactory resolution is achieved at an informal conference or after the expiration of an appeal period when no appeal is taken, or after the exhaustion of all appeals and subject to the final decision thereon, the regional authority shall implement the final decision and shall notify the client, any designated representative and/or guardian, and Administration of such action.
- K.** Appeal log.
1. The Administration and regional authority shall maintain logs of appeals filed under this Section.
 2. The log maintained by the Administration shall not include personally identifiable information and shall be a public record, available for inspection and copying by any person.
 3. With respect to each entry, the logs shall contain:
 - a. A unique docket number or matter number;
 - b. A substantive but concise description of the appeal including whether the appeal related to the provision of Title XIX services;
 - c. The date of the filing of appeal;
 - d. The date of the initial decision appealed from;
 - e. The date, nature and outcome of all subsequent decisions, appeals, or other relevant events; and
 - f. A substantive but concise description of the final decision and the action taken by the agency director and the date the action was taken.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-401 renumbered to R9-21-402; new Section R9-21-401 renumbered from R9-21-315 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

R9-21-402. General

- A.** It is the policy of the Administration to conduct investigations and bring matters to a resolution in four circumstances: first, in the event of a death of a client; second, whenever there is alleged to have occurred a rights violation; third, whenever there is alleged to exist a condition requiring investigation because it is dangerous, illegal or inhumane; and fourth, in any other case where an investigation would be in the public interest, as determined by the Administration. The purpose of R9-21-402 through R9-21-410 is to implement that policy. All investigations according to R9-21-402 through R9-21-410 shall be carried out in a prompt and equitable manner and with due regard for the dignity and rights of all persons involved. R9-21-402 through R9-21-410 do not obviate the need for sys-

tematically reporting, where appropriate, accidents and injuries involving clients.

- B.** This grievance and investigation procedure applies to any allegation that a rights violation or a condition requiring investigation, as defined in R9-21-101, has occurred or currently exists.
1. A grievance may be filed by a client, guardian, human rights advocate, human rights committee, State Protection and Advocacy System, designated representative, or any other concerned person when a violation of the client's rights or of the rights of several clients has occurred.
 2. A request for an investigation may be filed by any person whenever a condition requiring investigation occurs or has occurred.
 3. Allegations about the need for or appropriateness of behavioral health services or community services should generally should be addressed according to the Individual Service Planning Sections R9-21-301 through R9-21-314 and according to R9-21-401, as applicable.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-402 renumbered to R9-21-403; new Section R9-21-402 renumbered from R9-21-401 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

R9-21-403. Initiating a Grievance or Investigation

- A.** Any individual may file a grievance regarding an abridgement by a mental health agency of one or more of a client's rights in Article 2 of this Chapter,
- B.** Any individual may request an investigation regarding a condition requiring investigation.
- C.** An employee of or individual under contract with one of the following shall file a grievance if the employee has reason to believe that a mental health agency has abridged one or more of a client's rights in Article 2 of this Chapter or that a condition requiring investigation exists, and shall receive disciplinary action for failure to comply with this subsection:
1. A service provider,
 2. A regional authority,
 3. An inpatient facility, or
 4. The Administration.
- D.** A service provider or regional authority shall file a grievance if it:
1. Receives a non-frivolous allegation that:
 - a. A mental health agency has abridged one or more of a client's rights in Article 2 of this Chapter, or
 - b. A condition requiring investigation exists; or
 2. Has reason to believe that there exists or has occurred a condition requiring investigation in a mental health agency or program.
- E.** The Administration shall request an investigation if:
1. The Administration determines that it would be in the best interests of a client, the Administration, or the public; or
 2. The Administration receives a non-frivolous allegation or has reason to believe that:
 - a. A mental health agency has abridged one or more of a client's rights in Article 2 of this Chapter, or
 - b. A condition requiring investigation exists.
- F.** To file a grievance, an individual shall communicate the grievance orally or submit the grievance in writing to any employee of a mental health agency who shall forward the grievance to

the appropriate person as identified in R9-21-404. If asked to do so by a client, an employee shall assist the client in making an oral or written grievance or shall direct the client to the available supervisory or managerial staff who shall assist the client in making an oral or written grievance.

- G.** Any grievance or request for investigation shall be accurately and completely reduced to writing on an Administration-provided grievance or request for investigation form by:
1. The individual filing the grievance or request for investigation, or
 2. The mental health agency to whom the grievance or request for investigation is made.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-403 renumbered to R9-21-404; new Section R9-21-403 renumbered from R9-21-402 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

R9-21-404. Persons Responsible for Resolving Grievances and Requests for Investigation

- A.** Allegations involving rights violations:
1. Of other than physical abuse, sexual abuse, or sexual misconduct that occurred in a mental health agency, or as a result of an action of a person employed by a mental health agency, shall be addressed to and initially decided by:
 - a. The appropriate regional authority; or
 - b. If the mental health agency is operated exclusively by a governmental entity the allegation shall be addressed to and initially decided by that agency; or
 2. Of physical abuse, sexual abuse, or sexual misconduct that occurred in a mental health agency, or as a result of an action of a person employed by a mental health agency, shall be addressed to and decided by the Administration.
- B.** Allegations involving conditions requiring investigation:
1. Of other than a client death, which occurred in a mental health agency, or as a result of a person employed by a mental health agency, shall be addressed to and initially decided by:
 - a. The appropriate regional authority; or
 - b. If the mental health agency is operated exclusively by a governmental entity, the allegation shall be addressed to and initially decided by that agency; or
 2. Of a client death, which occurred in a mental health agency, or as a result of an action of a person employed by a mental health agency, shall be addressed to and decided by the Administration.
- C.** Within five days of receipt by a mental health agency of a grievance or request for investigation:
1. The mental health agency shall inform the person filing the grievance or request, in writing, that the grievance or request has been received;
 2. If the mental health agency is operated exclusively by a governmental entity, the mental health agency shall provide a copy of the grievance to the appropriate regional authority; and
 3. If the client is in need of special assistance, the mental health agency shall immediately send a copy of the grievance or request to the Office of Human Rights and the

human rights committee with jurisdiction over the agency.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Former Section R9-21-404 renumbered to R9-21-405; new Section R9-21-404 renumbered from R9-21-403 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

R9-21-405. Preliminary Disposition

- A.** The agency director before whom a grievance or request for investigation has been initiated shall immediately take whatever action may be reasonable to protect the health, safety and security of any client, witness, individual filing the grievance or request for investigation, or individual on whose behalf the grievance or request for investigation is filed.
- B.** Summary disposition.
1. A mental health agency or the Administration may summarily dispose of any grievance or a request for an investigation where the alleged rights violation or condition occurred more than one year immediately prior to the date on which the grievance or request is made.
 2. A mental health agency or the Administration who receives a grievance or request which is primarily directed to the level or type of mental health treatment provided to a client, which can be fairly and efficiently addressed within the procedures set forth in Article 3 and in R9-21-401, and which do not directly or indirectly involve any rights set forth in A.R.S. Title 36 or Article 2, may refer the grievance for resolution through the Individual Service Plan process or the appeal process in R9-21-401.
- C.** Disposition without investigation.
1. Within seven days of receipt of a grievance or request for an investigation, a mental health agency or the Administration may promptly resolve a grievance or request without conducting a full investigation, where the matter:
 - a. Involves no dispute as to the facts;
 - b. Is patently frivolous; or
 - c. Is resolved fairly and efficiently within seven days without a formal investigation.
 2. Within seven days of receipt of the grievance or request described in subsection (C)(1), the mental health agency or the Administration shall prepare a written, dated decision.
 - a. The decision shall explain the essential facts, why the mental health agency or the Administration believes that the matter is appropriately resolved without the appointment of an investigator, and the resolution of the matter.
 - b. The mental health agency or the Administration shall send copies of the decision to the parties, together with a notice of appeal rights according to A.R.S. § 41-1092.03, and to anyone else having a direct interest in the matter.
 3. After the expiration of the appeal period without appeal by any party, or after the exhaustion of all appeals and subject to the final decision on the appeal, the mental health agency or the Administration shall promptly take

appropriate action and prepare and add to the case record a written, dated report of the action taken to resolve the grievance or request.

D. Matters requiring investigation.

1. If the matter complained of cannot be resolved without a formal investigation according to the criteria set forth in subsection (C)(1), within seven days of receipt of the grievance or request the mental health agency or the Administration shall prepare a written, dated appointment of an impartial investigator who, in the judgment of the mental health agency or the Administration, is capable of proceeding with the investigation in an objective manner but who shall not be:
 - a. Any of the persons directly involved in the rights violation or condition requiring investigation; or
 - b. A staff person who works in the same administrative unit as, except a person with direct line authority over, any person alleged to have been involved in the rights violation or condition requiring investigation.
2. Immediately upon the appointment of an investigator, the mental health agency or the Administration shall notify the person filing the grievance or request for investigation in writing of the appointment. The notice shall contain the name of the investigator, the procedure by which the investigation will be conducted and the method by which the person may obtain assistance or representation.

- E.** If a client is a client who needs special assistance, the mental health agency or the Administration shall immediately send a copy of the grievance or request to the Office of Human Rights and the human rights committee with jurisdiction over the agency and shall send a copy of all decisions required by this Chapter made by the mental health agency or the Administration regarding the grievance or request to the Office of Human Rights and the human rights committee with jurisdiction over the agency.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Former Section R9-21-405 renumbered to R9-21-406; new Section R9-21-405 renumbered from R9-21-404 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

R9-21-406. Conduct of Investigation

- A.** Within 10 days of the appointment, the investigator shall hold a private, face-to-face conference with the person who filed the grievance or request for investigation to learn the relevant facts that form the grounds for the grievance or request, unless the grievance or request has been initiated by a mental health agency or the Administration according to R9-21-403 (D) or (E).
1. In scheduling such conference, and again at the conference, if the client appears without a designated representative, the investigator shall advise the client that:
 - a. The client may be represented by a designated representative of the client's own choice. The investigator shall also advise the client of the availability of assistance from the State Protection and Advocacy

System, the Office of Human Rights, and the relevant human rights committee.

- b. The client may make an audio tape of the conference and all future conferences, meetings or hearings to which the client may be a party during the investigation, provided that the client notify all other parties not later than the beginning of the meeting or hearing that the client intends to do so.
 - c. In any case where the person initiating the grievance or request, or the person(s) who is alleged to have been responsible for the rights violation or condition, is a client and is in need of special assistance and is unrepresented, the investigator shall give the Office of Human Rights notice of the need for representation.
2. Where the grievance has been initiated by the mental health agency or the Administration, the investigator shall promptly determine which persons have relevant information concerning the occurrence of the alleged rights violation or condition requiring investigation and proceed to interview such individuals.
- B.** Within 15 days of the appointment, but only after the conference with the person initiating the grievance or request for investigation, the investigator shall hold a private, face-to-face conference with the person(s) complained of or thought to be responsible for the rights violation or condition requiring investigation to discuss the matter and, in scheduling the conference with such person(s) or with any other witness, the investigator shall advise the person(s) or any other witness that:
1. The individual may make a recording of the conference and all future conferences, meetings or hearings during the course of the investigation, provided that the individual must notify all other parties to such meetings or hearings not later than the beginning of the meeting or hearing if the individual intends to so record.
 2. An employee of an inpatient facility, service provider, regional authority or the Administration has an obligation to cooperate in the investigation.
 3. Failure of an employee to cooperate may result in appropriate disciplinary action.
- C.** The investigator shall gather whatever further information may seem relevant and appropriate, including interviewing additional witnesses, requesting and reviewing documents, and examining other evidence or locations.
- D.** Within 10 days of completing all interviews with the parties but not later than 30 days from the date of the appointment, the investigator shall prepare a written, dated report briefly describing the investigation and containing findings of fact, conclusions, and recommendations
- E.** Within five days of receiving the investigator's report, the agency director shall review the report and the case record and prepare a written, dated decision which shall either:
1. Accept the investigator's report in whole or in part, at least with respect to the facts as found, and state a summary of findings and conclusions and the intended action of the agency director; and send:
 - a. A copy of the decision to:
 - i. The investigator;
 - ii. The individual who filed the grievance or request for investigation;
 - iii. The individual who is the subject of the grievance or request for investigation, if applicable;
 - iv. The Office of Human Rights; and
 - v. The appropriate human rights committee.

- b. A notice to the individual who filed the grievance or request for investigation and, if applicable, the client who is the subject of the grievance or request for investigation or, if applicable, the client's guardian, of:
- i. If the decision is from an agency director, the client's right to appeal to the Administration according to R9-21-406 and to an administrative hearing according to A.R.S. § 41-1092.03; and
 - ii. If the decision is from the Administration, the client's right to an administrative hearing according to A.R.S. § 41-1092.03; or
2. Reject the report for insufficiency of facts and return the matter for further investigation. In such event, the investigator shall complete the further investigation and deliver a revised report to the agency director within 10 days. Upon receipt of the report, the agency director shall proceed as provided in subsection (E)(l).
- F.** Actions that an agency director may take according to subsection (E)(1) include:
1. Identifying training or supervision for or disciplinary action against an individual responsible for a rights violation or condition requiring investigation identified during the course of investigating a grievance or request for investigation;
 2. Developing or modifying a mental health agency's policies and procedures;
 3. Notifying the regulatory entity that licensed or certified an individual according to A.R.S. Title 32, Chapter 33 of the findings from the investigation; or
 4. Imposing sanctions, including monetary penalties, according to terms of a contract, if applicable.
- G.** After the expiration of the appeal period set forth in R9-21-407, or after the exhaustion of all appeals and subject to the final decision on the appeal, the agency director shall promptly take the action set forth in the decision and add to the case record a written, dated report of the action taken. A copy of the report shall be sent to the Office of Human Rights and the human rights committee if the client is in need of special assistance.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Former Section R9-21-406 renumbered to R9-21-407; new Section R9-21-406 renumbered from R9-21-405 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

R9-21-407. Administrative Appeal

- A.** Any grievant or the client who is the subject of the grievance who is dissatisfied with the final decision of the agency director may, within 30 days of receipt of the decision, file a notice of appeal with the Administration. The appealing party shall send copies of the notice to the other parties and their representatives and to the agency director who shall forward the full case record to the Administration.
- B.** The Administration shall review the notice of appeal and the case record, and may discuss the matter with any of the persons involved or convene an informal conference. Within 15

days of the filing of the appeal, the Administration shall prepare a written, dated decision which shall either:

1. Accept the investigator's report, in whole or in part, at least with respect to the facts as found, and affirm, modify or reject the decision of the agency director with a statement of reasons; or
2. Reject the investigator's report for insufficiency of facts and return the matter with instructions to the agency director for further investigation and decision. In such event, the further investigation shall be completed and a revised report and decision shall be delivered to the Administration within 10 days. Upon receipt of the report and decision, the Administration shall render a final decision, consistent with the procedures set forth in subsection (B)(1).
3. A designated representative shall be afforded the opportunity to be present at any meeting or conference convened by the Administration to which the represented party is invited.
4. The Administration shall send copies of the decision to:
 - a. The parties, together with a notice of appeal rights according to A.R.S. § 41-1092.03;
 - b. The agency director; and
 - c. The Office of Human Rights and the applicable human rights committee for all clients, including clients who are in need of special assistance.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Former Section R9-21-407 renumbered to R9-21-408; new Section R9-21-407 renumbered from R9-21-406 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

R9-21-408. Further Appeal to Administrative Hearing

- A.** Any grievant or the client who is the subject of the grievance who is dissatisfied with the Director's decision of the Administration may request a fair hearing before an Administrative Law Judge.
1. Within 30 days of the date of the Director's decision, the appealing party shall file with the Administration a notice requesting a fair hearing.
 2. Upon receipt of the notice, the Administration shall send a copy to the parties, and to the Office of Human Rights and the human rights committee for clients who are in need of special assistance.
- B.** The hearing shall be conducted consistent with A.R.S. § 41-1092 et seq., and those portions of 9 A.A.C. 1 which are consistent with this Article.
1. The client shall have the right to be represented at the hearing by an individual chosen by the client at the client's own expense, in accordance with Rule 31, Rules of the Supreme Court. If the client has not designated a representative to assist the client at the hearing and is in need of special assistance, the human rights committee, or the human rights advocate unless refused by the client, shall make all reasonable efforts to represent the client.
 2. Any portion of the hearing may be closed to the public if the client requests or if the Administrative Law Judge determines that it is necessary to prevent an unwarranted

invasion of the client's privacy or that public disclosure would pose a substantial risk of harm to the client.

3. The Administration shall explain the Director's decision to the client at the client's request, together with the right to seek rehearing and judicial review.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Section repealed; new Section R9-21-408 renumbered from R9-21-407 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

R9-21-409. Notice and Records

- A. Notice to clients. All clients shall be informed of their right to file a grievance or request for investigation under these rules.
 1. Notice of this grievance and investigation process shall be included in the information posted or otherwise provided to every current and new client and employee. Special efforts shall be made to inform current and new residents of mental health facilities of this process and of the right to file a grievance or request for investigation;
 2. A copy of a brief memorandum explaining these rules shall be given to every current and new resident of an inpatient facility;
 3. Such memorandum and blank copies of the forms for filing a grievance, request for investigation, and appeal shall be posted in a prominent place in plain sight on every unit of an inpatient facility or in a program operated by a service provider; and
 4. Such memoranda, forms and copies of these rules shall be available at each inpatient facility, regional authority and service provider upon request by any person at any time.
- B. Notice and oversight by the Office of Human Rights and human rights committees.
 1. Upon receipt of any grievance or request for investigation involving a client, including a client who is in need of special assistance, the agency director shall immediately forward a copy of such grievance or request to the Office of Human Rights and the appropriate regional human rights committee.
 2. Upon receipt of such a grievance from the agency director, at the request of a client, or on its own initiative, the Office of Human Rights and/or the appropriate human rights committee shall assist a client in filing a grievance or request, if necessary. The Office and/or committee shall use its best efforts to see that such client is represented by an attorney, human rights advocate, committee member, or other person to protect the individual's interests and present information on the client's behalf. The Office and/or committee shall maintain a list of attorneys and other representatives, including the state protection and advocacy system, available to assist clients.
 3. Whenever the human rights committee has reason to believe that a rights violation involving abuse or a dangerous condition requiring investigation, including a client death, has occurred or currently exists, or that any rights violation or condition requiring investigation occurred or exists which involves a client who is in need of special assistance, it may, upon written notice to the official before whom the matter is pending, become a party to the grievance or request. As a party it shall receive copies of all reports, plans, appeals, notices and other significant documents relevant to the resolution of the grievance or request and be able to appeal any finding or decision.
4. The Office of Human Rights shall assist clients in resolving grievances according to R9-21-104.
- C. Notification of other persons.
 1. Whenever any rule, regulation, statute, or other law requires notification of a law enforcement officer, public official, medical examiner, or other person that an incident involving the death, abuse, neglect, or threat to a client has occurred, or that there exists a dangerous condition or event, such notice shall be given as required by law.
 2. A mental health agency shall immediately notify the Administration when:
 - a. A client brings criminal charges against an employee;
 - b. An employee brings criminal charges against a client;
 - c. An employee or client is indicted or convicted because of any action required to be investigated by this Article;
 - d. A client of an inpatient facility, a mental health agency, or a service provider dies. The agency director shall report such death according to the Administration's policy on the reporting and investigation of deaths.
 - e. A client of an inpatient facility, a mental health agency, or a service provider allegedly is physically or sexually abused.
 3. The investigation by the Administration provided for by this Article is independent of any investigation conducted by police, the county attorney, or other authority.
- D. Case records.
 1. A file, known as the case record, shall be kept for each grievance or request for investigation which is received by the Administration, ASH, regional authority or service provider under contract or subcontract with the Administration. The record shall include the grievance or request, the docket number or matter number assigned, the names of all persons interviewed and the dates of those interviews, either a taped or written summary of those interviews, a summary of documents reviewed, copies of memoranda generated by the investigation, the investigator's report, the agency director's decision, and all documents relating to any appeal.
 2. The investigator shall maintain possession of the case record until the investigation report is submitted. Thereafter, the agency director shall maintain control over the case record, except when the matter is on appeal. During any appeal, the record will be in the custody of the official who hears or decides the appeal.
- E. Public logs.
 1. The Administration and regional authority shall maintain logs of deaths and non-frivolous grievances or requests for investigation for inpatient facilities, agencies, service providers, and mental health agencies which it operates, funds, or supervises.
 2. The log maintained by the Administration shall not include personally identifiable information and shall be a public record, available for inspection and copying by any person.
 3. With respect to each grievance or request for investigation, the Administration's log shall contain:
 - a. A unique docket number or matter number;

- b. A substantive but concise description of the grievance or request for investigation;
- c. The date of the filing of grievance;
- d. The date of the initial decision or appointment of investigator;
- e. The date of the filing of the investigator's final report;
- f. A substantive but concise description of the investigator's final report;
- g. The date of all subsequent decisions, appeals, or other relevant events; and
- h. A substantive but concise description of the final decision and the action taken by the mental health agency or the Administration.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

R9-21-410. Miscellaneous

- A. Disqualification of official. The agency director, investigator, or any other official with authority to act on a grievance or request for investigation shall disqualify himself from acting, if such official cannot act on the matter impartially and objectively, in fact or in appearance. In the event of such disqualification, the official shall forthwith prepare and forward a written memorandum explaining the reasons for the decision to the Administration, as appropriate, who shall, within 10 days of receipt of the memorandum, take such steps as are necessary to resolve the grievance in an impartial, objective manner.
- B. Request for extension of time.
 - 1. The investigator or any other official of a mental health agency acting according to this Article may secure an extension of any time limit provided in this Article with the permission of the regional authority.
 - 2. The investigator or any other official of an inpatient facility operated exclusively by a governmental entity acting according to this Article may secure an extension of any time limit provided in this Article with the permission of the CEO of the entity or his designee.
 - 3. The investigator or any other official of the Administration acting according to this Article may secure an extension of any time limit provided in this Article with the permission of the Administration or designee.
 - 4. An extension of time may only be granted upon a showing of necessity and a showing that the delay will not pose a threat to the safety or security of the client.
 - 5. A request for extension shall be in writing, with copies to all parties. The request shall explain why an extension is needed and propose a new time limit which does not unreasonably postpone a final resolution of the matter.
 - 6. Such request shall be submitted to and acted upon prior to the expiration of the original time limit. Failure of the rel-

evant official to act within the time allowed shall constitute a denial of the request for an extension.

- C. Procedural irregularities.
 - 1. Any party may protest the failure or refusal of any official with responsibility to take action in accord with the procedural requirements of this Article, including the time limits, by filing a written protest with the Administration.
 - 2. Within 10 days of the filing of such a protest, the Administration shall take appropriate action to ensure that if there is or was a violation of a procedure or timeline, it is promptly corrected, including, if appropriate, disciplinary action against the official responsible for the violation or by removal of an investigator and the appointment of a substitute.
- D. Special Investigation.
 - 1. The Administration may at any time order that a special investigator review and report the facts of a grievance or condition requiring investigation, including a death or other matter.
 - 2. The special investigator and the Administration shall comply with the time limits and other procedures for an investigation set forth in this Article.
 - 3. Any final decision issued by the Administration based on such an investigation under this rule is appealable as provided in R9-21-408.
 - 4. Nothing in this Article shall prevent the Administration from conducting an investigation independent of these rules.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

ARTICLE 5. COURT-ORDERED EVALUATION AND TREATMENT

R9-21-501. Court-ordered Evaluation

- A. An application for court-ordered evaluation shall, according to A.R.S. § 36-521, be made on Department form MH-100, Titled "Application for Involuntary Evaluation," set forth in Exhibit A.
- B. Any mental health agency or service provider that receives an application for court-ordered evaluation shall immediately refer the applicant for pre-petition screening and petitioning for court-ordered evaluation, provided for in A.R.S. Title 36, Chapter 5, Article 4, to:
 - 1. A regional authority; or
 - 2. If a county has not contracted with a regional authority for pre-petition screening and petitioning for court-ordered evaluation, the county.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Section repealed; new Section R9-21-501 renumbered from R9-21-502 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

Exhibit A. Application for Involuntary Evaluation

APPLICATION FOR INVOLUNTARY EVALUATION
(Pursuant to A.R.S. § 36-520)

STATE OF ARIZONA)
COUNTY OF)

To the (Regional or Screening Authority)

- 1. The undersigned applicant requests that the above agency conduct a pre-petition screening of the person named herein.
2. The undersigned applicant alleges that there is now in the County a person whose name and address are:

(Name) (Address)

and that s/he believes that the person has a mental disorder and as a result of said mental disorder, is:

- a danger to self; a danger to others;
gravely disabled; persistently or acutely disabled

and is:

- unwilling to undergo voluntary evaluation, as evidenced by the following facts:
unable to undergo voluntary evaluation, as demonstrated by the following facts:

and who is believed to be in need of supervision, care, and treatment because of the following facts:

- 3. The conclusion that the person has a mental disorder is based on the following facts:
4. The conclusion that the person is dangerous or disabled is based on the following facts:

PERSONAL DATA OF PROPOSED PATIENT:

Age Date of Birth Sex Race
Weight Height Hair Color Eye Color
Marital Status Number of Children
Social Security No. Religion
Distinguishing Marks
Occupation
Present Location
Dates and Places of Previous Hospitalization
How Long in Arizona State Last From
Veteran? C-No. Education

NAME, ADDRESS AND TELEPHONE NUMBER OF:

- 1) Guardian _____
- 2) Spouse _____
- 3) Next of Kin _____
- 4) Significant Other Persons _____

_____ DATE _____ SIGNATURE OF APPLICANT _____

Printed or Typed Name of Applicant _____

Relationship to Proposed Patient _____

Applicant's Address _____

Applicant's Telephone _____

SUBSCRIBED AND SWORN to before me this _____ day of _____, 19 _____

Notary Public

My Commission Expires:

ADHS/BHS Form MH-100 (9/93)

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Exhibit A repealed, new Exhibit A adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Renumbered from a position after R9-21-502 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

Exhibit B. Petition for Court-ordered Evaluation

PETITION FOR COURT-ORDERED EVALUATION
IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF _____

In the Matter of)
) MH
)
) PETITION FOR COURT-
) ORDERED EVALUATION
) (Pursuant to A.R.S. § 36-523)
)
re: Mental Health Services)
_____)

STATE OF ARIZONA)
)
COUNTY OF)

Petitioner, _____
(Medical Director)

being first duly sworn/affirmed, alleges that:

- 1. There is now in this County a person whose name and address are as follows:
(Name) (Address)
2. The person may presently be found at:
3. There is reasonable cause to believe that the person has a mental disorder and is as a result:
A danger to self; A danger to others;
Gravely disabled; Persistently or acutely disabled and is:
4. The person is unwilling to undergo voluntary evaluation, as evidenced by the following facts:
5. The person is unable to undergo voluntary evaluation, as demonstrated by the following reasons:
6. The person is believed to be in need of supervision, care, and treatment because of the following facts:
7. The conclusion that the person has a mental disorder is based on the following facts:
8. The conclusion that the person is dangerous or disabled is based on the following facts:
9. The conclusion that all available alternatives have been investigated and deemed inappropriate is based on the following facts:
10. Applicant information:
Name of Applicant:
Address of Applicant:
Relationship to or Interest in the Proposed Patient:

- 11. In the opinion of the Petitioner, the person is _____ is not _____ in such a condition that, without immediate or continuing hospitalization, s/he is likely to suffer serious physical harm or inflict serious physical harm upon another person.
- 12. In the opinion of the Petitioner, evaluation should _____ should not _____ take place on an outpatient basis, based upon the following reasons: _____

PETITIONER REQUESTS THAT THE COURT:

Issue an Order requiring the person to be given an _____ Inpatient _____ Outpatient evaluation.

DATE

Signature Of Petitioner

Printed or Typed Name

SUBSCRIBED AND SWORN to before me this _____ day of _____, 19 _____.

Notary Public

My Commission Expires:

ADHS/BHS Form MH-105 (9/93)

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Exhibit B repealed, new Exhibit B adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Renumbered from a position after R9-21-502 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-502. Emergency Admission for Evaluation

- A. An application for emergency evaluation pursuant to A.R.S. § 36-524 may be made to any evaluation agency licensed and approved by the Department to provide such services on Department form MH-104, Titled "Application for Emergency Admission for Evaluation," set forth in Exhibit C.
- B. Prior to admission of an individual under this rule, the evaluation agency shall notify the appropriate regional authority of the potential admission so that the regional authority may first:
 - 1. Provide services or treatment to the individual as an alternative to admission; or
 - 2. Authorize admission of the individual.
- C. If the evaluation agency does not provide notice pursuant to subsection (B) of this rule, the regional authority shall not be obligated to pay for the services provided.

- D. Only a mental health agency licensed by the Department to provide emergency services according to A.R.S. Title 36, Chapter 4 may provide court-ordered emergency admission services under A.R.S. Title 36, Chapter 5, Article 4.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-502 renumbered to R9-21-501; new Section R9-21-502 renumbered from R9-21-503 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

Exhibit C. Application for Emergency Admission for Evaluation

APPLICATION FOR EMERGENCY ADMISSION FOR EVALUATION
(Pursuant to A.R.S. § 36-524)

STATE OF ARIZONA)
)ss
COUNTY OF _____)
_____)

The undersigned applicant, being first duly sworn/affirmed, hereby requests that _____
(Evaluation Agency)
admit the person named herein for evaluation.

1. The undersigned applicant alleges that there is now in the County a person whose name and address are:

_____ (Name) _____ (Address)

and that s/he believes that the person has a mental disorder and, as a result of said mental disorder, is:

[] A danger to self; [] A danger to others;

and that, during the time necessary to complete pre-petition screening under A.R.S. §§ 36-520 and 36-521, the person is likely without immediate hospitalization to suffer serious physical harm or serious illness or is likely to inflict serious physical harm upon another person.

2. The conclusion that the person has a mental disorder is based on the following facts:

3. The specific nature of the danger posed by this person is:

4. A summary of the personal observations upon which this statement is based is as follows:

PERSONAL DATA OF PROPOSED PATIENT:

Age _____ Date of Birth _____ Sex _____ Race _____
Weight _____ Height _____ Hair Color _____ Eye Color _____
Marital Status _____ Number of Children _____
Social Security No. _____ Religion _____
Distinguishing Marks _____
Occupation _____
Present Location _____
Dates and Places of Previous Hospitalization _____
How Long in Arizona _____ State Last From _____
Veteran? _____ C-No. _____ Education _____

NAME, ADDRESS AND TELEPHONE NUMBER OF:

- 1) Guardian _____
2) Spouse _____
3) Next of Kin _____
4) Significant Other Persons _____

DATE

SIGNATURE OF APPLICANT

Printed or Typed Name of Applicant _____

Relationship to Proposed Patient _____

Applicant's Address _____

Applicant's Telephone _____

SUBSCRIBED AND SWORN to before me this _____ day of _____, 19_____.

Notary Public

My Commission Expires:

ADHS/BHS Form MH-104 (9/93)

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Exhibit C repealed, new Exhibit C adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Renumbered from a position after R9-21-503 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-503. Voluntary Admission for Evaluation

- A. An application for voluntary evaluation pursuant to A.R.S. § 36-522 shall be submitted on Department form MH-103, Titled "Application for Voluntary Evaluation," set forth in Exhibit D to a mental health agency.
B. If a regional authority receives an application according to subsection (A), the regional authority shall provide for such evaluation under A.R.S. § 36-522 for any individual who:

- 1. Voluntarily makes application as provided in subsection (A);
2. Gives informed consent; and
3. Has not been adjudicated as an incapacitated person pursuant to A.R.S. Title 14, Chapter 5, or Title 36, Chapter 5.
C. Any mental health agency, which is not a regional authority under R9-21-501, that receives an application for voluntary evaluation shall immediately refer the individual to:
1. The county responsible for voluntary evaluations; or

2. If the county has contracted with a regional authority for voluntary evaluations, the appropriate regional authority.
- D.** Any mental health agency providing voluntary evaluation services pursuant to this Article shall place in the medical record of the individual to be evaluated the following:
1. A completed copy of the application for voluntary treatment;
 2. A completed informed consent form pursuant to R9-21-511; and
 3. A written statement of the individual's present mental condition.
- E.** Voluntary evaluation shall proceed only after the individual to be evaluated has given informed consent on Department form MH-103 and received information that the patient-physician

privilege does not apply and that the evaluation may result in a petition for the individual to undergo court-ordered treatment or for guardianship in the method prescribed by A.R.S. § 36-522.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-503 renumbered to R9-21-502; new Section R9-21-503 renumbered from R9-21-504 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

Exhibit D. Application for Voluntary Evaluation

APPLICATION FOR VOLUNTARY EVALUATION

(Pursuant to A.R.S. § 36-522)

The undersigned hereby requests a mental health evaluation to be performed by psychiatrists, psychologists, and social workers at

(Regional Authority)

on the following terms:

INPATIENT. I agree to remain as an inpatient in the above agency for a period of not more than 72 hours. I understand that, at the end of that period, the agency must release me or file a Petition for Court-Ordered Treatment, in which case I may be held until the court holds a hearing, which shall be no longer than six days from the date of filing the petition, excluding weekends and holidays. If such a Petition is filed, I will have the right to representation by a lawyer, and the court will appoint one for me if I cannot afford one.

OUTPATIENT. I agree to keep all scheduled appointments required for a complete evaluation, to the best of my ability. I understand that if I fail to appear, a Petition for Court-Ordered Evaluation or Treatment may be filed, in which case I may be detained and required to undergo involuntary evaluation and treatment. If such a Petition is filed, I will have the right to representation by a lawyer, and the court will appoint one for me if I cannot afford one.

I understand that the physician-patient privilege does not apply, and information I give during this evaluation may be used in court in a civil hearing for court-ordered treatment.

I understand that this evaluation may lead to a court hearing to determine if I need further treatment and that such treatment, or an investigation into the need for a guardianship, may be ordered by a court.

I understand that an application for my examination has been filed and I choose to be evaluated voluntarily rather than by court order.

I understand that my evaluation must take place within five days of my application.

I understand that I have a right to require the person who has applied for my evaluation to present evidence of the need for such evaluation to a court of law for approval or disapproval and I waive my right to require prior court review of the application.

I understand that I have a right, upon written request, to be discharged within 24 hours of that request (excluding weekends and holidays) unless the medical director of the evaluation agency files a petition for court-ordered evaluation.

Presented By

Signature of Applicant

Printed or Typed Name of Applicant

Date

ADHS/BHS Form MH-103 (9/93)

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Exhibit D repealed, new Exhibit D adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Renumbered from a position after R9-21-504 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-504. Court-ordered Treatment

- A. The regional authority shall perform, either directly or by contract, all treatment required by A.R.S. Title 36, Chapter 5, Article 5 and this Article. In order to perform these functions, the regional authority or its contractor must be licensed by the Department.
B. A mental health agency may provide court-ordered treatment pursuant to A.R.S. Title 36, Chapter 5, Article 5, other than through contract with the regional authority, provided that:
1. The mental health agency is licensed by the Department to provide the court-ordered treatment;
2. The mental health agency complies with all applicable requirements under A.R.S. Title 36, Chapter 5, Article 5; and
3. The individual ordered to undergo treatment is not a client of the regional authority.
C. Upon a determination that an individual is a danger to self or others, gravely disabled, or persistently or acutely disabled,

and if no alternatives to court-ordered treatment exist, the medical director of the agency that provided the court-ordered evaluation shall file the appropriate affidavits on Department form MH-112, set forth in Exhibit E, with the court, together with one of the following petitions:

1. A petition for court-ordered treatment for an individual alleged to be gravely disabled, which shall be filed on Department form MH-110, set forth in Exhibit F.
 2. A petition for court-ordered treatment for an individual alleged to be a danger to self or others, which shall be filed on Department form MH-110, set forth in Exhibit F.
 3. A petition for court-ordered treatment for an individual alleged to be persistently or acutely disabled, which shall be filed on Department form MH-110, set forth in Exhibit F.
- D.** Any mental health agency filing a petition for court-ordered treatment of a client pursuant to subsection (A) above shall do

so in consultation with the client's clinical team prior to filing the petition.

- E.** With respect to inpatient and outpatient treatment, the petition filed with the court shall request that the individual be committed to the care and supervision of the regional authority, if the individual is a client, or to an appropriate mental health treatment agency, if the individual is not a client.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-504 renumbered to R9-21-503; new Section R9-21-504 renumbered from R9-21-505 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

5. The conclusion that the person is dangerous or disabled is based on the following: _____

6. The conclusion that all available alternatives have been investigated and deemed inappropriate is based on the following:

Physician's Signature

SUBSCRIBED AND SWORN to before me this _____ day of _____, 19_____.

Notary Public

My Commission Expires: _____

ADHS/BHS Form MH-112 (9/93)

PERSISTENTLY OR ACUTELY DISABLED (EXHIBIT E, ADDENDUM NO. 1)

RE: _____

IF PERSISTENTLY OR ACUTELY DISABLED:

1. Does the person have a severe mental disorder that, if not treated, has a substantial probability of causing the person to suffer or continue to suffer severe and abnormal mental, emotional, or physical harm that significantly impairs judgment, reason, behavior, or capacity to recognize reality?
Yes ___ No ___

If yes, provide the facts that support this conclusion: _____

2. Does the severe mental disorder substantially impair the person's capacity to make an informed decision regarding treatment?
Yes ___ No ___

If yes, provide the facts that support this conclusion: _____

2a. Does this impairment cause the person to be incapable of understanding and expressing an understanding of the advantages and disadvantages of accepting treatment, and understanding and expressing an understanding of the alternatives to the particular treatment offered?
Yes ___ No ___

If yes, provide the facts that support this conclusion: _____

2b. Were the advantages and disadvantages of accepting treatment explained to the person?
Yes ___ No ___

Arizona Health Care Cost Containment System (AHCCCS) - Behavioral Health Services for Persons with Serious Mental Illness

2c. Were the alternatives to treatment and the advantages and disadvantages of such alternatives explained to the person?
Yes ___ No ___

2d. Explain the specific reasons why the person is incapable of understanding and expressing an understanding of the explanations described in 2a, 2b, and 2c:

3. Is there a reasonable prospect that the severe mental disorder is treatable by outpatient, inpatient, or combined inpatient and outpatient treatment?
Yes ___ No ___

If yes, please provide the facts that support this conclusion:

ADHS/BHS Form MH-112 Addendum No. 1 (9/93)

GRAVELY DISABLED (EXHIBIT E, ADDENDUM NO. 2)

RE: _____

IF GRAVELY DISABLED:

1. Is the person's condition evidenced by behavior in which s/he, as a result of a mental disorder, is likely to come to serious physical harm or serious illness because s/he would be unable to provide for his/her basic physical needs without hospitalization?
Yes ___ No ___

2. If Yes, explain how his/her mental disability affects his/her ability to do the following and how any inability might harm him/her. Provide examples, if available, to support your conclusion:

a. Provide for food: _____

b. Provide for clothing and maintain hygiene: _____

c. Provide for shelter: _____

d. Obtain and maintain steady employment: _____

e. Respond in an emergency: _____

f. Care for present or future medical problems: _____

g. Manage money: _____

h. Other:

ADHS/BHS Form MH-112 Addendum No. 2 (9/93)

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Exhibit E repealed, new Exhibit E with Addenda 1 and 2 adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Renumbered from a position after R9-21-505 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

Exhibit F. Petition for Court-ordered Treatment

PETITION FOR COURT-ORDERED TREATMENT
Gravely Disabled Person

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF

In the Matter of)
) MH
)
) PETITION FOR COURT-
) ORDERED TREATMENT
) (Pursuant to A.R.S. § 36-533)
re: Mental Health Services) Danger to Self/Others or
) Persistently or Acutely Disabled or
_____) Gravely Disabled

STATE OF ARIZONA)
) ss
COUNTY OF _____)
_____)

Petitioner _____, being first duly sworn/affirmed, alleges that:
(Medical Director)

- 1. _____ is, as a result of a mental disorder:
[] danger to self [] danger to others
[] persistently or acutely disabled
[] gravely disabled
and in need of treatment.
2. The court-ordered treatment alternatives that are appropriate and available are:
[] outpatient treatment [A.R.S. § 36-540(A)(1)].
[] combined inpatient and outpatient treatment [A.R.S. § 36-540(A)(2)].
[] inpatient treatment [A.R.S. § 36-540(A)(3)] at.
3. The person is unwilling or is unable to accept treatment voluntarily.
4. A summary of the facts supporting the above allegations is in the attached reports of examining physicians.
5. The person is residing or present in this county, or is admitted to an institution pursuant to an order of a court of competent jurisdiction sitting in this county, or who was committed by an Arizona tribal court, which order of commitment was duly domesticated pursuant to A.R.S. § 12-1702 et seq.
6. The person is entitled to notice of hearing of the petition and may be found at _____ (location)
7. Petitioner believes the person requires a:
_____ Title 14 guardian; _____ Conservator; _____ Title 36 guardian
and requests the Court to order an investigation and report to be made to the Court regarding this need. Said need exists because: _____
8. Petitioner believes the proposed person needs the immediate services of a temporary _____ guardian _____ conservator and requests that the Court appoint the same because: _____

Arizona Health Care Cost Containment System (AHCCCS) - Behavioral Health Services for Persons with Serious Mental Illness

- 9. Petitioner believes that _____ address: _____, is the person's guardian/conservator, who should receive notice of any hearing.
- 10. A copy of this Petition has been mailed to the Public Fiduciary of _____ County and (other guardian, if any) _____

PETITIONER requests that the Court:

- 1. Set a date for a hearing; and
- 2. After notice and hearing find that the person is suffering from a mental disorder the result of which renders him/her dangerous to self or others, persistently or acutely disabled, or gravely disabled and order a period of treatment, all as set forth in paragraphs (1) and (2) above.
- 3. Check if applicable;
 - Order an independent investigation and report to the Court regarding the need for a Title 14 guardian or conservator or Title 36 guardian.
 - Appoint the following-named person as temporary guardian and/or conservator of the person, who Petitioner believes to be a fit and proper person to serve in that capacity:

_____ (Proposed Temporary Guardian/Conservator) _____ (Relation to Patient)

_____ (Address of Proposed Temporary Guardian/Conservator)

- Impose the duties of a Title 36 guardian upon the person's A.R.S. Title 14 guardian who is _____

_____ DATE _____ Signature of Petitioner
Medical Director

SUBSCRIBED AND SWORN to before me this _____ day of _____, 19_____.

NOTARY PUBLIC OR DEPUTY CLERK OF THE SUPERIOR COURT

My Commission Expires:

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Exhibit F repealed, new Exhibit F adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Renumbered from a position after R9-21-505 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-505. Coordination of Court-ordered Treatment Plans with ISPs and ITDPs

- A.** All inpatient and outpatient treatment plans prepared for clients according to A.R.S. §§ 36-533, 36-540 and 36-540.01, and any modifications to the treatment plans, shall be developed and implemented according to the individual service planning procedures in Article 3 of this Chapter, including the right of the client to request different services and to appeal the treatment plan.
- B.** If a client's ISP or ITDP is inconsistent with an inpatient or outpatient treatment plan ordered by the court, the mental health agency or regional authority, whichever is appropriate, shall recommend to the court that the court-ordered plan be amended so that it is consistent with the client's ISP or ITDP.
- C.** If, during the period a client is on outpatient status, an emergency occurs that satisfies the standards for emergency admission under A.R.S. §§ 36-524 and 36-526, and that requires immediate revocation or modification of an outpatient order, a modification may be submitted to the court in consultation with the client's clinical team without complying with the individual service planning procedures, provided that the client and clinical team subsequently review any such modification according to the individual service planning procedures in Article 3 of this Chapter.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Former Section R9-21-505 renumbered to R9-21-504; new Section R9-21-505 renumbered from R9-21-506 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-506. Review of Court-ordered Individual

- A.** The mental health treatment agency that provides care for an individual ordered by a court to undergo treatment shall:
1. Assure that an examination and review of a court-ordered individual is accomplished in an effective and timely fashion, but not less than 30 days prior to expiration of any treatment portion of the order.
 2. Require written documentation of the examination and review.
 3. Maintain a special record that shall include:
 - a. The expiration date of any treatment portion of the court-ordered treatment; and
 - b. The date by which the review and examination must be initiated.
 4. Establish specific dates by which the review and examination will be accomplished.
 5. Conduct the review and examination by the specified dates.
- B.** In addition to subsection (A), the examination and review process for court-ordered clients shall, at a minimum, include the following:
1. The client's clinical team shall hold an ISP meeting pursuant to R9-21-307, not less than 30 days prior to the expiration of any treatment portion of the court order, which shall include the treatment team of the treatment agency providing behavioral health services under the court order. The ISP meeting shall include a determination by the clinical team of:
 - a. Whether the client continues to be a danger to others, a danger to self, gravely disabled, or persistently or acutely disabled;
 - b. That no alternatives to court-ordered treatment are appropriate; and
 - c. Whether court-ordered treatment should continue.
 2. If, upon conclusion of the ISP meeting, the clinical team determines that the client:
 - a. Continues to be a danger to others, a danger to self, gravely disabled, or persistently or acutely disabled;
 - b. That no alternatives to court-ordered treatment are appropriate; and
 - c. That court-ordered treatment should continue, the medical director of the mental health treatment agency providing care for the client committed by court order shall appoint two physicians (one of whom must be a psychiatrist) and the mental health worker assigned to the case to conduct an examination to determine whether the client continues to be a danger to others, a danger to self, gravely disabled, or persistently or acutely disabled.
 3. After such examination, the examining physicians shall enter a note in the progress sheet of the medical record stating the findings, decision, and the basis for that decision.
 4. If the medical finding is that the client continues to be a danger to self, a danger to others, gravely disabled, or persistently or acutely disabled, and if no alternatives to court-ordered treatment exist, the mental health treatment agency shall file a petition and affidavit(s) as provided in R9-21-505.
- C.** In addition to subsection (A), the examination and review process for non-clients shall, at a minimum, include the following:
1. A person designated by the mental health agency providing treatment shall notify the medical director of the agency in writing of the expiration date 30 days prior to expiration of the court-ordered treatment.
 2. The medical director shall within five days notify one or more physicians (at least one of whom must be a psychiatrist) and the mental health worker assigned to the case of the expiration date of the court-ordered treatment and appoint them to determine whether the non-client continues to be a danger to others, a danger to self, gravely disabled, or persistently or acutely disabled.
 3. After such examination, the examining physician(s) shall enter a note in the progress sheet of the medical record stating the findings, decision, and the basis for that decision.
 4. If the medical finding is that the non-client continues to be a danger to self, a danger to others, gravely disabled, or persistently or acutely disabled, and if no alternatives to court-ordered treatment exist, the mental health treatment agency shall file a petition and affidavits as provided in R9-21-505.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-506 renumbered to R9-21-505; new Section R9-21-506 renumbered from R9-21-507 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-507. Transfers of Court-ordered Persons

- A.** For the purpose of this Section, “non-client” means an individual who is seriously mentally ill but is not currently being evaluated or treated for a mental disorder by or through a regional authority.
- B.** An individual ordered by the court to undergo treatment and without a guardian may be transferred from a mental health agency to another mental health agency, provided that the medical director of the mental health agency initiating the transfer has established that:
1. There is no reason to believe the individual will suffer more serious physical harm or serious illness as a result of the transfer; and
 2. The individual is being transferred to a level and kind of treatment more appropriate to the individual’s treatment needs and has been accepted for transfer by the medical director of the receiving mental health agency pursuant to subsection (D).
- C.** The medical director of the mental health agency initiating the transfer shall:
1. Be the medical director of the mental health agency to which the court committed the individual; or
 2. Obtain the court’s consent to the transfer as necessary.
- D.** All clients shall be transferred according to the procedures in Article 3 of this Chapter. With regard to non-clients, the medical director of the mental health agency initiating the transfer may not transfer a non-client to, or use the services of, any other mental health agency, unless the medical director of the other mental health agency has agreed to provide such services to a non-client to be transferred, and the Department has licensed and approved the mental health agency to provide those services.
- E.** The medical director of the mental health agency initiating the transfer shall notify the receiving mental health agency in sufficient time for the intended transfer to be accomplished in an orderly fashion, but not less than three days. This notification shall include:
1. A summary of the individual’s needs.
 2. A statement that, in the medical director’s judgment, the receiving mental health agency can adequately meet the individual’s needs.
 3. If the individual is a client, a modification of a client’s ISP according to R9-21-314, when applicable.
 4. Documentation of the court’s consent, when applicable.
- F.** The medical director of the transferring mental health agency shall present a written compilation of the individual’s clinical needs and suggestions for future care to the medical director of the receiving mental health agency, who shall accept and approve it before an individual can be transferred according to subsection (B).
- G.** The transportation of individuals transferred from one mental health agency to another shall be the responsibility of the mental health agency initiating the transfer, irrespective of the allocation of the cost of the transportation defined elsewhere.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-507 renumbered to R9-21-506; new Section R9-21-507 renumbered from R9-21-508 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-508. Requests for Notification

- A.** At any time during a specified period of court-ordered treatment in which an individual has been found to be a danger to others, a relative or victim wishing to be notified in the event of a individual being released prior to the expiration of the period of court-ordered treatment shall file a demand, according to A.R.S. § 36-541.01(D), on Department form MH-127 in Exhibit G.
- B.** At any time during a specified period of court-ordered treatment in which an individual has been found to be a danger to others, a person other than a relative or victim wishing to be notified in the event of an individual being released prior to the expiration of the period of court-ordered treatment shall file a petition and form of order, to A.R.S. § 36-541.01(D) on Department form MH-128 in Exhibit H.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 530, effective January 29, 2003 (Supp. 03-1). Former Section R9-21-508 renumbered to R9-21-507; new Section R9-21-508 renumbered from R9-21-509 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

Exhibit G Demand for Notice by Relative or Victim

DEMAND FOR NOTICE BY RELATIVE OR VICTIM (Pursuant to A.R.S. § 36-541.01)

REGARDING: _____ (Full Name of Patient)

Pursuant to A.R.S. § 36-541.01, with respect to the above-named patient, a person who was ordered to undergo treatment for a mental disorder as a danger to others pursuant to A.R.S. § 36-540 by a court order of the Superior Court of _____ County, Case Number _____, or who was committed by an Arizona tribal court, which order of commitment was duly domesticated pursuant to A.R.S. §§ 12-1702 et seq., the undersigned _____ relative _____ victim does hereby demand that the medical director of _____, the mental health treatment agency providing court-ordered treatment for said person, provide the undersigned with written notice of intention to release or discharge said person prior to the expiration of the period for treatment ordered by the Court, as provided for in A.R.S. § 36-541.01(D).

The undersigned person demanding notice hereby agrees to advise the treatment agency in writing, by certified mail, return receipt requested, of any change in the address to which notice is to be mailed.

Signature of Applicant

Printed or Typed Name of Applicant

Date

Address to Mail Notice

Telephone Number of Applicant

ADHS/BHS Form MH-127 (9/93)

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Exhibit G repealed and a new Exhibit G adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Renumbered from a position after R9-21-509 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

Exhibit H. Petition for Notice

PETITION FOR NOTICE

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF _____

In the matter of)
) MH _____
)
) PETITION FOR NOTICE
)
) (Pursuant to A.R.S. § 36-541.01)
 re: Mental Health Services)
)
 _____)

REGARDING: _____
(Full Name of Patient)

Pursuant to A.R.S. § 36-541.01, with respect to the above-named patient, a person who was ordered to undergo treatment for a mental disorder as a danger to others pursuant to A.R.S. § 36-540 by a court order of the Superior Court of _____ County, Case Number _____, the undersigned, a person other than a relative or victim of the person hereby asserting a legitimate reason for receiving such notice, does hereby petition the Court to require that the medical director of _____, the mental health treatment agency providing court-ordered treatment for said person, provide the undersigned with written notice of intention to release or discharge said person prior to the expiration of the period for treatment ordered by the Court, as provided for in A.R.S. § 36-541.01, and does hereby provide the following information required by A.R.S. § 36-541.01(D):

Legitimate reason for receiving notice: _____

The undersigned person demanding notice hereby agrees to advise the treatment agency in writing, by certified mail, return receipt requested, of any change in the address to which notice is to be mailed.

Signature of Person Petitioning

Printed or Typed Name of Petitioner

Date

Address to Send Notice

Telephone Number of Applicant

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF _____

In the Matter of)
) MH
)
) ORDER FOR NOTICE
)
)
 re: Mental Health Services)
)
)
)

1. The Court having received a demand by _____, a relative or victim of _____, a patient ordered by the Court to undergo treatment for a mental disorder as a danger to others, for written notice from the medical director of _____, the mental health treatment agency providing court-ordered treatment for said patient, of intention to release or discharge said patient prior to the expiration of the period ordered by the Court, as provided for in A.R.S. § 36-541.01, which demand included all information required by A.R.S. § 36-541.01(D);
2. The Court having received a petition by _____, a person other than a relative or victim of _____, a patient ordered by this Court to undergo treatment for a mental disorder as a danger to others, asserting that the petitioner has a legitimate reason for receiving such notice and petitioning the Court to require that the medical director of _____, the mental health treatment agency providing court-ordered treatment for said patient, provide the petitioner with written notice of intention to release or discharge said patient prior to the expiration of the period for treatment ordered by the Court, as provided for in A.R.S. § 36-541.01, which petition included all information required by A.R.S. § 36-541.01(D); and the Court, after considering said petition, having found that the petitioner has a legitimate reason for receiving prior notice.

THEREFORE IT IS ORDERED that the medical director of _____, a mental health treatment agency, shall not release or discharge the above-named patient from court-ordered inpatient treatment without first giving written notice of the intention to do so, in accordance with A.R.S. § 36-541.01(F), to:

- _____ The above-named relative of the patient
- _____ The above-named victim of the patient
- _____ The above-named petitioner found by the Court to have a legitimate reason for receiving prior notice.

IT IS FURTHER ORDERED that a copy of this Order for Notice shall be delivered to the above-named mental health treatment agency and shall be filed with the patient’s clinical record, and if the patient is transferred to another agency or institution, any orders for notice shall be transferred with the patient.

DATED this _____ day of _____, 19 _____

 SUPERIOR COURT JUDGE/COMMISSIONER

ADHS/BHS Form MH-128 (9/93)

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Exhibit H repealed, new Exhibit H adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Renumbered from a position after R9-21-509 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-509. Voluntary Admission for Treatment

- A.** Application for admission for voluntary treatment according to A.R.S. § 36-518 shall be made to a mental health agency on Department form MH-210, Titled "Application for Voluntary Treatment," in Exhibit I, by any individual who:
1. Voluntarily makes application as provided in subsection (A);
 2. Gives informed consent;
 3. Has not been adjudicated as an incapacitated person according to A.R.S. Title 14, Chapter 5, or Title 36, Chapter 5; and
 4. If a minor, is appropriately admitted according to A.R.S. § 36-518.
- B.** Any mental health agency that is not a regional authority under R9-21-501 and that receives an application for voluntary treatment by a client shall immediately refer the client to the appropriate regional authority for treatment as provided under this rule, except that in the case of an emergency, a mental health treatment agency licensed by the Department to provide treatment under A.R.S. § 36-518 may accept an application for voluntary treatment and admit the client for treatment as follows:
1. Prior to admission of a client under this rule, the agency shall notify the appropriate regional authority of the potential admission and treatment so that the regional authority may first:
 - a. Provide other services or treatment to the client as an alternative; or
 - b. Authorize treatment of the client.
2. If the agency does not provide notice according to subsection (B)(1) above, the regional authority shall not be obligated to pay for the treatment provided.
- C.** Any mental health agency providing treatment according to A.R.S. § 36-518 shall place in the medical record of the individual to be treated the following:
1. A completed copy of the application for voluntary treatment;
 2. A completed informed consent form according to R9-21-511; and
 3. A written statement of the individual's present mental condition.
- D.** If the client admitted under this rule does not have an ISP, the regional authority shall prepare one in accordance with Article 3 of this Chapter. If the client already has an ISP, the regional authority shall commence a review of the ISP as provided in R9-21-313 and, if necessary, take steps to modify the ISP in accordance with R9-21-314.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Former Section R9-21-509 renumbered to R9-21-508; new Section R9-21-509 renumbered from R9-21-510 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

Exhibit I. Application for Voluntary Treatment

APPLICATION FOR VOLUNTARY TREATMENT

(Pursuant to A.R.S. § 36-518)

I, _____, hereby request that the
(Person's Name)
_____ place me in a program or agency for mental health treatment.
(Mental Health Agency)

I understand that my capacity to give informed consent to treatment will be determined before I am allowed to voluntarily consent to treatment. My informed consent to treatment will be given on a separate form.

Further, I am aware that I am entitled to:

- 1. Withdraw or modify my consent to treatment at any time.
2. Receive a booklet explaining my rights under Arizona law and assistance from a human rights advocate if I desire.
3. A fair explanation of the treatment I am to receive and the purposes of that treatment.
4. A description of any material and substantial risk reasonably to be expected as a result of the treatment.
5. An answer to my inquiries concerning treatment.
6. Revoke my consent to treatment at any time.
7. Discharge within 24 hours of my written request (excluding weekends and holidays) unless the medical director of the treatment agency files a petition for court-ordered treatment.

Person's Signature

Date

ADHS/BHS Form MH-210 (9/93)

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Exhibit I repealed, new Exhibit I adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Renumbered from a position after R9-21-510 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-510. Informed Consent in Voluntary Application for Admission and Treatment

- A.** Prior to beginning any course of medication or other treatment for an individual who is subject to voluntary admission under A.R.S. §§ 36-518 and 36-522, a mental health agency shall obtain an informed consent to treatment and enter it in the medical record. For all clients, the informed consent shall be obtained according to R9-21-206.01.
- B.** For clients, the mental health agency shall make reasonable inquiry into an individual's capacity to give informed consent, record these findings, and enter these findings in the client's ISP or record pursuant to Articles 2 and 3 of this Chapter. For non-clients, the agency shall adopt admission procedures that shall include the following:
1. The medical director or the medical director's designee shall make reasonable inquiry into an individual's capacity to give informed consent.
 2. The medical director or the medical director's designee shall record his findings regarding the individual's capacity to give and of having given informed consent.
 3. That the findings of the medical director or the medical director's designee shall be entered into the individual's record.
- C.** Informed consent to treatment may be revoked at any time by a reasonably clear statement in writing.
1. An individual shall receive assistance in writing the revocation as necessary.
 2. If informed consent to treatment is revoked, treatment shall be promptly discontinued, provided that a course of treatment may be concluded or phased out where necessary to avoid the harmful effects of abrupt withdrawal.
- D.** An informed consent form shall be signed by the individual and shall state that the following information was presented to the individual:
1. A fair explanation of the treatments and their purposes.
 2. A description of any material and substantive risk reasonably to be expected.
 3. An offer to answer any inquiries concerning the treatments.
 4. Notice that the individual is free to revoke informed consent to treatment; and
 5. For clients, all information required by R9-21-206.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Former Section R9-21-510 renumbered to R9-21-509; new Section R9-21-510 renumbered from R9-21-511 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

Exhibit J. Repealed**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4).

Exhibit K. Repealed**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective

October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4).

R9-21-511. Use of Psychotropic Medication

- A.** Psychotropic medications may only be ordered for individuals undergoing court-ordered evaluation according to R9-21-204 or R9-21-207.
- B.** Psychotropic medications may not be ordered for and administered to individuals undergoing court-ordered treatment, except as follows:
1. In an emergency involving the safety of the individual or another, as documented in the individual's medical record;
 2. If the individual or guardian gives an informed consent to use the medication;
 3. If provision for use of the medications shall be contained in the individual's treatment plan or ISP. At a minimum, the plan shall specify:
 - a. A description of the circumstances under which the medication may be used.
 - b. A description of the objectives that are expected to be achieved by use of the medication. This description must indicate how the individual's condition would be improved by using the medication and indicate what result would be expected if the medication were not used; or
 4. According to R9-21-204 or R9-21-207.
- C.** The agency shall have the capability to detect drug side effects or toxic reactions that may result from the medications used.
- D.** The agency shall have written policies and procedures governing the use of psychotropic medication. These policies and procedures shall specify:
1. Protective measures that will ensure the individual's safety and promote the avoidance or mitigation of short and long-term deleterious effects on the individual.
 2. Periodic individual care monitoring, i.e., evaluating and updating the treatment plan and reviewing problem areas such as failure of the individual to achieve treatment plan objectives.
 3. Recordkeeping requirements.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-511 renumbered to R9-21-510; new Section R9-21-511 renumbered from R9-21-512 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-512. Seclusion and Restraint

Individuals undergoing court-ordered evaluation or court-ordered treatment shall not be placed in seclusion or restraint except as permitted by Article 2 of this Chapter, and specifically R9-21-204.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-512 renumbered to R9-21-511; new Section R9-21-512 renumbered from R9-21-513 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-513. Renumbered

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary

of State October 14, 1992 (Supp. 92-4). Renumbered to R9-21-512 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

36-502. Powers and duties of the director of AHCCCS; rules; expenditure limitation

A. The director shall make rules that include standards for agencies other than the state hospital when providing services and shall prescribe forms as may be necessary for the proper administration and enforcement of this chapter. The rules shall be applicable to patients admitted to or treated in agencies, other than the state hospital, as set forth in this chapter and shall provide for periodic inspections of such agencies.

B. The director shall make rules concerning the admission of patients and the transfer of patients between mental health treatment agencies other than the state hospital. A patient undergoing court-ordered treatment may be transferred from one mental health treatment agency to another in accordance with the rules of the director, subject to the approval of the court.

C. The director may make rules concerning leaves, visits and absences of patients from evaluation agencies and mental health treatment agencies other than the state hospital.

D. The total amount of state monies that may be spent in any fiscal year by the administration for mental health services pursuant to this chapter may not exceed the amount appropriated or authorized by section 35-173 for that purpose. This chapter does not impose a duty on an officer, agent or employee of this state to discharge a responsibility or 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.

INDUSTRIAL COMMISSION OF ARIZONA (F19-0602)

Title 20, Chapter 5, Article 7, Self-Insurance Requirements for Workers' Compensation Pools Organized under A.R.S. § 23-961.01



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 4, 2019

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

FROM: Council Staff

DATE: May 6, 2019

SUBJECT: INDUSTRIAL COMMISSION OF ARIZONA (ICA)
Title 20, Chapter 5, Article 7, Self-Insurance Requirements for Workers' Compensation Pools Organized under A.R.S. § 23-961.01

This five year review report (5YRR) from the Industrial Commission of Arizona ("Commission") relates to all Sections of Title 20, Chapter 5, Article 7, Self-Insurance Requirements for Workers' Compensation Pools Organized under A.R.S. § 23-961.01. In 1997, the Arizona Legislature added "self-insurance pools" as a mechanism for securing workers' compensation. Specifically, A.R.S. § 23-961.01(A) permits two or more employers who are engaged in similar industries to form a workers' compensation pool to provide for the direct payment and administration of workers' compensation claims. Title 20, Chapter 5, Article 7, initially adopted in 1998, contains rules concerning self-insurance requirements for employer workers' compensation pools organized under A.R.S. § 23-961.01(A).

In its previous 5YRR for these rules in 2014, the Commission anticipated amending rules R20-5-706 through R20-5-708, R20-5-710, R20-5-711, R20-5-713, R20-5-717 through R20-5-721, R20-5-726, R20-5-728 through R20-5-730, and R20-5-739 after completion of Article 2 amendments to maintain consistency. However, at that time, there had been no applications for self-insured pools utilizing Article 7 since its inception. As such, the proposed rulemaking was a low priority.

The Commission did conduct one rulemaking amending R20-5-715, which was approved by this Council in September 2016, to require an employer pool maintain aggregate and specific

excess insurance policies and specify policy and retention amounts. This was an attempt by the Commission to reduce the cost to employers seeking to form workers' compensation pools.

The Commission indicates that there still have been no applications for authority to self-insure an employer pool under A.R.S. § 23-961.01 since the rules became effective in 1998.

Proposed Action

The Commission plans to complete a study as to why employers have not availed themselves of the opportunity to form workers' compensation pools under Article 7. Once the Commission has a better understanding of the actual burdens and impediments that prevent employers from forming workers' compensation pools, the Commission intends to initiate a rulemaking to amend the rules in Article 7 by December 2021, as outlined in more detail below. The Commission indicates this should provide approximately 18 months for an internal study related to the rules and 18 months for rulemaking.

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

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

2. Summary of the agency's economic impact comparison and identification of stakeholders:

Stakeholders include the Commission, employers that wish to join a workers' compensation pool, and employee associations that form a workers' compensation pool. The Commission indicates that rules in Article 7 have not been effective in encouraging the creation of employer self-insurance pools. No comparison of actual versus predicted economic impact is available. The Commission plans to study the reasons why employers have not availed themselves of the opportunity to form pools for the purpose of self-insurance under Article 7.

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

The Commission believes that the current rules may be an impediment to achieving the Legislature's objectives in A.R.S. § 23-961.01: increased competition in the workers' compensation market, motivation for loss control, employer-tailored safety programs, and long-term reduction in the costs associated with workers' compensation insurance. The Commission has identified various potential impediments that may be inhibiting the use of Article 7 by employer groups. Once the Commission has a better understanding of the actual burdens and impediments that prevent employers from forming workers' compensation pools, the Commission plans to make or amend rules that will streamline the rules in Article 7. To the extent that the existing rules create any adverse economic impact beyond that imposed by A.R.S. §§ 23-961 or 23-961.01, the Commission anticipates that the amendments will reduce the burden on employers by aligning Article 7 with current Arizona statutes and providing clarifications that reduce uncertainty for Arizona employers and employees.

4. Has the agency received any written criticisms of the rules over the last five years?

The Commission has not received any written criticism of the rules within the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?

Yes. The Commission indicates that the rules are mostly clear, concise, understandable, consistent, and effective except as outlined below:

- **R20-5-704** - The rule is not clear because it uses the term "self-insurer." The term should be "self-insured employer pool."
- **R20-5-735** - The rules should be amended to be consistent with a similar rule, R20-5-1129, in Article 11.
- **R20-5-736** - The rule should be amended to be consistent with a similar rule, R20-5-1130, in Article 11.
- **R20-5-738** - The rules should be amended to be consistent with a similar rule R20-5-1132, in Article 11.
- **R20-5-739** - The rule should be amended to be consistent with a similar rule, R20-5-1133, in Article 11.

The Commission notes that employer self-insurance pools are rarely formed. For this reason, the Commission believes that the current rules may be an impediment to achieving the Legislature's objectives in A.R.S. § 23-961.01, namely increased competition in the workers' compensation insurance market, motivation for loss control, employer-tailored safety programs, and long-term reduction in the costs associated with workers' compensation insurance. The Commission indicates that this determination is based on the Commission's experience using the rules, as opposed to data kept on the issue of effectiveness.

The Commission believes it appropriate to reexamine Article 7 to find appropriate ways to encourage small employers to form self-insurance pools as a potentially less costly workers' compensation insurance alternative.

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

The Commission indicates that it has not had the opportunity to enforce Article 7 because there have been no applications for authority to self-insure an employer pool under A.R.S. § 23-961.01 since the rules became effective in 1998.

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

There is no corresponding federal law.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rules were adopted in 1998. R20-5-715 was amended in 2016, but does not require issuing a regulatory permit, license, or agency authorization.

9. **Conclusion**

The rules are mostly clear, concise, understandable, consistent, and effective. However, the Commission has not had an opportunity to enforce the rules as no applications have been received since the rules became effective. As indicated above, the Commission proposes to conduct a study as to why employers have not availed themselves of the opportunity to form workers' compensation pools under Article 7. Once the Commission has a better understanding of the actual burdens and impediments that prevent employers from forming workers' compensation pools, the Commission intends to initiate a rulemaking to amend the rules in Article 7 by December 2021. Council staff recommends approval of this report.

**THE INDUSTRIAL COMMISSION OF ARIZONA
OFFICE OF THE DIRECTOR**



DALE L. SCHULTZ, CHAIRMAN
JOSEPH M. HENNELLY, JR., VICE CHAIR
SCOTT P. LEMARR, MEMBER
STEVEN J. KRENZEL, MEMBER

P.O. Box 19070
Phoenix, Arizona 85005-9070

JAMES ASHLEY, DIRECTOR
PHONE: (602) 542-4411
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January 23, 2019

Sent via e-mail to grrc@azdoa.gov
Nicole Sornsins, Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

Re: A.A.C. Title 20, Chapter 5, Article 7, Five-year Review Report

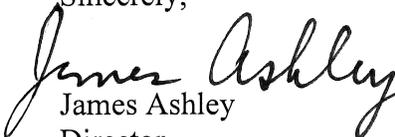
Dear Ms. Sornsins:

The Industrial Commission of Arizona (the "Commission"), submits for approval by the Governor's Regulatory Review Council (the "Council") the attached Five-year Review Report on 20 A.A.C. 5, Article 7. The Commission has timely filed this report on or before Monday, January 28, 2019, after receiving a 120-day extension from the Council.

An electronic copy of this cover letter, the report, the rules being reviewed [existing rules and a rule recently amended], the general and specific statutes authorizing the rules, and economic impact statements from 1998 and 2016 are concurrently submitted by e-mail to Christopher Klemminich. The Commission believes that the report complies with the requirements of A.R.S. § 41-1056.

The Commission has reviewed all rules in Article 7 and has complied with A.R.S. § 41-1091, which requires the Commission to annually publish a directory summarizing the subject matter of all currently applicable rules and substantive policy statements, by posting directories of its current rules and substantive policy statements on the Commission's website, as required by A.R.S. § 41-1091.01(1) & (2). Should you have any questions concerning the report, please contact Chief Counsel Gaetano Testini at (602) 542-5905 or Attorney Scott J. Cooley at (602) 542-6905.

Sincerely,


James Ashley
Director

SJC/kh
Enclosure

FIVE-YEAR-REVIEW REPORT
TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA
ARTICLE 7. SELF-INSURANCE REQUIREMENTS FOR WORKERS'
COMPENSATION POOLS ORGANIZED UNDER A.R.S. § 23-961.01

FIVE-YEAR-REVIEW REPORT
TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA
ARTICLE 7. SELF-INSURANCE REQUIREMENTS FOR WORKERS'
COMPENSATION POOLS ORGANIZED UNDER A.R.S. § 23-961.01

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FIVE-YEAR REVIEW SUMMARY

The Industrial Commission of Arizona (the “Commission”) was created in 1925 as a result of legislation implementing the constitutional provisions establishing a workers’ compensation system. From 1925 to 1969, the workers’ compensation system consisted of the State Compensation Fund, which was then a part of the Commission, and self-insured employers which generally comprised the mining and the railroad companies. In 1969, the workers’ compensation system reorganized and expanded to include private insurance companies. The State Compensation Fund was split off from the Commission and established as a separate agency responsible for providing workers’ compensation insurance coverage. The Commission retained both its responsibility as the file of record and its authority over the processing of workers’ compensation claims. Since that time, the role of the Commission has grown to include other labor-related issues such as occupational safety and health, youth employment laws, resolution of wage-related disputes, minimum wage, vocational rehabilitation, workers’ compensation coverage for claimants of uninsured employers, and self-insured employers.

Certification Regarding Compliance with A.R.S. § 41-1091

In the cover letter for this report, the Commission’s Director certifies that the Commission has complied with A.R.S. § 41-1091 by posting directories of its currently applicable rules and substantive policy statements on the Commission’s website, as required by A.R.S. § 23-1091.01(1) & (2).

About Article 7

Until 1997, Arizona law mandated that employers “secure workers’ compensation to their employees” by either: (1) acquiring insurance from a carrier licensed to write workers’ compensation insurance in the state or (2) obtaining authorization from the Industrial Commission of Arizona (Commission) to self-insure. *See* A.R.S. § 23-961(A). In 1997, the Arizona Legislature added “self-insurance pools” as a third mechanism for securing workers’ compensation. *See* A.R.S. §§ 23-961(A), 23-961.01. Specifically, A.R.S. § 23-961.01(A) permits two or more employers who are engaged in similar industries to form a workers’ compensation pool to provide for the direct payment and administration of workers’ compensation claims.

Title 20, Chapter 5, Article 7 of the Arizona Administrative Code contains rules concerning self-insurance requirements for employer workers' compensation pools organized under A.R.S. § 23-961.01(A). The rules have been in effect since September 9, 1998, and were promulgated to allow groups of individual companies and organizations to pool resources for the purpose of self-insurance in the area of workers' compensation (A.R.S. § 23-961.01, which addresses self-insurance pools, was added by Laws 1997, Ch. 194, group self-insurance; workers' compensation, effective July 21, 1997). A.R.S. § 23-961.01, the primary governing statute, has been amended only once in 1999 to remove an exemption from general laws relating to nonprofit corporations and make non-substantive amendments to the statute. A.R.S. § 23-961.01(B) provides broad authority for the Commission to "adopt rules necessary to carry out the purposes of this section." A.R.S. § 23-961.01(F) requires rules for the specific purpose of "safeguarding the solvency of pools and guaranteeing that injured workers receive [workers' compensation] benefits as required under this chapter [A.R.S. Title 23, Chapter 6]."

Rulemaking Related to R20-5-715 in 2016

The Commission has conducted one rulemaking since the original adoption of Article 7 in 1998, amending R20-5-715 in 2016. The 2016 amendments allow self-insurance pools to acquire necessary excess coverage more easily and in a cost-effective manner. In lieu of the previous maximum specific retention amount of \$250,000, the 2016 amendments authorize a range of specific retention amounts from \$100,000 up to \$1,250,000. In lieu of the previous maximum aggregate retention amount of "110% of collected premiums," the 2016 amendments authorize a maximum aggregate retention amount of "150% of collected premiums." And in lieu of the previous minimum aggregate excess coverage limit of \$5,000,000, the 2016 amendments authorize a minimum aggregate excess coverage amount of \$1,000,000. Finally, the 2016 amendments give the Commission flexibility to approve deviations from the authorized specific retention range where a self-insurance pool can demonstrate sufficient financial security and loss control procedures to justify a higher specific retention, consistent with the approval process contemplated in A.R.S. §§ 23-961(A)(2) and 23-961.01(B). Through the 2016 amendments, the Commission has sought to ease the regulatory burden on employers who may be interested in forming self-insurance pools by authorizing excess insurance products that are more accessible in the current insurance market and that are not cost prohibitive.

FIVE-YEAR-REVIEW REPORT
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1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.

The rules in Article 7 have general and specific authorization under A.R.S. §§ 23-107(A)(1); 23-108.03(B)(1); 23-961(G), and 23-961.01(B) & (F).

Pursuant to A.R.S. § 23-107(A)(1), the Commission “has full power, jurisdiction, and authority to formulate and adopt rules . . . for effecting the purposes of [A.R.S. Title 23, Chapter 1, Article 1].” A.R.S. § 23-108.03(B)(1) provides that “[a]ny powers and duties prescribed by law to the commission in [A.R.S. Title 23, Chapters 1, 2 and 6]” may, with certain exceptions (including rulemaking), “be delegated . . . to the director or any of its department heads or assistants.”

A.R.S. § 23-961(G) provides that every “self-insured employer, including workers’ compensation pools, on or before March 31 of each year shall pay a tax of not more than three percent of the premiums that would have been paid . . . during the preceding calendar year.” A.R.S. § 23-1065(A) provides that the Commission may direct payment into the state treasury of not to exceed one percent of the premiums received by private insurance carriers during the immediately preceding calendar year. Finally, under A.R.S. § 23-1065(F), the Commission is permitted to levy an additional assessment of up to a half percent of the premiums, if the apportionment annual reserved liabilities exceed six million dollars. Under A.R.S. § 23-961(G), the Commission has authority to “adopt rules that specify the premium plans and methods to be used for the calculation of rates and premiums and that shall be the basis for the taxes assessed to self-insured employers.”

A.R.S. § 23-961.01(B) provides the Commission with broad authority to “adopt rules as necessary to carry out the purposes of this section.” With respect to rules related to safeguarding the solvency

of pools and guaranteeing that injured workers receive workers' compensation benefits under Title 23, Chapter 6, A.R.S. § 23-961.01(F) specifies that the rules must "include at a minimum, matters pertaining to classification and rating, loss reserves, investments, financial security including minimum and combined premiums, combined net worth and other indicia necessary for protection from insolvency, specific and aggregate excess insurance, group homogeneity and assessments necessary for participation in and administration of the workers' compensation system."

2. Objective of the rules, including the purposes for the existence of the rules.

The Commission's overarching objectives regarding Article 7, in no particular order with respect to priority, are to: (1) simplify the existing procedural framework for the Commission to authorize groups of employers to pool their resources for the purpose of payment and administration of workers' compensation claims directly, through self-insurance; (2) reduce regulatory burden imposed on employers to attain the objectives of A.R.S. § 23-961.01, which included facilitation of competition, loss control, and an employer-tailored safety program; (3) provide small employers with the same opportunity for a long-term reduction in the costs for workers' compensation insurance experienced by large self-insured employers; and (4) achieve the regulatory objectives prescribed in A.R.S. § 23-961.01, such as safeguarding the solvency of pools and guaranteeing that injured workers receive workers' compensation benefits.

R20-5-701. Definitions

R20-5-701 Defines relevant terms used in Article 7 and the statutes governing self-insurance pools (to the extent terms are not already clearly defined by statute).

R20-5-702. Computation of Time

R20-5-702 Provides the process for computing time for events in Article 7.

R20-5-703. Forms Prescribed by the Commission

R20-5-703 Identifies the information that is required for completing the various forms the Commission requires for the establishment of a workers' compensation pool.

- R20-5-704. Requirement for Commission Approval to Act as Self-insurer
- R20-5-704 Addresses the approval and certificate of authority that is necessary before an employer pool may act as a self-insurer.
- R20-5-705. Duration of Certificate of Authority
- R20-5-705 Specifies the renewal period for a pool’s authority to be self-insured and provides that the Commission may approve or deny renewal of a certificate of authority.
- R20-5-706. Time-frames for Processing Initial and Renewal Application for Authority to Self-insure
- R20-5-706 Sets time frames the Commission uses in reviewing initial and renewal applications for authority to self-insure, establishing reasonable time parameters for these application processes.
- R20-5-707. Filing Requirements for Initial Application for Self-insurance License
- R20-5-707 Establishes the required documentation necessary for the Commission to analyze an initial application for self-insurance authority.
- R20-5-708. Filing Requirements for Renewal Application for Self-insurance License
- R20-5-708 Establishes the required documentation necessary to process an application for renewal of self-insurance authority.
- R20-5-709. Combined Net Worth
- R20-5-709 Specifies the required combined net worth of an employer pool at the time of the initial application to self-insure.
- R20-5-710. Similar Industry Requirement
- R20-5-710 Specifies how the Commission will determine whether employers joining together to form a self-insurance pool under A.R.S. § 23-961.01 are “similar industries.”

- R20-5-711. Joint and Several Liability of Members
R20-5-711 Clarifies the joint and several liability of the members of the pool and provides requirements for ensuring joint and several liability.
- R20-5-712. Fidelity Policy
R20-5-712 Specifies the requirements related to a fidelity policy to protect the pool from the actions of individuals on the pool's board of trustees, the pool's administrator, and individual employees of the pool, including the minimum amount of coverage.
- R20-5-713. Guaranty Bond
R20-5-713 Requires each pool to obtain and maintain a guaranty bond while self-insured, sets forth the amount of the bond, and establishes other requirements for issuance of the bond for financial security purposes.
- R20-5-714. Securities Deposited with the Arizona State Treasurer
R20-5-714 Establishes a procedure for depositing securities with the Arizona State Treasurer ("Treasurer") in lieu of the guaranty bond addressed in R20-5-713. The rule also outlines powers of the Commission with regard to securities held by the Treasurer.
- R20-5-715. Aggregate and Specific Excess Insurance Policies
R20-5-715 Establishes the requirements for the pool to obtain aggregate excess and specific excess insurance policies during the period of self-insurance and the specific policy and retention amounts for the policies.
- R20-5-716. Rates and Code Classifications; Penalty Rate
R20-5-716 Provides a standard process for the use of penalty rates and code classifications.
- R20-5-717. Gross Annual Premium of Pool; Calculation and Payment of Workers' Compensation Premiums; Discounts; Refunds
R20-5-717 Provides the procedure for calculating the gross annual workers' compensation premium for the pool and the pool's individual members. The rule also establishes

the process for a pool to deviate from established workers' compensation rates and how to declare a refund of surplus money.

R20-5-718. Financial Statements

R20-5-718 Specifies that an annual financial statement be filed with the Commission and specifies the requirements for the financial statement.

R20-5-719. Board of Trustees

R20-5-719 Addresses: (1) requirements related to management of the pool by a Board of Trustees, (2) duties and responsibilities of the Board, (3) functions the Board may delegate, and (4) actions that the Board may not take.

R20-5-720. Administrator; Prohibitions; Disclosure of Interest

R20-5-720 Establishes requirements and restrictions relating to an administrator of the pool, including required disclosure of any employment or financial interest of the pool administrator or the pool administrator's family.

R20-5-721. Admission of Employers into an Existing Workers' Compensation Pool

R20-5-721 Provides standards, required financial documents, and procedures necessary for an employer to join an existing pool, and the process for authorization and approval of the additional employer by the Board of Trustees and Commission. The rule also specifies the procedure for admission of new members to the pool after one year of operation and the Commission's duty to issue written findings approving or denying admission to the pool.

R20-5-722. Termination by a Member in a Pool; Cancellation of Membership by a Pool; Final Accounting

R20-5-722 Provides the procedures for an employer to terminate participation in a pool, and for a pool to cancel membership of an employer.

R20-5-723. Trustee Fund; Loss Fund

- R20-5-723 Requires establishment of a trustee fund and a loss fund by a pool.
- R20-5-724. Investment Activity of a Pool
- R20-5-724 Establishes limits for investment of surplus funds by the pool, listing allowable investment options.
- R20-5-725. Service Companies; Qualifications; Contracts; Transfer of Claims
- R20-5-725 Requires a pool to obtain permission from the Commission to process its own claims, otherwise the pool is required to have its workers' compensation claims processed by a service company (third party administrator/claims adjuster). The rule also establishes qualifications of a service company and the process for transferring claims from one service company to another.
- R20-5-726. Processing of Workers' Compensation Claims by a Pool
- R20-5-726 Establishes the guidelines for a pool to process its own workers' compensation claims.
- R20-5-727. Loss Control and Underwriting Programs
- R20-5-727 Requires a pool to maintain a loss control program, which includes written safety requirements and training programs for all employees of members of the pool. In addition, the rule establishes that the pool shall maintain an underwriting program that enables the pool to calculate the workers' compensation premiums due and to discharge the pool's responsibilities under the Workers' Compensation Act.
- R20-5-728. Insufficient Assets or Funds of a Pool; Plans of Abatement; Notice of Bankruptcy
- R20-5-728 Establishes the procedures to be followed in the event the pool has insufficient income to pay benefits under the Workers' Compensation Act. The rule also establishes the pool's responsibility to submit a proposal to achieve 100% funding, and the Commission's duties in the event the pool is insufficiently funded.
- R20-5-729. Arizona Office; Recordkeeping; Records Available for Review

- R20-5-729 Requires that pools maintain an office in Arizona; ensure that financial reports and minutes are signed by an authorized representative; make minutes, financial reports, or other documents concerning payroll, audits, investments, experience rating, or other information concerning the pool available to the Commission upon request; and retain records relating to the formation and operation of the pool.
- R20-5-730. Order for Additional Financial Information; Examination of Accounts and Records by Commission
- R20-5-730 Establishes that the Commission may order the pool to provide additional financial information from the pool's auditor, or may order an independent financial examination of the pool if the Commission questions the pool's financial ability to pay workers' compensation claims.
- R20-5-731. Assignment of Claims Under A.R.S. §23-966; Obligation of Member to Reimburse the Commission
- R20-5-731 Protects the benefits due to injured workers in the event that a pool is deemed financially insolvent and cannot pay its claims. A.R.S. § 23-966 requires claims of a self-insured pool to be assigned to the Special Fund established under A.R.S. § 23-1065. (Note: A.R.S. § 23-966 was not amended at the time of the 1997 legislation establishing employer workers' compensation pools organized under A.R.S. § 23-961.01. However, A.R.S. § 23-961, which allows for employer workers' compensation pools, is referenced in A.R.S. § 23-966(C), and A.R.S. § 23-963(4), which addresses how insolvency or bankruptcy of an employer does not relieve a workers' compensation pool from payment of compensation for injuries, were both amended by the 1997 legislation that established self-insurance pools under A.R.S. § 23-961.01)
- R20-5-732. Calculation and Payment of Taxes under A.R.S. § 23-961 and A.R.S. § 23-1065
- R20-5-732 Specifies procedures to calculate taxes to be paid by the pool pursuant to A.R.S. §§ 23-961(G) and 23-1065(A). The rule specifies the different tax plans and the

criteria for utilization of each plan. The rule also sets forth the Commission's duties pertaining to the calculation of a pool's tax obligation.

R20-5-733. Review of Initial and Renewal Applications for Authority to Self-insure by the Division

R20-5-733 Establishes the standards and procedures for the Division to review a pool's initial or renewal application to determine whether to recommend approval of the pool's application for self-insurance purposes.

R20-5-734. Decision by the Commission on Initial or Renewal Applications for Authority to Self-insure

R20-5-734 Establishes the factors that the Commission reviews in determining whether to approve or deny applications by pools for self-insurance purposes. The rule also sets forth the procedures and time frames the Commission must follow in considering a pool's application for self-insurance.

R20-5-735. Right to Request a Hearing

R20-5-735 Establishes the right of the applicant or pool to a hearing from any findings and order of the Commission. The rule also sets forth the process and relevant time frames for a pool to request a hearing.

R20-5-736. Hearing Rights and Procedures

R20-5-736 Establishes the burden of proof and procedures to be followed in any hearing before the Commission relating to this Article.

R20-5-737. Decision Upon Hearing by Commission

R20-5-737 Establishes the standards to be followed by the Commission at a hearing concerning the application of a pool or revocation of authority to self-insure. The rule also sets forth the Commission's duty to issue a written decision and the finality of the decision absent a request for review.

- R20-5-738. Request for Review
- R20-5-738 Establishes the time limitations and grounds to be considered in a review of a Commission decision under this Article.
- R20-5-739. Revocation of Authority to Self-insure
- R20-5-739 Provides the grounds to be considered in revocation of authority to self-insure. The rule also requires the pool to take certain steps to notify its members of the revocation and gives relevant time frames for the pool to request a hearing.

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

Although the current rules allow employers to pool resources for the purpose of self-insurance, the Commission’s experience has been that employer self-insurance pools are rarely formed. For this reason, the Commission believes that the current rules may be an impediment to achieving the Legislature’s objectives in A.R.S. § 23-961.01, namely increased competition in the workers’ compensation insurance market, motivation for loss control, employer-tailored safety programs, and long-term reduction in the costs associated with workers’ compensation insurance. This determination is based on the Commission’s experience using the rules, as opposed to data kept on the issue of effectiveness.

The Commission believes it appropriate to reexamine Article 7 to find appropriate ways to encourage small employers to form self-insurance pools as a potentially less costly workers’ compensation insurance alternative.

4. Consistency of the rules 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

With the exceptions noted below, the rules reviewed are consistent with federal and state statutes and are internally consistent. The Commission is unaware of any conflicting or duplicative rules.

The Commission reviewed A.R.S. §§ 23-107, 23-108.03, 23-901, 23-902, 23-961, and 23-961.01 and the current rules in Article 7 to determine consistency.

The following rules are procedurally inconsistent with similar rules in Article 11 and should be amended to achieve consistency:

R20-5-735 - The rule should be amended to be consistent with a similar rule, R20-5-1129, in Article 11.

R20-5-736 - The rule should be amended to be consistent with a similar rule, R20-5-1130, in Article 11.

R20-5-738 - The rule should be amended to be consistent with a similar rule, R20-5-1132, in Article 11.

R20-5-739 - The rule should be amended to be consistent with a similar rule, R20-5-1133, in Article 11.

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

The Commission has not had the opportunity to enforce Article 7 because there have been no applications for authority to self-insure an employer pool under A.R.S. § 23-961.01 since the rules became effective in 1998. If an application were to be submitted, the Commission would use the rules in Article 7 to process the application, being sure to consult the most current statutes.

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

Except as noted below, the rules in Article 7 are clear, concise, and understandable.

R20-5-704 - The rule is not clear because it uses the term self-insurer. The term should be self-insured employer pool.

7. **Written criticisms of the rules received by the agency within the five years immediately preceding the five-year review report**

Since the Commission's 2016 rulemaking regarding R20-5-715 became effective (September 7, 2016), and within the five years preceding this report, the Commission has not received any written criticisms of the Article 7 rules.

8. **A comparison of the estimated economic, small business, and consumer impact of the rules with the economic, small business, and consumer impact statement prepared on the last making of the rules or, if no economic, small business, and consumer impact statement was prepared on the last making of the rules, an assessment of the actual economic, small business, and consumer impact of the rules**

On September 1, 1998, the Governor's Regulatory Review Council (the "Council") approved an economic, small business, and consumer impact statement ("EIS") (attached) concerning Article 7. Article 7 was subsequently addressed in a Five-Year Review Report that the Council approved on April 1, 2014.

In the 1998 EIS, the Commission stated that Article 7 included new sections addressing each of the [subject] matters specifically listed in A.R.S. § 23-961.01 and that the sections were for the purpose of safeguarding the solvency of the pools and guaranteeing that injured workers receive benefits as required under the Arizona Workers' Compensation Act [the specific reference to safeguarding solvency of pools is in A.R.S. § 23-961.01(F)]. See 1998 EIS at 1-2. Although the current rules allow employers to pool resources for the purpose of self-insurance, the Commission's experience has been that employer self-insurance pools are rarely formed. For this reason, the Commission believes that the current rules may be an impediment to achieving the Legislature's objectives in A.R.S. § 23-961.01, namely increased competition in the workers'

compensation insurance market, motivation for loss control, employer-tailored safety programs, and long-term reduction in the costs associated with workers' compensation insurance.

In the 2014 Five-Year Review Report, the Commission discussed the then-existing rules describing the actual economic impact generally applicable to all rules as follows:

An employer association that elects to form a workers' compensation pool will incur costs. Direct administrative costs to a pool, incurred on an annual basis will include the following:

- a. Costs of administration;
- b. Costs for specific excess insurance, which will vary depending on the size of the pool;
- c. Costs for aggregate excess insurance, which will vary depending on the size of the pool;
- d. Costs for fidelity insurance;
- e. Costs for a guaranty bond, which will vary depending on the size of the pool;
- f. Costs for audits of the pool's financial statements;
- g. Costs for an actuarial review, which will vary depending on the size of the pool; and
- h. The payment of premium taxes.

In general, the Commission anticipates that the administrative costs listed above will account for 25% of the total costs incurred by a pool. However, the administrative costs incurred by the pool are outweighed by the benefits associated with the administratively necessary items. In general, these items ensure that a pool has the ability to process and pay workers' compensation benefits to injured workers and also serve to protect the solvency of the pool and the solvency of the Special Fund, which is statutorily responsible to pay the claims of a pool that is unable to process and/or pay claims.

Note that these costs are primarily associated with the statutory purpose of safeguarding the solvency of pools. With respect to individual rules the Commission mentioned that the cost of safeguarding features in the rules (examples include securing a fidelity policy under R20-5-712, securing a guaranty bond under R20-5-713, furnishing securities under R20-5-714, and purchasing excess insurance under R20-5-715) was outweighed by the benefit to the Special Fund Division. For other rules that were individually addressed, the Commission found that there was either no economic impact or minimal economic impact on employers or pools.

On September 7, 2016, the Governor's Regulatory Review Council (the "Council") approved an economic, small business, and consumer impact statement ("EIS") (attached) concerning one rule in Article 7: R20-5-715. The Commission made amendments to R20-5-715, which requires that an employer pool maintain aggregate and specific excess insurance policies and specifies policy and retention amounts. The changes made by the rulemaking are described above in the Five-year Review Summary.

The 2016 EIS described economic impacts on employers, employees, insurers, and the Special Fund Division of the Commission. With respect to employers, the Commission predicted that the proposed amendments would ease the regulatory burden on employers who participate in self-insurance pools by authorizing excess insurance products that are cost-effective and more accessible in the current insurance market. Predicted benefits to employers and employees would include increased workplace safety and a reduction in industrial injuries.

With respect to insurers, the Commission pointed out that Arizona employers might elect to participate in a self-insurance pool in lieu of purchasing workers' compensation insurance from an insurance carrier under A.R.S. § 23-961(A)(1). However, the Commission predicted that the economic impact of the amendments would not be significant for any particular insurance carrier.

The Commission predicted that the Commission's Special Fund Division would benefit from the amendments to R20-5-715 because workers' compensation liabilities of formerly-uninsured employers would be shifted from the Special Fund Division to self-insurance pools. The overall impact on the Special Fund Division, however, would be minimal.

Actual or predicted economic impact aside, the Commission's experience has been that the rules in Article 7, even with improvements to R20-5-715, have not been effective in encouraging the creation of employer self-insurance pools. The Commission plans to study the reasons why employers have not availed themselves of the opportunity to form pools for the purpose of self-insurance under Article 7.

9. **Any analysis submitted to the agency by another person regarding the rules' impact on this state's business competitiveness as compared to the competitiveness of businesses in other states**

No business competitiveness analysis has been submitted to the Commission regarding Article 7.

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

The previous five-year review report on Article 7 proposed no action with respect to the following rules, indicating that the Commission had no plans to amend the following rules: R20-5-704, R20-5-705, R20-5-709, R20-5-712, R20-5-716, R20-5-722 through R20-5-725, R20-5-727, or R20-5-731.

The Commission indicated that no changes were planned for other rules, specifically R20-5-701 through R20-5-703, and R20-5-714

The Commission stated that it anticipated amending R20-5-706 through R20-5-708, R20-5-710, R20-5-711, R20-5-713, R20-5-715, R20-5-717 through R20-5-721, R20-5-726, R20-5-728 through R20-5-730, and R20-5-732 through R20-5-739 after completion of Article 2 amendments.

The rules in Article 7 will be amended, consistent with the analysis and schedule presented in this report.

11. **A determination after analysis that probable benefits outweigh probable costs and that the rules impose the least burden and costs on persons regulated**

The Commission believes that the current rules may be an impediment to achieving the Legislature's objectives in A.R.S. § 23-961.01, namely increased competition in the workers' compensation insurance market, motivation for loss control, employer-tailored safety programs, and long-term reduction in the costs associated with workers' compensation insurance. The review of Article 7 for this report, the Commission has identified various potential impediments that may be inhibiting the use of Article 7 by employer groups. The following is a list of potential amendments under study and consideration by the Commission that would reduce burden and incentivize the creation of self-insurance pools:

R20-5-703 - The form requirements in the rule need to be updated, as they are not consistent with the current business environment.

R20-5-707 - The rule is inconsistent with industry standards. The rule is potentially detrimental, from a safeguarding standpoint, in that it allows some employers to submit internally signed financial statements, in lieu of audited financial statements. The rule does not state that an experience rating must be calculated for each member, but requires an explanation if it exceeds the threshold of 1.10. The rule should provide a specific safety protocol for members with high experience ratings, which allows the Commission to require ADOSH safety consultation training that helps improve the member's safety program.

R20-5-708 - The form requirements in the rule need to be updated. The financial security types are limited and this is potentially burdensome to employer pools and to the Commission.

R20-5-709 – The combined net worth requirement of \$1M potentially impedes the formation of self-insurance pools. The minimum requirement could be lowered by requiring excess insurance policies with defined self-insurance retention amounts.

R20-5-710 - The rule needs to be updated with respect to standard industrial classification codes.

R20-5-711 - The rule references the assignment of claims to the State Compensation Fund in the event the pool becomes insolvent and the member does not pay the liability of the claims. All references to the State Compensation Fund need to be removed.

R20-5-712 - The requirement of a fidelity policy, which protects the pool from unlawful actions of individuals appointed to the pool's board of trustees, the administrator of the pool, and employees of the pool, might be seen as burdensome requirement by employers. The protection afforded by the rule could be provided by a general liability policy with provisions that address unlawful actions of the board of trustees, the administrator, or the employees of the pool. The rule could be amended to allow an employer pool to substitute, for the requirements of a fidelity policy, the crime section of a general liability policy.

R20-5-713 - The rule may need to be repealed and replaced because the amount of the bond, \$200,000 at minimum, is potentially burdensome to employers. There should be a graduated amount of financial security deposit required up to a \$100,000 minimum, based on the risk and prior incurred liability associated with the pool members. Security, in the form of a guaranty bond, is outdated, as are bond forms, insurance company AM Best rating and procedures for obtaining the bond, which are inconsistent with current insurance industry standards. The letter of credit language is also outdated, as well as inconsistent with the needs of the Commission and current banking industry standards. The rule language for United States securities is outdated and is inconsistent with the needs of the Commission and current banking industry standards.

R20-5-714 - The rule should be repealed because the Arizona State Treasurer is unable to hold securities in trust for the Commission, as specified in the rule.

R20-5-716 – The language in the rule is incorrect. Subsection A states a pool shall only use rates and code classifications obtained from a rating organization licensed by the Arizona Department of Insurance. Rating agencies are not licensed, they are approved by ADOI. Furthermore, the rule does not provide sufficient standards for applying a penalty rate.

R20-5-717 - The rule should more clearly explain the experience modification rate. The deviation rate used should be that approved by the Commission. The rule should also state refunds may be available after the pool has posted a sufficient statutory deposit (security deposit) for its most current self-insurance renewal year and paid its taxes for the current year in which taxes are due.

R20-5-718 - The rule should be updated so that it is consistent with current industry standards.

R20-5-719 - The rules should be amended to require Commission approval of trustees elected by members of the workers' compensation pool.

R20-5-720 - The rule should be amended to address other conflicts of interest.

R20-5-721 - The rule should be amended to provide criteria for admission of additional members to the pool without Commission approval. Currently, the requirement that the Commission approve the admission of each new member of the pool is potentially burdensome.

R20-5-722 - The rule should be amended to update criteria for termination of member participation.

R20-5-723 - The rule, requiring that the pool maintain a trustee fund and a loss fund, should be updated to be consistent with needs of Commission and industry standards.

R20-5-724 - The rule should be aligned with Title 35 requirements and require Commission approval of any pool investment manager.

R20-5-725 - The rule should be amended to include criteria for administration of the pool by member employers.

R20-5-726 - The rule should be combined with R20-5-725.

R20-5-727 - The rule should be amended to reflect ADOSH safety programs.

R20-5-728 - The rule should be amended to provide improved safeguards for the Commission.

R20-5-731 - The rule should be amended to update the procedure for claim assignment and remove references to the State Compensation Fund.

R20-5-732 - The rule should be amended to update the tax procedures and required information.

The Commission is planning to study the reasons why employers have not availed themselves of the opportunity to form workers' compensation pools and determine why Article 7 is not being used. Once the Commission has a better understanding of the actual burdens and impediments that prevent employers from forming workers' compensation pools, the Commission plans to make or amend rules that will streamline the rules in Article 7.

The Commission initially promulgated Article 7 in 1998. The amendments to R20-5-715 in 2016 were a recent attempt by the Commission to reduce the cost to employers seeking to form workers' compensation pools. To the extent that the existing rules create any adverse economic

impact beyond that imposed by A.R.S. §§ 23-961 or 23-961.01, the Commission anticipates that the amendments will reduce regulatory burden on employers by aligning Article 7 with current Arizona statutes and providing clarifications that reduce uncertainty for Arizona employers and employees.

12. **A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law**

The rules in Article 7 implement state law, specifically A.R.S. §§ 23-961 & 23-961.01. There is no corresponding federal law.

13. **For rules adopted 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**

This analysis applies only to rules adopted after July 29, 2010. It would therefore only apply to the amendments made by the 2016 rulemaking relating to R20-5-715, which became effective on September 7, 2016. R20-5-715 does not require issuance of a regulatory permit, license, or agency authorization.

14. **Proposed course of action**

The Commission plans to complete its study and initiate a rulemaking to amend the rules in Article 7 by December 2021. This should provide approximately 18 months for an internal study related to the rules and 18 months for rulemaking.

EXHIBIT 1

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ARTICLE 7. SELF-INSURANCE REQUIREMENTS FOR WORKERS' COMPENSATION POOLS ORGANIZED UNDER A.R.S. § 23-961.01

Article 7, consisting of new Sections R20-5-701 through R20-5-739, adopted effective September 9, 1998 (Supp. 98-3).

R20-5-701 through R20-5-708 recodified from R4-13-701 through R4-13-708 (Supp. 95-1).

Article 7, consisting of Sections R4-13-701 through R4-13-708, transferred to the Department of Agriculture, Title 3, Chapter 8, Article 7, Sections R3-8-201 through R3-8-208, pursuant to Laws 1990, Ch. 374, Sec. 445 (Supp. 91-3).

New Article 7 adopted effective July 13, 1989. (Supp. 89-3)

Laws 1981, Ch. 149, effective January 1, 1982, provided for the transfer of the Office of Fire Marshal from the Industrial Commission to the Department of Emergency and Military Affairs, Division of Emergency Services (Supp. 82-2).

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2. The factual issues in such proceedings are substantially the same as the factual issues before the Industrial Commission;
 3. The proceedings were fair and regular; and
 4. The outcome of the proceedings was not inconsistent with the purposes of this Chapter and the Act.
- F. A determination pursuant to A.R.S. § 23-425(C) includes:
1. A decision to not proceed with the case;
 2. To defer the case to another forum; or
 3. To proceed to litigation in Superior Court.

Historical Note

Adopted effective May 3, 1989 (Supp. 89-2). R20-5-682
recodified from R4-13-682 (Supp. 95-1).

**ARTICLE 7. SELF-INSURANCE REQUIREMENTS FOR
WORKERS' COMPENSATION POOLS ORGANIZED
UNDER A.R.S. § 23-961.01**

R20-5-701. Definitions

In addition to the definitions provided in A.R.S. § 23-901, the following definitions apply to this Article:

"Administrator" means an individual or organization chosen by a board to manage the daily operations of a pool.

"Applicant" means a worker compensation pool organized under A.R.S. § 23-961.01 that has filed an initial application for authority to self-insure.

"Board of trustees" or "board" means a body of individuals that manage all operations of a worker compensation pool.

"Cash flow ratio" means a numerical relationship that reflects an ability to meet current financial obligations out of cash flow and is calculated by dividing funds received from operations of a business by current liabilities.

"Certificate of authority" means a document issued by the Commission granting a pool authority to be self-insured for purposes of workers' compensation.

"Claim" means a worker compensation claim.

"Code classification" means a number assigned by an approved rating organization that classifies employees.

"Current ratio" means a numerical relationship that reflects an ability to pay current obligations and is calculated by dividing current assets by current liabilities.

"Debt status ratio" means a numerical relationship that reflects the proportion of funds supplied internally relative to the funds supplied by creditors and is calculated by dividing net worth by total liabilities.

"Division" means the Administration Division of the Industrial Commission of Arizona.

"Excess insurance carrier" means an insurance carrier authorized by the Arizona Department of Insurance to issue policies of excess insurance coverage and casualty insurance coverage to a self-insured.

"Experience modification rate" means a ratio comparing actual losses to expected losses based on a formula determined by an approved rating organization and which includes three years of loss information.

"Financial rating organization" means a nationally recognized organization such as Standard & Poor's or Moody's that evaluates and rates securities.

"Fiscal year" means a 12 month cycle that begins from the effective date of authority to self-insure.

"Loss fund" means an account from which money is used to pay all workers' compensation expenses including current and contingent liabilities of a worker's compensation claim of a pool.

"Member" means an employer described in A.R.S. § 23-961.01 that has joined with other employers to form a pool.

"Pool" means a workers' compensation group organized under A.R.S. § 23-961.01.

"Profitability ratio" means a numerical relationship that represents the return on assets and the efficiency of assets and is calculated by dividing profit before taxes by total assets, multiplied by 100.

"Quick ratio" means a numerical relationship that represents the degree to which liabilities are covered by the most liquid current assets and is calculated by dividing cash and equivalents, plus trade receivables, by current liabilities.

"Rate" means an assignment of a code classification based on risk as established by a rating organization and approved by the Arizona Department of Insurance.

"Rating organization" means an entity that meets the requirements of A.R.S. § 20-363(F) and is approved by the Arizona Department of Insurance to establish rates, codes, and formulas used to calculate worker compensation premiums.

"Service company" means an entity or organization that is contracted by a pool to receive, process, and pay workers' compensation claims for a pool.

"Trustee fund" means an account into which premiums, investment proceeds, and other revenues are deposited and are used to cover all administrative or operational expenses of a pool.

"Working capital ratio" means a numerical relationship that measures the sufficiency of working capital to support sales and is calculated by dividing working capital by sales.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-702. Computation of Time

- A. In computing any period of time prescribed or allowed by this Article, the Commission shall not include the day of the act or event from which the period of time begins to run. The Commission shall include the last day of the period computed unless it is a Saturday, Sunday, or legal holiday in which event the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than 11 days, the Commission shall exclude intermediate Saturdays, Sundays, and legal holidays in the computation of time.
- B. Except as otherwise provided by law, the Commission may extend time limits prescribed by this Article for good cause.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-703. Forms Prescribed by the Commission

The following forms are available upon request from the Commission and contain requests for the information listed in each subsection.

1. Initial Application for Authority to Self-insure:
 - a. Name of the pool;
 - b. Address and telephone number of the pool's principal office;
 - c. Effective date of formation of the pool;
 - d. Name and address of each member of the pool;

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- e. Two digit standard industrial classification code for each member of the pool;
 - f. Name and address of the industry or trade association, or professional organization to which members of the pool belong;
 - g. Effective date of formation of the industry or trade association, or professional organization to which members of the pool belong;
 - h. Type of business in which members are engaged and length of time in business for each member;
 - i. Explanation of how businesses of members are the same or similar;
 - j. Amount of workers' compensation insurance premiums paid by each member in the preceding year;
 - k. Names and addresses of the board of trustees;
 - l. Name, address, and telephone number of the administrator appointed by the board of trustees;
 - m. Name, address, and telephone number of the service company, if applicable;
 - n. Names, titles, addresses, and telephone numbers of the persons in charge of the loss control and underwriting programs;
 - o. Premium tax plan selection;
 - p. Authorized signature and title of person signing initial application;
 - q. Statement that all information and assertions contained in the application and the documents accompanying the application are factually correct and true; and
 - r. Date of execution of the initial application.
2. Renewal Application:
 - a. Name of the pool;
 - b. Address and telephone number of the pool's principal office;
 - c. Name and address of each member of the pool and the effective date of membership;
 - d. Renewal date of the pool;
 - e. Effective date of initial authority to self-insure;
 - f. Total number of member employees covered by the pool;
 - g. Total payroll of the pool for the last fiscal year;
 - h. Name, address, and telephone number of the administrator;
 - i. Name, address, and telephone number of the service company, if applicable;
 - j. Name, address, and telephone number of the excess insurance carrier;
 - k. Name and address of the companies providing guaranty bond and fidelity policy;
 - l. Name and address of individuals serving on the board of trustees;
 - m. Names, titles, addresses, and telephone numbers of persons in charge of loss control and underwriting programs;
 - n. Authorized signature and title of person signing renewal application;
 - o. Statement that all information and assertions contained in the renewal application and the documents accompanying the renewal application are factually correct and true; and
 - p. Date of execution of the renewal application.
 3. Self-Insurance Guaranty Bond Form:
 - a. Pool identification;
 - b. Names of fidelity and surety insurance companies;
 - c. Description of the bond, including the amount and conditions of the bond obligations and liability of surety;
 - d. Statement regarding the responsibility for fees and costs associated with the collection of the bond and the responsibility for payment of any award or judgment against the surety;
 - e. Authorized signatures and titles by pool, surety, and agent; and
 - f. Date of execution of the guaranty bond form.
 4. Option Election Form:
 - a. Calculation and selection of type of guaranty bond and securities;
 - b. Description of incurred liability and anticipated future liability (compensation and medical) on all open cases for the preceding four years and the current year;
 - c. Authorized signature and title of person signing option election form;
 - d. Statement that all information and assertions contained in the form are factually correct and true; and
 - e. Date of execution of the option election form.
 5. Self-insured Payroll Report:
 - a. Description of the cumulative payroll for all members of the pool (classification codes, methods and types of pay);
 - b. Amount paid in the preceding calendar year;
 - c. Authorized signature and title of person signing self-insured payroll report;
 - d. Statement that all information and assertions contained in the report are factually correct and true; and
 - e. Date of execution of self-insured payroll report.
 6. Self-insured Medical Report:
 - a. Description of costs relating to industrial injuries;
 - b. Reinsurance premiums paid;
 - c. Total expenditures for workers' compensation and occupational disease claims;
 - d. Authorized signature and title of person signing self-insured medical report;
 - e. Statement that all information and assertions contained in the report are factually correct and true; and
 - f. Date of execution of the self-insured medical report.
 7. Self-insured Injury Report:
 - a. Description of specific information for the current year and three preceding years for each injury requiring payment in excess of \$5000 which includes accumulated amount paid and reserved for each claim in excess of \$5,000;
 - b. Description of all injuries for the current year and three preceding years if individual injury required payment of less than \$5,000;
 - c. Authorized signature, title, and telephone number of person signing self-insured injury report;
 - d. Statement that all information and assertions contained in the report are factually correct and true; and
 - e. Date of execution of the self-insured injury report.
 8. Quarterly Tax Payment Form:
 - a. Name and address of the pool;
 - b. Description and calculation of the quarterly tax and designation of the applicable quarter;
 - c. Amount of annual tax paid in the previous calendar year; amount of the quarterly tax paid adjusted for change in the tax rate;

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- d. Description and calculation of any penalty due;
- e. Authorized signature, title and telephone number of person signing the quarterly tax payment form;
- f. Statement that all information and assertions contained in the form are factually correct and true; and
- g. Date of execution of the quarterly tax payment form.
- 9. Application to Add a Member to Self-insured Pool:
 - a. Name of the pool and name of the member to be added to the pool, including if applicable, addresses, corporation, subsidiary, partnership, and trust information;
 - b. Nature and years in business of the member to be added;
 - c. History of business in Arizona and elsewhere for the member to be added;
 - d. Payroll data for each member to be added;
 - e. Work force data for each member to be added;
 - f. Financial data for each member to be added;
 - g. Insurance data for each member to be added;
 - h. Two digit standard industrial classification code for each member of the pool;
 - i. Workers' compensation claims, loss and performance history for the member to be added;
 - j. Authorization by board resolution approving addition of each new member;
 - k. Authorized signature and title of person signing application;
 - l. Statement that all information and assertions contained in the application are factually correct and true; and
 - m. Date of execution of the application.
- 10. Notice Confirming Addition of Member to Pool:
 - a. Name of the pool;
 - b. Name and address of the new member;
 - c. Effective date of membership;
 - d. Rate and code classification to be applied to new member;
 - e. Standard industrial classification code for new member;
 - f. Authorized signature and title of person signing notice;
 - g. Statement that all information and assertions contained in the notice are factually correct and true; and
 - h. Date of execution of the notice.
- 11. Notice of Termination of Membership:
 - a. Name and address of pool;
 - b. Effective date of termination;
 - c. Name and address of the member to be terminated, identified as follows:
 - i. All names and addresses of every location used by the member;
 - ii. If the member is a partnership, the names and addresses of all the partners;
 - iii. If the member is a corporation doing business under a number of divisions, the notice shall state the names of all the divisions of the corporation; and
 - iv. If a member changes names, both the new and former names.
 - d. Authorized signature, title and telephone number of person signing notice;
 - e. Statement that all information and assertions contained in the notice are factually correct and true; and
 - f. Date of execution of the notice.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-704. Requirement for Commission Approval to Act as Self-insurer

A pool does not have authority to act as a self-insurer under A.R.S. §§ 23-961 and 23-961.01 unless the pool receives and maintains a certificate of authority from the Commission.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-705. Duration of Certificate of Authority

Except as provided in this subsection, a certificate of authority is valid for one fiscal year. The Commission may renew the certificate on an annual basis upon application by a pool. If a pool timely files a complete renewal application under this Article, the Commission shall consider the existing certificate of authority valid, subject to compliance with A.R.S. § 23-901 et seq. and this Article, until a new certificate of authority is issued or an order of the Commission denying a renewal application becomes final.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-706. Time-frames for Processing Initial and Renewal Application for Authority to Self-insure**A. Administrative completeness review.**

1. Initial application. The Division shall review an initial application for authority to self-insure within 20 days of receipt of the application to determine if the application contains the information required by A.R.S. § 23-961.01 and this Article. The Division shall inform an applicant by written notice whether the application is complete or is deficient within the time-frame provided in this subsection. If the application is incomplete, the Division shall include in its written notice to the applicant a complete list of the missing information. The Division shall deem the application withdrawn if an applicant fails to file a complete application within 45 days of being notified by the Division that its application is incomplete or deficient.
2. Renewal application. The Division shall review a renewal application for authority to self-insure within 20 days of receipt of the application to determine if the application contains the information required by A.R.S. § 23-961.01 and this Article. The Division shall inform a pool by written notice whether the application is complete or is deficient within the time-frame provided in this subsection. If the renewal application is incomplete, the Division shall include in its written notice to the pool a complete list of the missing information. The Division shall deem the application withdrawn if a pool fails to file a complete application within 45 days of being notified by the Division that its application is incomplete or deficient, except that failure to file the financial and actuarial reports required under R20-5-708(C) shall not cause the Division to deem the application withdrawn if a pool files the financial and actuarial reports with the Division within 120 days after the end of the pool's fiscal year.

B. Substantive review.

1. Initial application. Within 70 days after the Division deems an initial application complete, the Commission shall determine whether an initial application for authority to self-insure meets the substantive criteria of A.R.S. § 23-961.01 and this Article and shall issue an order granting or denying authority to self-insure.

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2. Renewal application. Within 40 days after the Division deems a renewal application complete, the Commission shall determine whether a renewal application for authority to self-insure meets the substantive criteria of A.R.S. § 23-961.01 and this Article and shall issue an order granting or denying authority to self-insure.
- C. Overall review.
1. Initial application. The overall review period shall be 90 days, unless extended under A.R.S. § 41-1072 et seq.
 2. Renewal application. The overall review period shall be 60 days, unless extended under A.R.S. § 41-1072 et seq.
- Historical Note**
Adopted effective September 9, 1998 (Supp. 98-3).
- R20-5-707. Filing Requirements for Initial Application for Self-Insurance License**
- A. Initial application for authorization to self-insure.
1. An application for authority to self-insure shall be completed on forms approved by the Commission.
 2. An application for authority to self-insure shall be filed with the Division. An application is considered filed when it is received at the office of the Division.
 3. An application shall be typewritten or written in ink in legible text.
 4. The administrator of a pool shall sign the application. The signature of the administrator shall be notarized.
 5. The administrator shall verify, in writing, that the information contained in and submitted with the application is true and correct.
- B. The Commission shall deem an initial application for authority to self-insure complete if an applicant provides the following information with the initial application:
1. A copy of the contract required under A.R.S. § 23-961.01 establishing the pool;
 2. A copy of the articles of incorporation establishing the pool, if applicable;
 3. A copy of the trust agreement establishing the pool, if applicable;
 4. A copy of the by-laws governing the operations of the pool;
 5. An original, signed application to join the pool from every employer receiving approval from the board to join the pool;
 6. A resolution from the board approving employers for membership in the pool;
 7. A certified copy of an audited financial statement or an internally reviewed and signed financial statement for each employer applying for membership in the pool for the most current and prior two years that, considered collectively, demonstrate that the combined net worth of the employers applying for membership at the time of the initial application is not less than \$1,000,000;
 8. A copy of the following financial ratios for each employer applying for membership in the pool:
 - a. Cash flow ratio;
 - b. Current ratio;
 - c. Debt status ratio;
 - d. Profitability ratio;
 - e. Quick ratio; and
 - f. Working capital ratio.
 9. A detailed description of the loss control program required under R20-5-727, including a description of training programs and safety requirements implemented or to be implemented;
 10. A written statement from each member with an experience modification rate greater than 1.10 describing the causes of the member's experience modification rate and outlining remedial measures the member has taken and will take to lower the member's experience modification rate;
11. An original, signed fidelity policy, or a certified copy, that meets the requirements of R20-5-712, or written confirmation from an authorized insurance company that it will provide fidelity coverage to the applicant as required under R20-5-712 which coverage is effective on the date the applicant is approved by the Industrial Commission to begin self-insurance;
 12. An original, signed guaranty bond, securities, or letter of credit that meets the requirements of R20-5-713 or any of the following:
 - a. Written confirmation from an authorized insurance company that it will provide a guaranty bond to the applicant as required under R20-5-713 which shall be deposited with the Industrial Commission before approval for self-insurance is effective,
 - b. Written confirmation from a financial institution that it will provide a letter of credit to the applicant as required under R20-5-713 which is effective when approval for self-insurance is effective, or
 - c. Written confirmation from a pool that it will obtain securities as required under R20-5-713 which shall be deposited with the Arizona State Treasurer before approval for self-insurance is effective.
 13. A completed and signed Option Election Form and Self-Insurance Bond Form;
 14. A copy of excess insurance policies issued by an authorized carrier that meet the requirements of R20-5-715 or written confirmation from an authorized insurance company that it will provide excess insurance coverage to the applicant as required under R20-5-715. The excess coverage shall be effective on the date the applicant is approved by the Industrial Commission to begin self-insurance;
 15. A copy of the signed agreement or contract of hire between a board and the administrator of the pool;
 16. A designation of a service company and a copy of the signed agreement between the service company and pool that meet the requirements of R20-5-725 or a written statement with supporting documentation required under R20-5-726 requesting authorization to process claims in-house;
 17. A list of all rates by code classification to be used by the pool to calculate premiums;
 18. A statement showing how premiums shall be calculated for members;
 19. A detailed description of the underwriting program required under R20-5-727;
 20. A feasibility study by a member of the American Academy of Actuaries (MAAA) or a Fellow of the Casualty Actuarial Society (FCAS) that documents the rate structure needed to set premium levels to cover potential losses and expenses of the pool; and
 21. A schedule showing net workers' compensation premiums paid, total losses incurred, and experience modification rates for the three preceding years for each employer applying for membership in the pool.
- Historical Note**
Adopted effective September 9, 1998 (Supp. 98-3).
- R20-5-708. Filing Requirements for Renewal Application for Self-Insurance License**

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- A. A self-insured pool seeking renewal of an authority to self-insure for workers' compensation insurance shall file a renewal application 30 days before the existing certificate of authority expires. A pool shall maintain all bonds, policies, and contracts required under this Article while a renewal application is pending before the Commission. The Commission shall deem a renewal application withdrawn if a pool fails to maintain all bonds, policies, and contracts required under this Article.
- B. A renewal application shall meet the following requirements:
1. An application for renewal of authority to self-insure shall be completed on a form approved by the Commission;
 2. An application for renewal of authority to self-insure shall be filed with the Division. An application is considered filed when it is received at the office of the Division;
 3. An application shall be typewritten or written in ink in legible text;
 4. The administrator of a pool shall sign the application. The signature of the administrator shall be notarized; and
 5. The administrator shall verify, in writing, that the information contained in and submitted with the application is true and correct.
- C. A self-insured pool shall provide the following information at the time the pool files a renewal application:
1. An updated, completed and signed Option Election Form;
 2. A continuation certificate for the guaranty bond or letter of credit signed by an authorized representative of the surety or bank in an amount equal to the amount set forth in the updated Option Election Form and that meets the requirements of R20-5-713;
 3. A confirmation of excess insurance policies issued by an authorized carrier that meet the requirements of R20-5-715;
 4. A copy of a signed service contract that meets the requirements of R20-5-725 designating an approved service company or a written statement with supporting documentation required under R20-5-726 requesting authorization to process claims in-house;
 5. A continuation certificate for the fidelity policy that meets the requirements of R20-5-712;
 6. A statement of any change made in the rates and code classifications utilized by the pool to calculate workers' compensation premiums;
 7. A statement of any change in the calculation method of a premium for each member;
 8. A statement describing the expenses paid from the trustee fund and the loss fund expressed in a dollar amount and as a percentage of the total premiums collected by the pool in the preceding fiscal year;
 9. A copy of the current contract or agreement of hire between the pool and administrator; and
 10. A copy of the current delegation agreement between the board of trustees and administrator, if applicable, under R20-5-719(C).
- D. No later than 120 days after the end of a pool's fiscal year, the pool shall file with the Division a copy of the pool's most recent audited annual financial statements and a copy of the pool's most recent actuarial review of:
1. Losses and reserves for all known claims, and
 2. Reserves for incurred but not reported claims.
- E. The Commission shall deem a renewal application complete when a pool provides the information required under subsections (C) and (D).
- F. If a pool does not file a renewal application, each member of the pool shall provide the Commission proof of compliance

with A.R.S. § 23-961(A) no later than 10 days after the pool's certificate of authority expires.

- G. If a pool's renewal application is deemed withdrawn under this Section, each member of the pool shall provide proof of compliance with A.R.S. § 23-961(A) no later than 10 days after the date the Commission deems the application withdrawn.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-709. Combined Net Worth

A pool shall ensure that the combined net worth of its members is at least \$1 million at the time the pool files an initial application for authority to self-insure.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-710. Similar Industry Requirement

The Commission shall consider the following in determining whether two or more employers meet the similar industry requirement of A.R.S. § 23-961.01:

1. Two digit standard industrial classification code established by the 1987 Standard Industrial Classification Manual assigned to an employer applying for membership in the pool; and
2. Other information describing or concerning the business of an employer applying for membership in the pool. The Commission may solicit additional written or oral information from a pool or others to assist the Commission in determining whether two or more employers are engaged in a similar industry.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-711. Joint and Several Liability of Members

A. The joint and several liability provision described under A.R.S. § 23-961.01(E) shall include the following meaning:

1. Liability of members. Each member is liable for its own workers' compensation claims or losses incurred during the member's period of membership in the pool to the extent that the pool does not pay the claims or losses. A member's liability for its own claims or losses continues for the life of the claims and continues notwithstanding the pool's inability to process or pay the member's claims or losses. Failure of the pool to comply with the provisions of the Arizona Workers' Compensation Act relating to payment and processing of claims shall result in the assignment of the claims to the State Compensation Fund under A.R.S. § 23-966 and shall not relieve a member of liability for its own losses or claims. In the event that claims are assigned to the State Compensation Fund under A.R.S. § 23-966, the Industrial Commission shall have a right of reimbursement against the member for the amount paid by the State Compensation Fund for the member's own claims and losses, including costs, necessary expenses and reasonable attorney's fees, to the extent that such claims and losses are not covered by the pool's bonds or assets.
2. Liability of a pool. The pool shall pay all claims for which each member incurs liability during each member's period of membership. The pool shall defend, in the name of and on behalf of any member, any action or other proceeding which may arise or be instituted against a member as a result of injury or death covered by the Arizona Workers' Compensation Act and accompanying rules. The pool shall pay all legal costs and all expenses incurred for investigation, negotiation or defense related

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to such action or proceeding. The pool shall also pay all judgments or awards, and all interest due and accruing after a judgment.

- B. The joint and several liability clause required under A.R.S. § 23-961.01 to be included in each agreement or contract to establish a pool shall include the language in subsection (A)(1) and (2).
- C. The joint and several liability clause required under A.R.S. § 23-961.01(E) applies to any agreement used to form a pool on a cooperative or contract basis, through a joint formation of a nonprofit corporation, or by the execution of a trust agreement.
- D. A pool shall ensure that all members read and agree, in writing, to the joint and several clause required under A.R.S. § 23-961.01 and described in subsection (A).
- E. Failure to comply with the requirements of A.R.S. § 23-961.01(E) and this Section is cause for revocation of authority to self-insure.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-712. Fidelity Policy

- A. A pool shall obtain and maintain during all periods of self-insurance a fidelity policy to protect the pool from unlawful actions of the following:
 - 1. Individuals appointed to the pool's board of trustees (individual and collective liability),
 - 2. Administrator of the pool, and
 - 3. Employees of the pool.
- B. The amount of the fidelity policy in subsection (A) shall be at least \$1 million. A pool may purchase a fidelity policy in excess of \$1 million if the pool determines that a policy in excess of \$1 million is necessary to protect members of the pool from damages resulting from misrepresentation or misuse of any monies or securities owned, controlled, or managed by the board, administrator, or employees of the pool.
- C. The pool shall provide the Commission proof of the fidelity policy as required under R20-5-707 and R20-5-708.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-713. Guaranty Bond

- A. A pool shall obtain and maintain during all periods of self-insurance a guaranty bond equal to the greater of either:
 - 1. 125% of the total outstanding accrued liability as reflected in the option election form described in subsection (B); or
 - 2. \$200,000.
- B. A pool shall complete and sign an option election form when an initial or renewal application is filed to determine the amount of the bond or securities required to cover the pool's losses. A pool shall ensure that the information contained in the option election form is in agreement with the data provided in the actuarial report. A guaranty bond or continuation certificate for the guaranty bond shall be in the amount established in the option election form.
- C. A guaranty bond or continuation certificate for the guaranty bond filed with the Commission shall bear the effective date of the certificate of authority under which the pool is authorized to self-insure. The guaranty bond or continuation certificate shall be valid for a period of one year, subject to annual renewal in the amount established in the Option Election Form filed with a renewal application.
- D. A guaranty bond or continuation certificate for the guaranty bond shall be issued by an insurance carrier authorized by the Arizona Department of Insurance to transact fidelity and surety insurance in Arizona. The guaranty bond and continua-

tion certificate shall be executed by an authorized agent of a surety, as evidenced by a certified power of attorney, and countersigned by a licensed resident agent.

- E. Instead of posting a guaranty bond, a pool may either deposit with the Commission for transmittal to the Arizona State Treasurer, bonds of the United States or other securities. The amount of the bond or securities shall bear a face value equal to the requirements of subsections (A) and (B).
- F. Instead of posting a guaranty bond, a pool may obtain a letter of credit. The amount of the letter of credit shall be equal to the requirements of subsections (A) and (B).
- G. The Commission shall not accept certificates of deposit instead of a guaranty bond, securities, or letter of credit.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-714. Securities Deposited with the Arizona State Treasurer

- A. Any securities deposited with Arizona State Treasurer under R20-5-713(E) shall be registered as follows: "The Industrial Commission of Arizona, in trust for the fulfillment by (name of pool), of (name of pool's) obligations under the Arizona Workers' Compensation Act."
- B. The securities shall be held by the State Treasurer, as custodian, subject to the order of and in trust for, the Industrial Commission of Arizona.
- C. The Commission shall have the following powers with regard to securities held by the State Treasurer:
 - 1. To collect or order the collection of the securities as they become due;
 - 2. To sell or order the sale of the securities, or any part of the securities; and
 - 3. To apply or order the application of the proceeds of the sale of securities, to the payment of any award rendered against the pool in the event of a default in the payment of a pool's obligations under the Arizona Workers' Compensation Act.
- D. The Commission shall remit, upon request from a pool that has deposited securities for transmittal to the State Treasurer, interest coupons on securities as they mature.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-715. Aggregate and Specific Excess Insurance Policies

- A. A pool shall maintain aggregate and specific excess insurance policies during all periods of self-insurance.
- B. The Commission shall not consider policies of aggregate and specific excess insurance when determining a pool's ability to fulfill its financial obligations under the Arizona Workers' Compensation Act, unless the policies are issued by a casualty insurance company authorized by the Arizona Department of Insurance to transact business in Arizona.
- C. A pool or insurance company seeking to cancel or refuse renewal of aggregate and specific excess insurance policies shall provide 90 days written notice of the proposed cancellation or non-renewal to the other party to the policies and to the Commission. The written notice shall be by registered or certified mail. Failure to provide notice as required by this Section precludes cancellation or non-renewal of the policies.
- D. Policy and Retention Amounts.
 - 1. Policy and retention amounts for specific and aggregate excess insurance for a pool shall be as follows:
 - a. Retention for specific excess insurance shall not be less than \$100,000 nor exceed \$1,250,000 without advance written approval by the Commission. Spe-

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- cific excess insurance shall be provided to the statutory limit; and
- b. Maximum retention of aggregate excess insurance shall not exceed 150% of collected premiums. Total aggregate insurance coverage shall not be less than \$1,000,000.
 2. Aggregate and specific excess insurance policies shall state that payments of workers' compensation benefits on a claim made by a member employer, pool, or surety under a bond or through the use of other approved securities shall be applied toward reaching the retention level in the policy.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).
Amended by final rulemaking at 22 A.A.R. 2782, effective September 7, 2016 (Supp. 16-3).

R20-5-716. Rates and Code Classifications; Penalty Rate

- A. A pool shall only use rates and code classifications obtained from a rating organization licensed by the Arizona Department of Insurance.
- B. A pool may apply a penalty rate in excess of an annual premium to any member with an unfavorable loss experience, provided the pool provides written notice to the member 30 days before the effective date of the change in rate.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-717. Gross Annual Premium of Pool; Calculation and Payment of Workers' Compensation Premiums; Discounts; Refunds

- A. The gross annual workers' compensation premium for a pool shall be sufficient to fund the administrative expenses and total incurred losses of the pool.
- B. A pool shall calculate a member's workers' compensation premium and experience modification rate using formulas described in a rating plan that meets the following:
 1. The rating plan is filed by an Arizona licensed rating organization, and
 2. The rating plan has not been disapproved by the Arizona Department of Insurance.
- C. Each member shall pay to a pool the premium due in equal monthly or quarterly payments for the premium year, except that upon admission into a pool, a new member shall pay no later than five days after the effective date of membership not less than 25% of the annual premium calculated for the new member. The remaining premium due after a new member has advanced 25% of the annual premium shall be paid in equal monthly or quarterly payments for the premium year. A pool shall permit a member to pay a premium in advance of the monthly or quarterly schedule.
- D. Deviations from rates.
 1. A pool shall not deviate from established workers' compensation rates unless the pool complies with the following:
 - a. The deviation is based upon the expense and loss experience of the pool,
 - b. The deviation is supported and justified by an actuary's feasibility study, and
 - c. The pool provides the information required under this subsection to the Division and receives approval from the Division.
 2. The Division shall approve the deviation if the deviation is based upon the expense and loss experience of a pool and is justified in an actuary's feasibility study.

- E. Refunds. A pool may declare a refund of surplus money, including excess investment income, to its members under the following conditions:
 1. Surplus money exists, including excess investment money, for a fiscal year in excess of the amount necessary to meet all financial obligations for the fiscal year, including financial obligations arising from incurred but not reported claims;
 2. Total assets of a pool are greater than total liabilities for each fiscal year;
 3. An actuary approves the amount of the refund;
 4. The amount of refund is a fixed liability of the pool at the time the refund is declared; and
 5. The board sets a date for the refund that shall not be less than 12 months after the end of the fiscal year in which the excess is reported.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-718. Financial Statements

- A. A pool shall ensure that a financial statement is prepared annually at the end of its fiscal year by a certified public accountant who has experience in auditing insurance carriers or self-insured pools. The financial statement shall be accompanied by an actuarial report regarding reserves for claims and associated expenses, and claims incurred, but not reported.
- B. A pool shall ensure that reported reserves in a financial statement are established based on 110% of an actuary's best estimate.
- C. A pool shall ensure that an actuarial opinion is rendered by an actuary who is a member of the Academy of Actuaries (MAAA) or a fellow of the Casualty Actuarial Society (FCAS).
- D. A pool shall ensure that the pool's annual financial statement described in subsection (A) is audited by a certified public accountant. The audit shall include:
 1. An evaluation and statement from the certified public accountant whether invested surplus money was invested in compliance with R20-5-724;
 2. A description of how the pool operates; and
 3. A statement whether the pool complied with statutes and rules governing self-insured workers' compensation pools as it relates to financial matters.
- E. Upon request by the Commission or within 120 days after a pool's fiscal year ends, a pool shall file its annual financial statement with the Commission. If a pool stops providing coverage on an ongoing basis or fails to file a renewal application for authorization to self-insure, then the pool shall provide its annual financial statement within 120 days after the pool's fiscal year ends.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-719. Board of Trustees

- A. A pool shall be managed by a board of trustees consisting of at least five individuals elected for a stated term of office. At least 2/3 of a board shall be from the membership of the pool.
- B. Minimum duties and responsibilities of a board. In addition to those duties and responsibilities provided by law, the duties of a board shall include:
 1. Responsibility for all operations of a pool;
 2. Ensuring compliance with this Article and the applicable provisions of the Arizona Workers' Compensation Act;
 3. Hiring of an administrator to manage the daily operations of a pool;

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4. Reviewing and taking action on applications for membership in a pool;
 5. Contracting with a service company or seeking authorization from the Commission to process workers' compensation claims in-house;
 6. Determining the premium to be charged to a member;
 7. Investing surplus monies in compliance with this Article and other applicable law;
 8. Enacting procedures that limit disbursement of money to payment and expenses associated with claims processing and administrative expenses necessary to conduct the operations of the pool;
 9. Ensuring that the pool complies with statutory accounting principles (SAP) and provides accurate financial information to enable complete and accurate preparation of financial reports;
 10. Maintaining all records and documents relating to the formation and ongoing operations of the pool; and
 11. Ensuring that accounts and records of the pool are audited as required under this Article.
- C. Delegation of board duties to administrator.
1. Except as prohibited by law, a board may delegate to an administrator the duties the board determines proper.
 2. Delegation of duties from a board to an administrator shall be in writing. A copy of the delegation agreement shall be provided to the Commission with each renewal application.
- D. Board prohibitions. A board or board trustee shall not commit or perform the following acts:
1. Extend credit to members for payment of a premium;
 2. Utilize money collected as premiums for a purpose unauthorized by this Article;
 3. Borrow money from a pool or in the name of a pool without providing written notice to the Commission of the nature and purpose of the loan; and
 4. Approve admission into a pool an employer who has a negative net worth and whose admission would impair the ability of the pool to meet its financial obligations under the Arizona Workers' Compensation Act.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-720. Administrator; Prohibitions; Disclosure of Interest

- A. An administrator of a pool shall not be a member of a board of trustees of a workers' compensation pool.
- B. An administrator shall not commit any of the acts described in R20-5-719(D).
- C. An administrator shall disclose to a board any actual or perceived employment or financial interest that the administrator or administrator's family has in any potential provider of services or insurance coverage to the pool. The administrator shall disclose the interest before a contract or agreement is reached with the company or business providing the service or coverage. If a pool has an existing contract or agreement in which a prospective administrator or administrator's family has an actual or perceived employment or financial interest, the administrator shall disclose the interest before accepting a position as administrator for the pool. It is the responsibility of a board to identify for a prospective administrator current providers of services and coverage to the pool.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-721. Admission of Employers into an Existing Workers' Compensation Pool

- A. An employer that meets the requirements of A.R.S. § 23-961.01 and this Article that seeks to join an existing pool shall submit an application for membership to the board of trustees of the pool, or the board's designee, on a form approved by the Commission.
- B. Consideration of application by a board.
 1. A board shall approve or deny admission in the pool according to the bylaws of the pool and other applicable statutes and rules.
 2. Upon approval of admission of an employer by a board, the board shall transmit the original application of the employer and board resolution approving membership to the Commission for consideration and approval.
- C. Commission Approval.
 1. Except as provided in subsection (C)(2), within seven days after receiving an employer application described in subsection (B)(2), the Division shall advise the pool whether the employer application is complete. Within 45 days after receiving a complete employer application described in subsection (B)(2), the Commission shall consider the application and shall approve the admission of an employer into a pool if each of the following requirements are met:
 - a. The employer meets the requirements of A.R.S. § 23-961.01 and this Article;
 - b. Admission of the employer into the pool does not impair the ability of the pool to meet the requirements of A.R.S. § 23-961.01 and this Article;
 - c. Admission of the employer into the pool does not impair the ability of the pool to meet its financial obligations under the Arizona Workers' Compensation Act.
 2. After a pool has completed one year of operation, the pool may request Commission authorization to admit new members without Commission approval. Within 30 days after receiving such a request, the Commission shall consider and approve the request to add members to a pool without Commission approval if the pool meets the following:
 - a. The pool uses the similar industry requirement set forth in R20-5-710 and provides a list or description of businesses that the pool will consider as being similar; and
 - b. The pool adopts as its own criteria for admission of new employers the criteria set forth in subsection (C)(1) and provides financial standards that the pool shall apply to employers seeking admission into the pool.
 3. The Commission shall issue written findings and an order either approving or denying admission of an employer into a pool under subsection (C)(1) or approving or denying authorization to add members without Commission approval under subsection (C)(2). The Commission shall mail the findings and order upon the interested parties. The written findings and order is final unless a party files a request for hearing with the Administration Division within 10 days after the findings and order is issued. Hearing rights and procedure are governed by R20-5-736, R20-5-737, and R20-5-738.
- D. Admission of an employer under subsection (C)(2).
 1. A pool shall require an employer applying for membership in the pool to provide a financial report that is either a certified audited financial statement or an internally reviewed and signed financial statement certified by an officer or representative of the employer applying for membership.

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2. If a pool approves admission of a new employer into the pool, the pool shall send written notice to the Commission, on a form approved by the Commission, within 10 days and prior to the effective date of membership, confirming that the pool has admitted a new member.
3. In addition to the notice required under subsection (D)(2), the pool shall also provide to the Commission, the board resolution approving membership and a copy of the employer's application for admission into the pool.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-722. Termination by a Member in a Pool; Cancellation of Membership by a Pool; Final Accounting

- A. A member of a pool may terminate its participation in the pool or submit to cancellation by a pool under the bylaws of the pool and other applicable statutes and rules.
- B. A pool shall provide the Commission written notice of a member's intent to terminate membership or a pool's intent to cancel a member's participation in the pool at least 30 days before the termination or cancellation is effective on a form approved by the Commission.
- C. A pool shall provide a final accounting and settlement of the obligations of or refunds to a terminated or canceled member when all incurred claims are concluded, settled, or paid.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-723. Trustee Fund; Loss Fund

- A. A pool shall maintain a trustee fund and a loss fund.
- B. Trustee fund.
 1. All premiums and assessments charged to members of a pool shall be paid to the trustee fund which fund shall be placed in a designated federally insured depository in Arizona.
 2. A pool shall create a loss fund from the trustee fund.
 3. A pool shall pay administrative expenses of the pool from the trustee fund.
 4. Money from the trustee fund shall be transferred to the loss fund as needed to enable a pool to pay from the loss fund cash needs related to liabilities imposed or arising under the Arizona Workers' Compensation Act.
- C. Loss fund.
 1. A pool shall place its loss fund in a designated federally insured depository in Arizona.
 2. A pool shall pay all workers' compensation expenses from the loss fund.
 3. A loss fund shall be maintained at all times by an authorized service company or administrator charged with processing and paying workers' compensation claims.
 4. A pool shall ensure that its loss fund is financially able to cover current cash needs related to liabilities imposed or arising under the Arizona Workers' Compensation Act.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-724. Investment Activity of a Pool

A pool may invest surplus money not needed for immediate cash needs under the following conditions:

1. Investments are limited to:
 - a. United States Government bonds;
 - b. United States Treasury notes;
 - c. Municipal and corporate bonds described under subsections (A)(2), (3), and (4);
 - d. Certificates of deposit;

- e. Savings accounts in banks located in Arizona that are federally insured; and
- f. Common or preferred stock.

2. Corporate and municipal bonds are restricted to the top three major investment grades as determined by two financial rating services;
3. Not more than 5% of a corporate municipal bond portfolio is invested in any one corporation or municipality;
4. Not more than 30% of the market value of a portfolio is in corporate and municipal bonds;
5. Not more than 20% of the market value of an investment portfolio is in common and preferred stocks; and
6. Not more than 5% of a common and preferred stock portfolio is invested in any one corporation.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-725. Service Companies; Qualifications; Contracts; Transfer of Claims

- A. A pool shall obtain the services of a service company to process the pool's workers' compensation claims unless the pool obtains permission to process its own workers' compensation claims from the Commission under R20-5-726.
- B. Qualifications of a service company.
 1. A service company shall have facilities and equipment to manage, process, and store workers' compensation claims;
 2. If required by law, a service company shall ensure that a licensed claims adjuster processes all workers' compensation claims. If a licensed claims adjuster is not required by law to process claims, then the service company shall ensure that workers' compensation claims are processed by persons with experience, training, and knowledge of the following:
 - a. Processing of Arizona workers' compensation claims; and
 - b. Arizona Worker's Compensation Act;
 3. Service company personnel processing workers' compensation claims shall attend and complete training provided by the Commission Claims Division.
- C. A service company shall process and pay each worker's compensation claim in compliance with the Arizona Workers' Compensation Act and the rules. A contract between a pool and service company shall include this requirement.
- D. Transfer of claims from one service company to another service company.
 1. The transfer of claims from one service company to another service company shall be handled in a way that does not interfere with or interrupt the processing of a worker's compensation claim.
 2. A service company transferring a worker's compensation claim shall communicate to the new service company the historical claims processing activity associated with the worker's compensation claim, and shall provide an original or copy of every document required for continued processing of the worker's compensation claim.
 3. A pool shall immediately provide written notice to the Industrial Commission Claims Division of any transfer of a worker's compensation claim from one service company to another.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-726. Processing of Workers' Compensation Claims by a Pool

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- A. The Commission shall permit a pool to process its own workers' compensation claims if the pool provides information and supporting documentation establishing the following:
1. The pool has facilities and equipment to manage, process, and store its own workers' compensation claims;
 2. If required by law, a pool shall ensure that a licensed claims adjuster processes all workers' compensation claims. If a licensed claims adjuster is not required by law to process claims, then the pool shall ensure that workers' compensation claims are processed by persons with experience, training, and knowledge of the following:
 - a. Processing of Arizona workers' compensation claims; and
 - b. Arizona Workers' Compensation Act;
 3. Pool personnel processing workers' compensation claims shall attend and complete training provided by the Commission Claims Division.
- B. A pool shall pay and process workers' compensation claims in compliance with the Arizona Workers' Compensation Act and the rules.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-727. Loss Control and Underwriting Programs

- A. A pool shall maintain during all periods of self-insurance a loss control program that includes, at a minimum, written safety requirements and training programs for all employees of members.
- B. A pool shall maintain during all periods of self-insurance an underwriting program that enables the pool to calculate and determine workers' compensation premiums due and to discharge the pool's responsibilities under the Arizona Workers' Compensation Act and this Article.
- C. A pool shall ensure those persons with education, experience, or training in loss control administer the loss control program.
- D. A pool shall ensure those persons with education, experience, or training in underwriting administer the underwriting program.
- E. A pool shall maintain facilities and equipment to implement the loss control and underwriting programs.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-728. Insufficient Assets or Funds of a Pool; Plans of Abatement; Notice of Bankruptcy

- A. A pool shall immediately provide written notice to the Commission if collected premiums and earned investment income for a fiscal year are insufficient to pay benefits under the Arizona Workers' Compensation Act for all reported workers' compensation claims and expenses for the year. When a pool provides notice to the Commission of the deficiency, the pool shall also provide a written proposal to achieve 100% funding. The proposal may include the following:
1. Use of premiums collected in other fiscal years, but not necessary for payment of claims or expenses in the year collected;
 2. Use of investment earnings associated with other fiscal years, but not necessary for payment of claims or expenses in the year in which associated; or
 3. Assessment of members.
- B. The Commission shall review the proposal submitted under subsection (A) and approve the proposal within 10 days if the Commission determines that the proposal will abate the deficiency. A pool shall implement the plan no later than 30 days after the date the Commission approves the plan and shall achieve 100% funding within one year after the date the Com-

mission approves the plan. Failure to implement the plan is cause for revocation of the pool's certificate of authority under R20-5-739.

- C. If, as a result of an audit or examination by either a pool or the Commission, it appears that the assets of a pool are insufficient to enable the pool to discharge the pool's responsibilities under the Arizona Workers' Compensation Act and this Article, the Commission shall notify the administrator and the board of the deficiency and issue an order to abate the deficiency.
- D. The Commission has authority to include in its order of abatement issued under subsection (C) a provision that a pool shall not add new members to the pool until the deficiency is abated.
- E. Failure to comply with an order of abatement within 60 days after the order is issued constitutes cause for revocation of a pool's certificate of authority under R20-5-739.
- F. A pool shall provide immediate written notice to the Commission of any bankruptcy filing by the pool.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-729. Arizona Office; Recordkeeping; Records Available for Review

- A. A pool shall maintain an office in Arizona.
- B. A pool shall ensure that all financial reports and minutes are signed by an authorized representative of the pool.
- C. A pool shall make board meeting minutes, reports or other documents concerning payroll, audits, investments, experience rating, or other information concerning the pool available to the Commission upon request.
- D. A pool shall retain records relating to the formation and operation of the pool. The pool's current board shall know the current location of the records.
- E. Records of a pool are the property of the pool. If records of a pool are in the control or custody of a third party, the third party shall immediately surrender the records to a pool, upon request by the pool.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-730. Order for Additional Financial Information; Examination of Accounts and Records by Commission

If the Commission questions a pool's financial ability to pay workers' compensation claims under the Arizona Workers' Compensation Act, the Commission may order the pool to provide additional financial information from the pool's auditor or may order an independent financial examination of the pool.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-731. Assignment of Claims Under A.R.S. § 23-966; Obligation of Member to Reimburse the Commission

The Commission shall assign all workers' compensation claims of a pool to the State Compensation Fund under A.R.S. § 23-966 in the event that a pool files for bankruptcy or a pool is unable to process or pay benefits as required under the Arizona Workers' Compensation Act. In the event that the Commission assigns workers' compensation claims to the State Compensation Fund under A.R.S. § 23-966, the Commission shall have a right of reimbursement against any member of a pool for the amount paid by the State Compensation Fund for the member's claims and losses, including reasonable administrative costs, to the extent that such claims and losses are not covered by the pool's bonds or assets.

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-732. Calculation and Payment of Taxes under A.R.S. § 23-961 and A.R.S. § 23-1065

- A. Subject to subsection (B), the Commission shall determine the taxes to be paid under A.R.S. § 23-961(G) and A.R.S. § 23-1065(A) by calculating a pool's premiums using one of the following insurance plans selected by a pool:
1. Fixed premium plan:
 - a. A plan in which neither losses nor incurred loss reserves are used to calculate a premium;
 - b. A discount is allowed for premium size; and
 - c. The taxable premium is calculated as follows: Payroll x applicable rate - premium discount.
 2. Guaranteed cost plan:
 - a. A plan that provides for a direct relationship, on an annual basis, of the premium for tax purposes and the experience modification rate developed to reflect the loss payments and incurred loss experience of an insured;
 - b. The taxable premium is calculated as follows: (Payroll x applicable rate x experience modification rate) - premium discount.
 3. Retrospective plan:
 - a. A plan that provides for a relationship between the premium for tax purposes, the experience modification rate developed to reflect the loss payment and incurred loss experience of an insured, and the actual incurred losses for the tax year;
 - b. Plan is calculated annually and premium is not subject to further adjustment during the tax year;
 - c. The net taxable premium is calculated as follows: (payroll x applicable rate x experience modification rate x basic premium factor) + (losses for current year + adjusted losses for premium year x conversion factor) x tax multiplier; and
 - d. The net taxable premium is subject to a maximum and minimum premium level depending on which one of the four rating insurance option plans specified in the rating system filed by the rating organization is used by the State Compensation Fund under A.R.S. Title 20, Chapter 2, Article 4;
- B. A pool shall not select a retrospective plan unless the pool meets the following criteria:
1. The pool has an annual net taxable premium exceeding \$100,000; and
 2. The pool submits and calculates four years of data concerning paid loss determinations and incurred loss reserved for each workers' compensation claim which information shall be used to calculate an experience modification factor for the pool. The oldest three years of data is used to calculate the rate and the current year data is used to calculate the tax.
- C. A pool shall submit to the Commission information required on the following forms no later than February 15 of each year:
1. Self-insured Payroll Report, and
 2. Self-insured Injury Report.
- D. Payment of quarterly tax.
1. The Commission shall calculate quarterly taxes owed under A.R.S. § 23-961(H) or A.R.S. § 23-1065(A) in one of the following ways:
 - a. 25% of the tax calculated for the previous year and adjusted for changes in the tax rate; or
 - b. Calculation based on actual payroll and premiums collected for each quarter.

2. A pool shall file a completed and signed Self-insurers' Quarterly Tax Payment Form with each quarterly tax payment.
 3. Quarterly payments are due April 30, July 31, October 31, and January 31, for the periods ending March 31, June 31, September 30, and December 31, respectively.
 4. Quarterly tax payments may be adjusted because of changes in the annual tax rate.
- E. After receipt of the information required under A.R.S. § 23-961 and this Article, the Commission shall determine the annual taxes owed by a pool. The Commission shall also determine whether the pool has underpaid or overpaid the annual taxes required to be paid by the pool. If the quarterly tax payments paid by a pool are less than the actual tax calculated for the year, then the pool shall pay the difference on or before March 31 of the calendar year in which the taxes are due. If a pool has overpaid its annual taxes, then the Commission shall refund the amount as described in A.R.S. § 23-961(I). A pool shall pay to the Industrial Commission the pool's annual tax on or before March 31 based on premiums calculated for the preceding calendar year and adjusted for quarterly taxes previously paid.
- F. In addition to the penalty described under A.R.S. § 23-961(J), failure to pay annual or quarterly taxes as required is cause for revocation of a pool's certificate of authority.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-733. Review of Initial and Renewal Applications for Authority to Self-insure by the Division

- A. Upon the filing of a completed initial or renewal application for authority to self-insure, the Division shall review the initial or renewal application to determine and verify whether the information contained in and submitted with the initial or renewal application for authorization to self-insure is complete and accurate. The Division shall also review the information provided to determine the following:
1. Whether the pool has met the requirements of A.R.S. § 23-961.01;
 2. Whether the pool has met the requirements of this Article; and
 3. Whether the pool has the ability to process and pay benefits required under the Arizona Workers' Compensation Act. A determination of a pool's financial ability to pay shall include a review of the ratios provided by each member at the time of an initial application and review of the following ratios for a pool at the time of renewal:
 - a. Total cash, receivables, and investments to total assets; and
 - b. Total revenue to total expenditures for loss fund and trustee fund.
- B. The Division shall present the findings of its review described in subsection (A) to the Commission. The Division shall also present its recommendations to the Commission regarding an initial or renewal application.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-734. Decision by the Commission on Initial or Renewal Applications for Authority to Self-insure

- A. The Commission shall consider the following before granting or denying an initial or renewal application to self-insure:
1. The information submitted by an applicant or pool,
 2. The information and recommendations of the Division, and
 3. The requirements of A.R.S. § 23-961.01 and this Article.

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- B. The Commission shall deny an application for authority to self-insure if the Commission finds one or more of the following conditions:
1. An applicant or pool does not meet the requirements of A.R.S. § 23-961.01,
 2. An applicant or pool does not meet the requirements of this Article, or
 3. An applicant or pool is unable to process and pay benefits required under the Arizona Workers' Compensation Act.
- C. A decision of the Commission shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting. The Commission shall issue written findings and an order granting or denying authorization to self-insure.
- D. The Division shall mail a copy of the Commission's written findings and order upon the applicant or pool within 10 days of the date the Commission issues its findings and order.
- E. In the case of an initial application, an applicant shall substitute written confirmation from an authorized insurance carrier to provide fidelity coverage with evidence of fidelity insurance coverage as required under R20-5-712 no later than 10 days after the Commission grants authority to self-insure under this Section. The grant of authority to self-insure under this Section shall not become effective until the applicant provides evidence of actual fidelity coverage. The Commission shall deem an initial application withdrawn and the grant of authority to self-insure rescinded if an applicant fails to substitute written confirmation of fidelity coverage with evidence of fidelity coverage as required under this subsection.
- F. In the case of an initial application, an applicant shall substitute written confirmation from an authorized insurance carrier to provide excess insurance coverage with evidence of excess insurance coverage as required under R20-5-715 no later than 10 days after the Commission grants authority to self-insure under this Section. The grant of authority to self-insure under this Section shall not become effective until the applicant provides evidence of actual excess insurance coverage. The Commission shall deem an initial application withdrawn and the grant of authority to self-insure rescinded if an applicant fails to substitute written confirmation of excess insurance coverage with evidence of excess insurance coverage as required under this subsection.
- G. In the case of an initial application, an applicant shall deposit the guaranty bond, letter of credit, or other securities as required under R20-5-713 no later than 10 days after the Commission grants authority to self-insure under this Section. The grant of authority to self-insure under this Section shall not become effective until the applicant deposits the guaranty bond, letter of credit, or other security. The Commission shall deem an initial application withdrawn and the grant of authority to self-insure rescinded if an applicant fails to deposit the guaranty bond, letter of credit, or other securities as required under this subsection.
- H. Subject to subsections (E), (F), and (G), no later than 10 days after the Commission grants authorization to self-insure, the Division shall prepare a certificate of authority to self-insure and shall mail the certificate to the self-insured at the business address of the pool listed on the initial or renewal application.
- B. A request for hearing shall comply with A.R.S. § 23-945 and be signed by an authorized representative of the applicant or pool or the applicant's or pool's legal representative. The applicant or pool shall file the request for hearing with the Division.
- C. The Commission shall deem its findings and order final if a request for hearing is not received by the Division within the time specified in subsection (A).

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-736. Hearing Rights and Procedures

- A. Burden of proof.
1. Except as provided in subsection (A)(2), in all proceedings arising out of this Article, the applicant or pool shall have the burden of proof to establish that it has met the requirements of A.R.S. § 23-901 et seq. and this Article.
 2. In a revocation hearing, the Commission shall have the burden of proof to establish that the self-insured has committed the acts described in R20-5-739.
- B. Roles of Chair and Chief Counsel.
1. The Chair of the Commission or designee shall preside over hearings held under this Article. Except as otherwise provided in this Section, the Chair shall apply the provisions of A.R.S. § 41-1062 to hearings held under this Article and shall have the authority and power of a presiding officer as described in A.R.S. § 41-1062.
 2. The Chief Counsel of the Commission shall represent the Commission in hearings held before the Commission and upon direction of the Chair of the Commission shall issue on behalf of the Commission all notices and subpoenas required under this Section. In the discretion of the Chief Counsel, the Chief Counsel may assign an attorney from the Legal Division of the Commission to represent the Division.
- C. Appearance by a party.
1. Except as otherwise provided by law, the parties may appear on their own behalf or through counsel.
 2. When an attorney appears or intends to appear before the Commission, the attorney shall notify the Commission, in writing, of the attorney's name, address, and telephone number and the name and address of the person on whose behalf the attorney appears.
- D. Filing and service.
1. For purposes of this Section, a document is considered filed when the Commission receives the document. All documents required to be filed in this Section with the Commission shall be served upon the Chief Counsel of the Industrial Commission and upon all parties to the proceeding.
 2. Except as otherwise provided in A.R.S. § 23-901, et seq. and this Article, service of all documents upon the Commission, applicant or pool shall be by personal service or by mail. Personal service includes delivery upon the Commission or party. Service by mail includes every type of service except personal service and is complete on mailing.
- E. Notice of hearing.
1. The Commission shall give the parties at least 20 days notice of hearing.
 2. A notice of hearing shall be in writing and mailed to the last known address of the applicant or pool as shown on the record of the Commission or upon the applicant's or pool's representative if a notice of appearance has been filed by a representative.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-735. Right to Request a Hearing

- A. An applicant or pool shall have 10 days from the date the Commission mails the findings and order under R20-5-734 to request a hearing.

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3. A notice of hearing shall comply with the requirements in A.R.S. § 41-1061(B).
- F. Evidence.
1. The civil rules of evidence do not apply to hearings held under this Section.
 2. A party may make an opening and closing statement with the permission of the Chair if the Chair determines that the statement will be helpful to a determination of the issues.
 3. All witnesses at a hearing shall testify under oath or affirmation.
 4. A party may present evidence and conduct cross-examination of witnesses.
 5. Documentary evidence may be received into evidence and shall be filed no later than 15 days before the date of the hearing. Upon request or upon direction from the chair of the Commission, the Commission may issue a subpoena to the author of any document submitted into evidence to appear and testify at the hearing.
 6. Upon written request by a party or upon direction from the Chair of the Commission, the Commission may issue a subpoena requiring the attendance and testimony of a witness whose testimony is material. A subpoena shall be requested no later than 10 days before the date of the hearing.
 7. Upon written request by a party or upon direction from the Chair of the Commission, the Commission may issue a subpoena duces tecum requiring the production of documents or other tangible evidence. The written request by a party shall contain a statement explaining the general relevance, materiality, and reasonable particularity of the documentary or other tangible evidence and the facts to be proven by them.
- G. Transcript of Proceedings. Hearings before the Commission shall be stenographically reported or mechanically recorded. Any party desiring a copy of the transcript shall obtain a copy from the court reporter.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-737. Decision Upon Hearing by Commission

- A. A decision of the Commission to deny an initial or renewal application shall be based upon the grounds in R20-5-734(B) and shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting.
- B. A decision of the Commission to revoke authority to self-insure shall be based upon the grounds in R20-5-739 and shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting.
- C. A decision of the Commission to deny admission of an employer into a pool or deny authorization to add members without Commission approval shall be based upon the grounds in R20-5-721 and shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting.
- D. After a decision is rendered at a public meeting, the Commission shall issue a written decision upon hearing which shall include findings of fact and conclusions of law, separately stated.
- E. A Commission decision is final unless an applicant or pool requests review under R20-5-738 no later than 15 days after the written decision is mailed to the parties.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-738. Request for Review

- A. A party may request review of a Commission decision issued under R20-5-737 by filing with the Commission a written request for review no later than 15 days after the written decision is mailed to the parties.
- B. A request for review shall be based upon one or more of the following grounds which have materially affected the rights of a party:
 1. Irregularities in the hearing proceedings or any order or abuse of discretion that deprives a party seeking review of a fair hearing;
 2. Accident or surprise which could not have been prevented by ordinary prudence;
 3. Newly discovered material evidence that could not have been discovered with reasonable diligence and produced at the hearing;
 4. Error in the admission or rejection of evidence, or errors of law occurring at, or during the course of, the hearing;
 5. Bias or prejudice of the Division or Commission; and
 6. The order, decision, or findings of fact are not justified by the evidence or are contrary to law.
- C. A request for review shall state the specific facts and law in support of the request and shall specify the relief sought by the request.
- D. The Commission shall issue a decision upon review no later than 30 days after receiving a request for review.
- E. The Commission's decision upon review is final unless an applicant or pool seeks judicial review as provided in A.R.S. § 23-946.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

R20-5-739. Revocation of Authority to Self-insure

- A. In addition to those specific grounds set forth in this Article, the following constitute grounds for revocation of authority to self-insure for workers' compensation:
 1. Failure to comply with requirements of this Article or applicable requirements of 20 A.A.C. 5, Article 1;
 2. Failure to comply with applicable requirements of A.R.S. § 23-901 et seq.;
 3. Unless otherwise provided, failure to comply with an order or award of the Commission within 30 days after the order or award becomes final;
 4. An inability to process and pay claims under the Arizona Workers' Compensation Act;
 5. The failure of a pool to provide the Commission the reports and taxes required under this Article; and
 6. The willful misstatement of any material fact in an application, report, or statement made to the Commission.
- B. Upon receipt of information demonstrating that a pool has committed an act described in subsection (A), the Division shall conduct an investigation of the facts of the alleged misconduct. If, upon completion of the investigation, the Division determines that sufficient evidence exists to warrant revocation of a pool's authority to self-insure, then the Division shall present its findings to the Commission.
- C. The Commission shall consider the findings and recommendation of the Division before revoking a pool's authority to self-insure.
- D. The Commission shall revoke a pool's authority to self-insure if the Commission finds one or more of the grounds set forth in subsection (A). The Commission shall issue written findings and an order revoking the authority to self-insure and shall serve a copy of the findings and order upon the pool.

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- E. A pool shall have 10 days from the date the Commission serves the findings and order described in subsection (D) to request a hearing. The request for hearing shall comply with the requirements of A.R.S. § 23-945.
- F. R20-5-736, R20-5-737, and R20-5-738 govern hearing rights and procedures for revocation hearings.
- G. A pool shall immediately inform each of its members, in writing, of the Commission's order of revocation.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

**ARTICLE 8. OCCUPATIONAL SAFETY AND HEALTH
RULES OF PROCEDURE BEFORE THE INDUSTRIAL
COMMISSION OF ARIZONA**

R20-5-801. Notice of Rules

Sections R20-5-801 et seq. apply to all actions and proceedings of or before the Commission and Review Board pertaining to those issues arising out of Title 23, Chapter 2, Article 10.

Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-801 recodified from R4-13-801 (Supp. 95-1).

R20-5-802. Location of Office and Office Hours

The main office of the Industrial Commission of Arizona is located in Phoenix, Arizona. An office is also located in Tucson, Arizona. The offices are open for the transaction of business from 8:00 a.m. until 5:00 p.m. every day except Saturdays, Sundays and legal holidays.

Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-802 recodified from R4-13-802 (Supp. 95-1).

R20-5-803. Definitions

In these Rules of Procedures, unless the context otherwise requires, the following words and terms shall have the following meanings:

1. "Commission" means the Industrial Commission of Arizona.
2. "Affected employee" means an employee of a cited employer who is exposed to the alleged hazard described in the citation, as a result of his assigned duties.
3. "Authorized employee representative" means a labor organization which has a collective bargaining relationship with the cited employer and which represents affected employees.
4. "Representative" means any person, including an authorized employee representative, authorized by a party to represent him in a proceeding.
5. "Citation" means a written communication issued by the Division of Occupational Safety and Health of the Industrial Commission of Arizona pursuant to A.R.S. § 23-415.
6. "Notification of proposed penalty" means a written communication issued by the Industrial Commission of Arizona pursuant to A.R.S. § 23-418.
7. "Party" means the Occupational Safety and Health Division of the Commission, the affected employer and affected employees.

Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-803 recodified from R4-13-803 (Supp. 95-1).

R20-5-804. Computation of Time

In computing any period of time prescribed or allowed in these rules, the day from which the designated period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than seven days, inter-

mediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-804 recodified from R4-13-804 (Supp. 95-1).

R20-5-805. Record Address

The initial pleading filed by any person shall contain his name, address and telephone number. Any change in such information must be communicated promptly in writing to the Commission and to all other parties. A party who fails to furnish such correct and current information shall be deemed to have waived his right to object to the validity of any notice and/or service which has been made to the last known address of the party as shown by the records of the Commission.

Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-805 recodified from R4-13-805 (Supp. 95-1).

R20-5-806. Service and Notice

- A. At the time of filing pleadings or other documents a copy thereof shall be served by the filing party on every other party.
- B. Service upon a party who has appeared through a representative shall be made only upon such representative.
- C. Unless otherwise herein indicated, service may be accomplished by postage prepaid first class mail or by personal delivery. Service is deemed effected at the time of mailing (if by mail) or at the time of personal delivery (if by personal delivery).
- D. Proof of service shall be accomplished by a written statement of the same which sets forth the date and manner of service. Such statement shall be filed with the pleading or document.
- E. Service and notice to employees represented by an authorized employee representative shall be deemed accomplished by serving the representative in the manner prescribed in subsection (C).
- F. In the event that there are any affected employees who are not represented by an authorized employee representative, the employer shall, immediately upon receipt of Notice of the Date of Hearing, post, where the citation is required to be posted, a copy of the Notice of Date of Hearing and a notice informing such affected employees of their right to appear at the hearing and state their position and of the availability of all pleadings for inspection and copying at reasonable times. A notice in the following form shall be deemed to comply with this subsection:
(Name of employer)

Your employer has been cited by the Industrial Commission of Arizona for violation of the Arizona Occupational Safety and Health Act of 1972. The citation has been contested and will be the subject of a hearing before the Industrial Commission. Affected employees are entitled to appear in this hearing under the terms and conditions established by the Industrial Commission in its Rules of Procedure. Notice of Intent to Participate should be sent to:

THE INDUSTRIAL COMMISSION
OF ARIZONA
1601 West Jefferson Street,
Phoenix, Arizona 85007.

All papers relevant to this matter may be inspected at:

(Place reasonably convenient to employees, preferably at or near workplace.)

EXHIBIT 2

We've updated our Privacy Statement. Before you continue, please read our new Privacy Statement and familiarize yourself with the terms.

WESTLAW

Arizona Revised Statutes Annotated
Title 23. Labor

§ 23-107. General powers

AZ ST § 23-107 Arizona Revised Statutes Annotated Title 23. Labor (Approx. 2 pages)

A.R.S. § 23-107

§ 23-107. General powers

Currentness

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.¹
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.

NOTES OF DECISIONS (54)

Advisory capacity
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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 § 23-961, subsection A if the information is kept confidential by the private entity in its ordinary and regular course of business.

Credits

Amended by Laws 1968, 4th S.S., Ch. 6, § 7, eff. Jan. 2, 1969; Laws 1974, Ch. 184, § 2, eff. May 17, 1974; Laws 1984, Ch. 188, § 21; Laws 2004, Ch. 96, § 1.

Notes of Decisions (54)

Footnotes

1 Section 23-901 et seq.

A. R. S. § 23-107, AZ ST § 23-107

Current through the First Special and Second Regular Session of the Fifty-Third Legislature (2018), and includes Election Results from the November 6, 2018 General Election

End of

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WESTLAW

Arizona Revised Statutes Annotated
Title 23. Labor

§ 23-108.03. Performance of certain powers and duties

AZ ST § 23-108.03 Arizona Revised Statutes Annotated Title 23. Labor Effective: August 6, 2016 (Approx. 2 pages)

Effective: August 6, 2016

A.R.S. § 23-108.03

§ 23-108.03. Performance of certain powers and duties

Currentness

A. The industrial commission shall be responsible for determining the policy of the commission.

B. Any powers and duties prescribed by law to the commission in this chapter and chapters 2 and 6 of this title,¹ whether ministerial or discretionary, may by resolution be delegated by the commission to the director or any of its department heads or assistants, provided, that the commission shall not delegate its power or duty to:

1. Make rules and regulations.
2. Commute awards to a lump sum.
3. License self-insurers.

C. The commission shall be responsible for the official acts of its employees acting in the name of the commission and by its delegated authority.

Credits

Added by Laws 1968, 4th S.S., Ch. 6, § 9, eff. Jan. 2, 1969. Amended by Laws 1976, Ch. 162, § 35; Laws 2016, Ch. 356, § 4.

Notes of Decisions (13)

Footnotes

¹ Section 23-101 et seq., 23-201 et seq., 23-901 et seq.

A. R. S. § 23-108.03, AZ ST § 23-108.03

Current through the First Special and Second Regular Session of the Fifty-Third Legislature (2018), and includes Election Results from the November 6, 2018 General Election

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NOTES OF DECISIONS (13)

Average monthly wage
Commutation of awards
Judicial notice

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WESTLAW

Arizona Revised Statutes Annotated
Title 23. Labor

§ 23-901. Definitions

AZ ST § 23-901 Arizona Revised Statutes Annotated Title 23. Labor Effective: August 3, 2018 (Approx. 5 pages)

Effective: August 3, 2018

A.R.S. § 23-901

§ 23-901. Definitions

Currentness

In this chapter, unless the context otherwise requires:

1. "Award" means the finding or decision of an administrative law judge or the commission as to the amount of compensation or benefit due an injured employee or the dependents of a deceased employee.
2. "Client" means an individual, association, company, firm, partnership, corporation or any other legally recognized entity that is subject to this chapter and that enters into a professional employer agreement with a professional employer organization.
3. "Co-employee" means every person employed by an injured employee's employer.
4. "Commission" means the industrial commission of Arizona.
5. "Compensation" means the compensation and benefits provided by this chapter.
6. "Employee", "workman", "worker" and "operative" means:
 - (a) Every person in the service of this state or a county, city, town, municipal corporation or school district, including regular members of lawfully constituted police and fire departments of cities and towns, whether by election, appointment or contract of hire.
 - (b) Every person in the service of any employer subject to this chapter, including aliens and minors legally or illegally permitted to work for hire, but not including a person whose employment is both:
 - (i) Casual.
 - (ii) Not in the usual course of the trade, business or occupation of the employer.
 - (c) Lessees of mining property and the lessees' employees and contractors engaged in the performance of work that is a part of the business conducted by the lessor and over which the lessor retains supervision or control are within the meaning of this paragraph employees of the lessor, and are deemed to be drawing wages as are usually paid employees for similar work. The lessor may deduct from the proceeds of ores mined by the lessees the premium required by this chapter to be paid for such employees.
 - (d) Regular members of volunteer fire departments organized pursuant to title 48, chapter 5, article 1,¹ regular firefighters of any volunteer fire department, including private fire protection service organizations, organized pursuant to title 10, chapters 24 through 40,² volunteer firefighters serving as members of a fire department of any incorporated city or town or an unincorporated area without pay or without full pay and on a part-time basis, and voluntary policemen and volunteer firefighters serving in any incorporated city, town or

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Accident
 Administrative interpretations, construction and application
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 Nature of workers' compensation act
 Negligence actions
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unincorporated area without pay or without full pay and on a part-time basis, are deemed to be employees, but for the purposes of this chapter, the basis for computing wages for premium payments and compensation benefits for regular members of volunteer fire departments organized pursuant to title 48, chapter 5, article 1, or organized pursuant to title 10, chapters 24 through 40, regular members of any private fire protection service organization, volunteer firefighters and volunteer policemen of these departments or organizations shall be the salary equal to the beginning salary of the same rank or grade in the full-time service with the city, town, volunteer fire department or private fire protection service organization, provided if there is no full-time equivalent then the salary equivalent shall be as determined by resolution of the governing body of the city, town or volunteer fire department or corporation.

(e) Members of the department of public safety reserve, organized pursuant to § 41-1715, are deemed to be employees. For the purposes of this chapter, the basis for computing wages for premium payments and compensation benefits for a member of the department of public safety reserve who is a peace officer shall be the salary received by officers of the department of public safety for the officers' first month of regular duty as an officer. For members of the department of public safety reserve who are not peace officers, the basis for computing premiums and compensation benefits is four hundred dollars a month.

(f) Any person placed in on-the-job evaluation or in on-the-job training under the department of economic security's temporary assistance for needy families program or vocational rehabilitation program shall be deemed to be an employee of the department for the purpose of coverage under the state workers' compensation laws only. The basis for computing premium payments and compensation benefits shall be two hundred dollars per month. Any person receiving vocational rehabilitation services under the department of economic security's vocational rehabilitation program whose major evaluation or training activity is academic, whether as an enrolled attending student or by correspondence, or who is confined to a hospital or penal institution, shall not be deemed to be an employee of the department for any purpose.

(g) Regular members of a volunteer sheriff's reserve, which may be established by resolution of the county board of supervisors, to assist the sheriff in the performance of the sheriff's official duties. A roster of the current members shall monthly be certified to the clerk of the board of supervisors by the sheriff and shall not exceed the maximum number authorized by the board of supervisors. Certified members of an authorized volunteer sheriff's reserve shall be deemed to be employees of the county for the purpose of coverage under the Arizona workers' compensation laws and occupational disease disability laws and shall be entitled to receive the benefits of these laws for any compensable injuries or disabling conditions that arise out of and occur in the course of the performance of duties authorized and directed by the sheriff. Compensation benefits and premium payments shall be based on the salary received by a regular full-time deputy sheriff of the county involved for the first month of regular patrol duty as an officer for each certified member of a volunteer sheriff's reserve. This subdivision does not provide compensation coverage for any member of a sheriff's posse who is not a certified member of an authorized volunteer sheriff's reserve except as a participant in a search and rescue mission or a search and rescue training mission.

(h) A working member of a partnership may be deemed to be an employee entitled to the benefits provided by this chapter on written acceptance, by endorsement, at the discretion of the insurance carrier for the partnership of an application for coverage by the working partner. The basis for computing premium payments and compensation benefits for the working partner shall be an assumed average monthly wage of not less than six hundred dollars nor more than the maximum wage provided in § 23-1041 and is subject to the discretionary approval of the insurance carrier. Any compensation for permanent partial or permanent total disability payable to the partner is computed on the lesser of the assumed monthly wage agreed to by the insurance carrier on the acceptance of the application for coverage or the actual average monthly wage received by the partner at the time of injury.

(i) The sole proprietor of a business subject to this chapter may be deemed to be an employee entitled to the benefits provided by this chapter on written acceptance, by endorsement, at the discretion of the insurance carrier of an application for coverage by the sole proprietor. The basis for computing premium payments and compensation benefits for the sole proprietor is an assumed average monthly wage of not less than six hundred dollars nor more than the maximum wage provided by § 23-1041 and is subject to the

Out-of-state employment
Pain and suffering, purpose
Particular applications, generally, employees
Particular orders and awards
Partners, employees
Persons not considered employees
Preexisting injury, course of employment
Prisoners, employees
Process
Progressive disability, course of employment
Purpose
Reduction of litigation, purpose
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Replacement of lost earnings, purpose
Res judicata and collateral estoppel, orders and awards
Salesmen
Schools and school districts, employees
Sole proprietorship, employees
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State, employees
Stockholders, employees
Technicalities, construction and application
Utilities
Validity
Vocational rehabilitation trainees, employees
Volunteers, employees
Weight and sufficiency of evidence
Workers' compensation fund

discretionary approval of the insurance carrier. Any compensation for permanent partial or permanent total disability payable to the sole proprietor shall be computed on the lesser of the assumed monthly wage agreed to by the insurance carrier on the acceptance of the application for coverage or the actual average monthly wage received by the sole proprietor at the time of injury.

(j) A member of the Arizona national guard, Arizona state guard or unorganized militia shall be deemed a state employee and entitled to coverage under the Arizona workers' compensation law at all times while the member is receiving the payment of the member's military salary from this state under competent military orders or on order of the governor. Compensation benefits shall be based on the monthly military pay rate to which the member is entitled at the time of injury, but not less than a salary of four hundred dollars per month, nor more than the maximum provided by the workers' compensation law. Arizona compensation benefits shall not inure to a member compensable under federal law.

(k) Certified ambulance drivers and attendants who serve without pay or without full pay on a part-time basis are deemed to be employees and entitled to the benefits provided by this chapter and the basis for computing wages for premium payments and compensation benefits for certified ambulance personnel shall be four hundred dollars per month.

(l) Volunteer workers of a licensed health care institution may be deemed to be employees and entitled to the benefits provided by this chapter on written acceptance by the insurance carrier of an application by the health care institution for coverage of such volunteers. The basis for computing wages for premium payments and compensation benefits for volunteers shall be four hundred dollars per month.

(m) Personnel who participate in a search or rescue operation or a search or rescue training operation that carries a mission identifier assigned by the division of emergency management as provided in § 35-192.01 and who serve without compensation as volunteer state employees. The basis for computation of wages for premium purposes and compensation benefits is the total volunteer man-hours recorded by the division of emergency management in a given quarter multiplied by the amount determined by the appropriate risk management formula.

(n) Personnel who participate in emergency management training, exercises or drills that are duly enrolled or registered with the division of emergency management or any political subdivision as provided in § 26-314, subsection C and who serve without compensation as volunteer state employees. The basis for computation of wages for premium purposes and compensation benefits is the total volunteer man-hours recorded by the division of emergency management or political subdivision during a given training session, exercise or drill multiplied by the amount determined by the appropriate risk management formula.

(o) Regular members of the Arizona game and fish department reserve, organized pursuant to § 17-214. The basis for computing wages for premium payments and compensation benefits for a member of the reserve is the salary received by game rangers and wildlife managers of the Arizona game and fish department for the game rangers' and wildlife managers' first month of regular duty.

(p) Every person employed pursuant to a professional employer agreement.

(q) A working member of a limited liability company who owns less than fifty percent of the membership interest in the limited liability company.

(r) A working member of a limited liability company who owns fifty percent or more of the membership interest in the limited liability company may be deemed to be an employee entitled to the benefits provided by this chapter on the written acceptance, by endorsement, of an application for coverage by the working member at the discretion of the insurance carrier for the limited liability company. The basis for computing wages for premium payments and compensation benefits for the working member is an assumed average monthly wage of six hundred dollars or more but not more than the maximum wage provided in § 23-1041 and is subject to the discretionary approval of the insurance carrier. Any compensation for permanent partial or permanent total disability payable to the working member is computed on the lesser of the assumed monthly wage agreed to by the insurance carrier on the acceptance of the application for coverage or the actual average monthly wage received by the working member at the time of injury.

(s) A working shareholder of a corporation who owns less than fifty percent of the beneficial interest in the corporation.

(t) A working shareholder of a corporation who owns fifty percent or more of the beneficial interest in the corporation may be deemed to be an employee entitled to the benefits provided by this chapter on the written acceptance, by endorsement, of an application for coverage by the working shareholder at the discretion of the insurance carrier for the corporation. The basis for computing wages for premium payments and compensation benefits for the working shareholder is an assumed average monthly wage of six hundred dollars or more but not more than the maximum wage provided in § 23-1041 and is subject to the discretionary approval of the insurance carrier. Any compensation for permanent partial or permanent total disability payable to the working shareholder is computed on the lesser of the assumed monthly wage agreed to by the insurance carrier on the acceptance of the application for coverage or the actual average monthly wage received by the working shareholder at the time of injury.

7. "General order" means an order applied generally throughout this state to all persons under jurisdiction of the commission.

8. "Heart-related or perivascular injury, illness or death" means myocardial infarction, coronary thrombosis or any other similar sudden, violent or acute process involving the heart or perivascular system, or any death resulting therefrom, and any weakness, disease or other condition of the heart or perivascular system, or any death resulting therefrom.

9. "Insurance carrier" means every insurance carrier duly authorized by the director of insurance to write workers' compensation or occupational disease compensation insurance in this state.

10. "Interested party" means the employer, the employee, or if the employee is deceased, the employee's estate, the surviving spouse or dependents, the commission, the insurance carrier or their representative.

11. "Mental injury, illness or condition" means any mental, emotional, psychotic or neurotic injury, illness or condition.

12. "Order" means and includes any rule, direction, requirement, standard, determination or decision other than an award or a directive by the commission or an administrative law judge relative to any entitlement to compensation benefits, or to the amount of compensation benefits, and any procedural ruling relative to the processing or adjudicating of a compensation matter.

13. "Personal injury by accident arising out of and in the course of employment" means any of the following:

(a) Personal injury by accident arising out of and in the course of employment.

(b) An injury caused by the wilful act of a third person directed against an employee because of the employee's employment, but does not include a disease unless resulting from the injury.

(c) An occupational disease that is due to causes and conditions characteristic of and peculiar to a particular trade, occupation, process or employment, and not the ordinary diseases to which the general public is exposed, and subject to § 23-901.01 or, for heart-related, perivascular or pulmonary cases, § 23-1105.

14. "Professional employer agreement" means a written contract between a client and a professional employer organization:

(a) In which the professional employer organization expressly agrees to co-employ all or a majority of the employees providing services for the client. In determining whether the professional employer organization employs all or a majority of the employees of a client, any person employed pursuant to the terms of the professional employer agreement after the initial placement of client employees on the payroll of the professional employer organization shall be included.

(b) That is intended to be ongoing rather than temporary in nature.

(c) In which employer responsibilities for worksite employees, including hiring, firing and disciplining, are expressly allocated between the professional employer organization and the client in the agreement.

15. "Professional employer organization" means any person engaged in the business of providing professional employer services. Professional employer organization does not include a temporary help firm or an employment agency.

16. "Professional employer services" means the service of entering into co-employment relationships under this chapter to which all or a majority of the employees providing services to a client or to a division or work unit of a client are covered employees.

17. "Special order" means an order other than a general order.

18. "Weakness, disease or other condition of the heart or perivascular system" means arteriosclerotic heart disease, cerebral vascular disease, peripheral vascular disease, cardiovascular disease, angina pectoris, congestive heart trouble, coronary insufficiency, ischemia and all other similar weaknesses, diseases and conditions, and also previous episodes or instances of myocardial infarction, coronary thrombosis or any similar sudden, violent or acute process involving the heart or perivascular system.

19. "Workers' compensation" means workmen's compensation as used in article XVIII, section 8, Constitution of Arizona.

Credits

Amended by Laws 1964, Ch. 48, § 1; Laws 1964, Ch. 70, § 1; Laws 1968, Ch. 54, § 1; Laws 1968, 45th S.S., Ch. 6, § 11, eff. Jan. 2, 1969; Laws 1970, Ch. 187, § 1; Laws 1971, Ch. 173, § 6; Laws 1972, Ch. 26, § 1; Laws 1973, Ch. 53, § 1; Laws 1973, Ch. 136, § 1, eff. Jan. 1, 1974; Laws 1974, Ch. 178, § 1; Laws 1976, Ch. 120, § 1; Laws 1976, Ch. 162, § 41; Laws 1979, Ch. 215, § 4; Laws 1980, Ch. 246, § 17; Laws 1981, Ch. 199, § 1; Laws 1982, Ch. 215, § 2; Laws 1984, Ch. 188, § 22; Laws 1985, Ch. 136, § 1; Laws 1985, Ch. 190, § 34; Laws 1985, Ch. 349, § 1; Laws 1992, Ch. 156, § 2; Laws 1992, Ch. 185, § 1; Laws 1994, Ch. 223, § 95, eff. Jan. 1, 1996; Laws 1999, Ch. 297, § 28, eff. May 18, 1999; Laws 2000, Ch. 280, § 1; Laws 2000, Ch. 393, § 1; Laws 2002, Ch. 331, § 1, eff. July 1, 2006; Laws 2003, Ch. 180, §§ 2, 3; Laws 2004, Ch. 185, § 1, eff. July 1, 2006; Laws 2007, Ch. 129, § 2; Laws 2008, Ch. 187, § 2; Laws 2011, Ch. 27, § 6; Laws 2011, Ch. 157, § 4, eff. Jan. 1, 2013; Laws 2017, Ch. 325, § 1; Laws 2018, Ch. 175, § 1.

Notes of Decisions (370)

Footnotes

1 Section 48-802 et seq.

2 Sections 10-3101 et seq. through 10-11701 et seq.

A. R. S. § 23-901, AZ ST § 23-901

Current through the First Special and Second Regular Session of the Fifty-Third Legislature (2018), and includes Election Results from the November 6, 2018 General Election

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WESTLAW

Arizona Revised Statutes Annotated
Title 23. Labor

§ 23-902. Employers subject to chapter; exceptions

AZ ST § 23-902 Arizona Revised Statutes Annotated Title 23. Labor Effective: July 1, 2015 (Approx. 3 pages)

Effective: July 1, 2015

A.R.S. § 23-902

§ 23-902. Employers subject to chapter; exceptions

Currentness

A. Employers subject to this chapter are the state, each county, city, town, municipal corporation and school district and every person who employs any workers or operatives regularly employed in the same business or establishment under contract of hire, including covered employees pursuant to a professional employer agreement, except domestic servants. Exempted employers of domestic servants may come under this chapter by complying with its provisions and the rules of the commission. For the purposes of this subsection, "regularly employed" includes all employments, whether continuous throughout the year, or for only a portion of the year, in the usual trade, business, profession or occupation of an employer.

B. When an employer procures work to be done for the employer by a contractor over whose work the employer retains supervision or control, and the work is a part or process in the trade or business of the employer, then the contractors and the contractor's employees, and any subcontractor and the subcontractor's employees, are, within the meaning of this section, employees of the original employer. For the purposes of this subsection, "part or process in the trade or business of the employer" means a particular work activity that in the context of an ongoing and integral business process is regular, ordinary or routine in the operation of the business or is routinely done through the business' own employees.

C. A person engaged in work for a business, and who while so engaged is independent of that business in the execution of the work and not subject to the rule or control of the business for which the work is done, but is engaged only in the performance of a definite job or piece of work, and is subordinate to that business only in effecting a result in accordance with that business design, is an independent contractor.

D. A business that uses the services of an independent contractor and the independent contractor may prove the existence of an independent contractor relationship by executing a written agreement that complies with this subsection. The written agreement shall evidence that the business does not have the authority to supervise or control the actual work of the independent contractor or the independent contractor's employees. A written agreement executed in compliance with this subsection creates a rebuttable presumption of an independent contractor relationship between the parties if the written agreement contains a disclosure statement that the independent contractor is not entitled to workers' compensation benefits from the business. Unless the rebuttable presumption is overcome, no premium may be collected by the carrier on payments by the business to the independent contractor if a fully completed written agreement that satisfies the requirements of this subsection is submitted to the carrier. The written agreement shall be dated and contain the signatures of both parties and, unless otherwise provided by law, shall state that the business:

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Agriculture
Carriers
Churches
Consent of employee, statutory employers
Construction and application
Contracts of employment
Defenses
Domestic servants
Dual capacity doctrine
Employment outside state
Exclusive remedy
Extent of control, supervision or control
Factors
Homeowners
Independent contractors
Indian tribes
Interstate commerce, employment outside state
Jurisdiction
Lessors and lessees
Methods and manner, supervision or control
Multiple or joint employers
Occupation, trade or business
Part or process in business
Partners
Posting of notice
Premises, supervision or control
Presumptions, special employers
Prisoners
Purpose of act, statutory employers
Regular employment
Regular, ordinary or routine activity, statutory employers
Rejection of provisions of act
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Review
Right to control, supervision or control
Routine supervision or control
Salespersons
School districts
Securing coverage after accident, admissibility of evidence
Special employers
State and subdivisions, generally
Statutory employees, weight and sufficiency of evidence
Statutory employers
Stockholders
Summary judgment
Supervision or control
Totality of facts and circumstances, supervision or control
Trade, business or occupation
Truck drivers
Weight and sufficiency of evidence

1. Does not require the independent contractor to perform work exclusively for the business. This paragraph shall not be construed as conclusive evidence that an individual who performs services primarily or exclusively for another person is an employee of that person.
 2. Does not provide the independent contractor with any business registrations or licenses required to perform the specific services set forth in the contract.
 3. Does not pay the independent contractor a salary or hourly rate instead of an amount fixed by contract.
 4. Will not terminate the independent contractor before the expiration of the contract period, unless the independent contractor breaches the contract or violates the laws of this state.
 5. Does not provide tools to the independent contractor.
 6. Does not dictate the time of performance.
 7. Pays the independent contractor in the name appearing on the written agreement.
 8. Will not combine business operations with the person performing the services rather than maintaining these operations separately.
- E. A business that uses the services of a sole proprietor who has waived the sole proprietor's rights to workers' compensation coverage and benefits pursuant to § 23-961, subsection M is not liable for workers' compensation coverage or the payment of premiums for the sole proprietor.
- F. The written agreement executed in compliance with subsection D of this section shall be null and void and create no presumption of an independent contractor relationship if the consent of either party is either:
1. Obtained through misrepresentation, false statements, fraud or intimidation.
 2. Obtained through coercion or duress.
- G. If any agreement is found to be null and void under subsection F of this section the insurance carrier is entitled to collect a premium.

Credits

Amended by Laws 1973, Ch. 136, § 2, eff. Jan. 1, 1974; Laws 1994, Ch. 255, § 2; Laws 1996, Ch. 232, § 1; Laws 2001, Ch. 201, § 1; Laws 2003, Ch. 180, § 9; Laws 2004, Ch. 307, § 1; Laws 2007, Ch. 148, § 1; Laws 2014, Ch. 186, § 13, eff. July 1, 2015.

Notes of Decisions (196)

A. R. S. § 23-902, AZ ST § 23-902

Current through the First Special and Second Regular Session of the Fifty-Third Legislature (2018), and includes Election Results from the November 6, 2018 General Election

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WESTLAW

Arizona Revised Statutes Annotated
Title 23. Labor

§ 23-961. Methods of securing compensation by employers; deficit premium; civil penalty
AZ ST § 23-961 Arizona Revised Statutes Annotated Title 23. Labor Effective: July 1, 2015 (Approx. 4 pages)

Effective: July 1, 2015

A.R.S. § 23-961

§ 23-961. Methods of securing compensation by employers; deficit premium; civil penalty

Currentness

A. Employers shall secure workers' compensation to their employees in one of the following ways:

1. By insuring and keeping insured the payment of such compensation with an insurance carrier authorized by the director of insurance to write workers' compensation insurance in this state.
2. By furnishing to the commission satisfactory proof of financial ability to pay the compensation directly or through a workers' compensation pool approved by the commission in the amount and manner and when due as provided in this chapter. The requirements of this paragraph may be satisfied by furnishing to the commission satisfactory proof that the employer is a member of a workers' compensation pool approved by the commission pursuant to § 23-961.01. The commission may require a deposit or any other security from the employer for the payment of compensation liabilities in an amount fixed by the commission, but not less than one hundred thousand dollars for workers' compensation liabilities. If the employer does not fully comply with the provisions of this chapter relating to the payment of compensation, the commission may revoke the authority of the employer to pay compensation directly.

B. An employer may not secure compensation to comply with this chapter by any mechanism other than as provided in this section. No insurance, combination or other program may be marketed, offered or sold as workers' compensation that does not comply with this section. An employer violates this chapter if the employer purchases or secures its obligations under this chapter through a substitute for workers' compensation that does not comply with this section.

C. Insurance carriers that transact the business of workers' compensation insurance in this state are subject to the rules of the director of insurance.

D. On application of an insurance carrier, the director of insurance may order the release to the insurance carrier of all or part of the cash or securities that the insurance carrier deposited before the effective date of this amendment to this section with the state treasurer pursuant to this section. In determining whether to order the release of all or part of the deposit, the director of insurance shall consider all of the following:

1. The financial condition of the insurance carrier.
2. The insurance carrier's liabilities for workers' compensation loss and loss expenses in this state.

NOTES OF DECISIONS (46)

- Administrative expenses, premium taxes
- Application for insurance, coverage
- Authorized insurance carriers
- Cancellation
- Construction and application
- Coverage
- Duty of employer
- Failure to insure
- Local office, carriers
- Notice to employees, cancellation
- Past due premiums
- Premium rates
- Premium taxes
- Private insurers, premium rates
- Refund, premium taxes
- Reinstatement
- Self-insurers
- Self-raters' policy
- State compensation fund insurance, premium rates
- Validity, premium taxes

3. Whether the insurance carrier is subject to a finding of hazardous condition, an order of supervision, a delinquency proceeding or any other regulatory action in this state, the insurance carrier's state of domicile or any other state in which the insurance carrier transacted the business of insurance.

4. Any other factors the director of insurance determines are relevant to the application for release of the deposit.

E. Except in the event of nonpayment of premiums, each insurance carrier shall carry a risk to the conclusion of the policy period unless the policy is cancelled by the employer or unless one or both of the parties to a professional employer agreement terminate the agreement. The policy period shall be agreed upon by the insurance carrier and the employer.

F. At least thirty days' notice shall be given by the insurance carrier to the employer and to the commission of any cancellation or nonrenewal of a policy if the cancellation or nonrenewal is at the election of the insurance carrier. The insurance carrier shall promptly notify the commission of any cancellation by the employer or failure of the employer to renew the policy. The failure to give notice of nonrenewal if the nonrenewal is at the election of the insurance carrier shall not extend coverage beyond the policy period. An insurance carrier shall notify the commission on a form prescribed by the commission that it has insured an employer for workers' compensation promptly after undertaking to insure the employer.

G. Every insurance carrier on or before March 1 of each year shall pay to the state treasurer for the credit of the administrative fund, in lieu of all other taxes on workers' compensation insurance, a tax of not more than three per cent on all premiums collected or contracted for during the year ending December 31 next preceding, less the deductions from such total direct premiums for applicable cancellations, returned premiums and all policy dividends or refunds paid or credited to policyholders within this state and not reapplied as premiums for new, additional or extended insurance. Every self-insured employer, including workers' compensation pools, on or before March 31 of each year shall pay a tax of not more than three per cent of the premiums that would have been paid by the employer if the employer had been fully insured by an insurance carrier authorized to transact workers' compensation insurance in this state during the preceding calendar year. The commission shall adopt rules that shall specify the premium plans and methods to be used for the calculation of rates and premiums and that shall be the basis for the taxes assessed to self-insured employers. The tax shall be not less than two hundred fifty dollars per annum and shall be computed and collected by the commission and paid to the state treasurer for the credit of the administrative fund at a rate not exceeding three per cent to be fixed annually by the industrial commission. The rate shall be no more than is necessary to cover the actual expenses of the industrial commission in carrying out its powers and duties under this title. Any quarterly payments of tax pursuant to subsection I of this section shall be deducted from the tax payable pursuant to this subsection.

H. An insurance carrier may reduce the amount of premiums paid by an employer by up to five per cent if all of the following apply:

1. The insured employer complies with the drug testing policy requirements prescribed in § 23-493.04.
2. The insured employer conducts drug testing of prospective employees.
3. The insured employer conducts drug testing of an employee after the employee has been injured.
4. The insured employer allows the employer's insurance carrier to have access to the drug testing results under paragraphs 2 and 3 of this subsection.

I. Any insurer that, pursuant to this section, paid or is required to pay a tax of two thousand dollars or more for the preceding calendar year shall file a quarterly report, in a form prescribed by the commission, accompanied by a payment in an amount equal to the tax due at the rates prescribed in subsection G of this section for premiums determined pursuant to subsection G of this section or an amount equal to twenty-five per cent of the tax paid or required to be paid pursuant to subsection G of this section for the preceding

calendar year. The quarterly payments shall be due and payable on or before the last day of the month following the close of the quarter and shall be made to the state treasurer.

J. If an overpayment of taxes results from the method prescribed in subsection I of this section the industrial commission may refund the overpayment without interest.

K. An insurer who fails to pay the tax prescribed by subsection G or I of this section or the amount prescribed by § 23-1065, subsection A is subject to a civil penalty equal to the greater of twenty-five dollars or five per cent of the tax or amount due plus interest at the rate of one per cent per month from the date the tax or amount was due.

L. An insurance carrier authorized to write workers' compensation insurance may not assess an employer premiums for services provided by a contractor alleged to be an employee under § 23-902, subsection B or C, unless the carrier has done both of the following:

1. Prepared written audit or field investigation findings establishing that all applicable factors for determining employment status under § 23-902 have been met.
2. Provided a copy of such findings to the employer in advance of assessing a premium.

M. Notwithstanding § 23-901, paragraph 6, subdivision (i), a sole proprietor may waive the sole proprietor's rights to workers' compensation coverage and benefits if both the sole proprietor and the insurance carrier of the employer subject to this chapter for which the sole proprietor performs services sign and date a waiver that is substantially in the following form:

I am a sole proprietor, and I am doing business as (name of sole proprietor). I am performing work as an independent contractor for (name of employer). I am not the employee of (name of employer) for workers' compensation purposes, and, therefore, I am not entitled to workers' compensation benefits from (name of employer). I understand that if I have any employees working for me, I must maintain workers' compensation insurance on them.

Sole proprietor	Date
-----------------	------

Insurance carrier	Date
-------------------	------

Credits

Amended by Laws 1968, 4th S.S., Ch. 6, § 24, eff. Jan. 2, 1969; Laws 1970, Ch. 137, § 15; Laws 1971, Ch. 173, § 13; Laws 1974, Ch. 184, § 8, eff. May 17, 1974; Laws 1978, Ch. 92, § 10, eff. Oct. 1, 1978; Laws 1983, Ch. 4, § 7, eff. Feb. 11, 1983; Laws 1984, Ch. 188, § 25; Laws 1985, Ch. 39, § 9; Laws 1987, Ch. 38, § 2; Laws 1988, Ch. 51, § 2; Laws 1990, Ch. 249, § 1; Laws 1993, 2nd S.S., Ch. 9, § 1; Laws 1994, Ch. 255, § 3; Laws 1996, Ch. 232, § 2; Laws 1997, Ch. 194, § 1; Laws 2001, Ch. 201, § 3; Laws 2003, Ch. 180, § 11; Laws 2004, Ch. 307, § 2; Laws 2007, Ch. 148, § 2; Laws 2011, Ch. 157, § 5, eff. Jan. 1, 2013; Laws 2014, Ch. 186, § 14, eff. July 1, 2015.

Notes of Decisions (46)

A. R. S. § 23-961, AZ ST § 23-961

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Arizona Revised Statutes Annotated

Title 23. Labor

§ 23-961.01. Self-insurance pools

AZ ST § 23-961.01 Arizona Revised Statutes Annotated Title 23. Labor (Approx. 2 pages)

A.R.S. § 23-961.01

§ 23-961.01. Self-insurance pools

Currentness

A. Two or more employers, each of whom are engaged in similar industries, may enter into contracts to establish a workers' compensation pool to provide for the payment and administration of workers' compensation claims pursuant to this chapter. The members of each workers' compensation pool shall elect a board of trustees to manage the workers' compensation pool established pursuant to this section. Each member employer shall have been in business for at least five consecutive years before entering into a contract to establish a workers' compensation pool. The total amount of gross workers' compensation insurance premiums paid by the members of the pool in the year preceding the execution of the contract must equal at least seven hundred fifty thousand dollars. The group of employers that makes up a workers' compensation pool shall have been formed for a specific purpose, other than to engage in self-insurance, before the formation of a workers' compensation pool. Employers may establish workers' compensation pools pursuant to this section by one of the following means:

1. On a cooperative or contract basis.
2. Through the joint formation of a nonprofit corporation.
3. By the execution of a trust agreement to carry out the provisions of this chapter directly by the employers or by contracting with a third party.

B. A workers' compensation pool established pursuant to this section is subject to approval as a self-insurer by the industrial commission pursuant to § 23-961, subsection A, paragraph 2. The commission shall adopt rules as necessary to carry out the purposes of this section.

C. Workers' compensation pools established pursuant to this section are exempt from taxation under title 43.¹

D. Each agreement or contract shall provide that the members of a workers' compensation pool are jointly and severally liable for the liabilities of the pool. If a member of a pool discontinues its membership in the pool, that party shall be liable only for liabilities accruing prior to the discontinuation of its membership in the pool.

E. As to self-insurance pools established under this section, no pool, employer within a pool, or agent of any pool or employer within a pool may require an employee to be treated by or directed to any specific medical provider subsequent to the employee's initial visit to treat an industrial injury or illness, except as may be required as part of an independent medical examination for an employee making a workers' compensation claim.

F. The industrial commission shall adopt rules necessary for safeguarding the solvency of pools and guaranteeing that injured workers receive benefits as required under this chapter. These rules shall include, at a minimum, matters pertaining to classification and rating, loss

reserves, investments, financial security including minimum and combined premiums, combined net worth and other indicia necessary for protection from insolvency, specific and aggregate excess insurance, group homogeneity and assessments necessary for participation in and administration of the workers' compensation system.

Credits

Added by Laws 1997, Ch. 194, § 2. Amended by Laws 1999, Ch. 297, § 29, eff. May 18, 1999.

Footnotes

1 Section 43-101 et seq.

A. R. S. § 23-961.01, AZ ST § 23-961.01

Current through the First Special and Second Regular Session of the Fifty-Third Legislature (2018), and includes Election Results from the November 6, 2018 General Election

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WESTLAW

Arizona Revised Statutes Annotated
Title 23. Labor

§ 23-1065. Special fund; purposes; investment committee

AZ ST § 23-1065 Arizona Revised Statutes Annotated Title 23. Labor Effective: July 3, 2015 (Approx. 5 pages)

Effective: July 3, 2015

A.R.S. § 23-1065

§ 23-1065. Special fund; purposes; investment committee

Currentness

A. The industrial commission may direct the payment into the state treasury of not to exceed one per cent of all premiums received by private insurance carriers during the immediately preceding calendar year. The same percentage shall be assessed against self-insurers based on the total cost to the self-insured employer as provided in § 23-961, subsection G. Such assessments shall be computed on the same premium basis as provided for in § 23-961, subsections G, H, I, J and K and shall be no more than is necessary to keep the special fund actuarially sound. Such payments shall be placed in a special fund within the administrative fund to provide, at the discretion of the commission, such additional awards as may be necessary to enable injured employees to accept the benefits of any law of this state or of the United States, or both jointly, for promotion of vocational rehabilitation of persons with disabilities in industry.

B. In claims involving an employee who has a preexisting industrially-related permanent physical impairment of the type specified in § 23-1044, subsection B and who thereafter suffers an additional permanent physical impairment of the type specified in such subsection, the claim involving the subsequent impairment is eligible for reimbursement, as provided by subsection D of this section, according to the following:

1. The employer in whose employ the subsequent impairment occurred or its insurance carrier is solely responsible for all temporary disability compensation to which the employee is entitled and for an amount equal to the permanent disability compensation provided by § 23-1044, subsection B for the subsequent impairment. If the employee is determined to have sustained no loss of earning capacity after the medically stationary date, the employer or carrier shall pay him as a vocational rehabilitation bonus the amount calculated under this paragraph as a lump sum, which shall be a credit against any permanent compensation benefits awarded in any subsequent proceeding. The amount of the vocational rehabilitation bonus for which the employer or carrier is responsible under this paragraph shall be calculated solely on physical, medically rated permanent impairment and not on occupational or other factors.

2. If the commission determines that the employee is entitled to compensation for loss of earning capacity under § 23-1044, subsection C or permanent total disability under § 23-1045, subsection B, the total amount of permanent benefits for which the employer or carrier is solely responsible under paragraph 1 of this subsection shall be expended first, with monthly payments made according to the loss of earning capacity or permanent total disability award. The employer or carrier and the special fund are equally responsible for the remaining amount of compensation for loss of earning capacity under § 23-1044, subsection C or permanent total disability under § 23-1045, subsection B. This paragraph shall not be construed as requiring payment of any benefits under § 23-1044, subsection B

NOTES OF DECISIONS (85)

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in any case in which an employee is entitled to benefits for loss of earning capacity under § 23-1044, subsection C or permanent total disability benefits under § 23-1045, subsection B.

C. In claims involving an employee who has a preexisting physical impairment that is not industrially-related and, whether congenital or due to injury or disease, is of such seriousness as to constitute a hindrance or obstacle to employment or to obtaining reemployment if the employee becomes unemployed, and the impairment equals or exceeds a ten per cent permanent impairment evaluated in accordance with the American medical association guides to the evaluation of permanent impairment, and the employee thereafter suffers an additional permanent impairment not of the type specified in § 23-1044, subsection B, the claim involving the subsequent impairment is eligible for reimbursement, as provided by subsection D of this section, under the following conditions:

1. The employer in whose employ the subsequent impairment occurred or its carrier is solely responsible for all temporary disability compensation to which the employee is entitled.
2. The employer had knowledge of the permanent impairment at the time the employee was hired, or that the employee continued in employment after the employer acquired such knowledge.
3. The employee's preexisting impairment is due to one or more of the following:
 - (a) Epilepsy.
 - (b) Diabetes.
 - (c) Cardiac disease.
 - (d) Arthritis.
 - (e) Amputated foot, leg, arm or hand.
 - (f) Loss of sight of one or both eyes or a partial loss of uncorrected vision of more than seventy-five per cent bilaterally.
 - (g) Residual disability from poliomyelitis.
 - (h) Cerebral palsy.
 - (i) Multiple sclerosis.
 - (j) Parkinson's disease.
 - (k) Cerebral vascular accident.
 - (l) Tuberculosis.
 - (m) Silicosis.
 - (n) Psychoneurotic disability following treatment in a recognized medical or mental institution.
 - (o) Hemophilia.
 - (p) Chronic osteomyelitis.
 - (q) Hyperinsulinism.
 - (r) Muscular dystrophies.
 - (s) Arteriosclerosis.
 - (t) Thrombophlebitis.
 - (u) Varicose veins.
 - (v) Heavy metal poisoning.
 - (w) Ionizing radiation injury.
 - (x) Compressed air sequelae.

(y) Ruptured intervertebral disk.

4. The employer or carrier and the special fund are equally responsible for the amount of compensation for loss of earning capacity under § 23-1044, subsection C or permanent total disability under § 23-1045, subsection B.

D. The employer or insurance carrier shall notify the commission of its intent to claim reimbursement for an eligible claim under subsection B or C of this section not later than the time the employer or insurance carrier notifies the commission pursuant to § 23-1047, subsection A. Upon receiving notice the commission may expend funds from the special fund created by this section for travel and discovery procedures and for the employment of such independent legal, medical, rehabilitation, claims or labor market consultants or experts as may be deemed necessary by the commission to assist in the determination of the liability of the special fund, if any, under subsection B or C of this section. In the event there is any dispute regarding liability to the special fund pursuant to subsection B or C of this section, the commission shall not delay the issuance of a permanent award pursuant to § 23-1047, subsection B.

E. If the special fund created by this section is determined to be liable under either subsection B or C of this section, the employer or insurance carrier that is primarily liable shall pay the entire amount of the award to the injured employee and the commission shall by rule provide for the reimbursement of the employer or insurance carrier on an annual basis. In any case arising out of subsection B or C of this section, the written approval of the special fund is required for the compromise of any claim made pursuant to § 23-1023. In any such case, written approval shall not be unreasonably withheld by the special fund, carrier, self-insured employer or other person responsible for the payment of compensation. Failure to obtain the written approval of the special fund shall not cause the injured worker to lose any benefits but ends the special fund's liability for reimbursement and makes the employer or carrier solely responsible for the payment of the remaining benefits.

F. The employer or insurance carrier shall make its claim for reimbursement to the commission no later than November 1 each year, for payments made pursuant to subsection B or C of this section during the twelve months prior to October 1 each year. Claims shall be paid before December 31 each year. If the total annual reserved liabilities of the special fund obligated under subsections B and C of this section exceed six million dollars, as determined by the annual actuarial study performed pursuant to subsection I of this section, the commission, after notice and a hearing, may levy an additional assessment under subsection A of this section of up to one-half per cent to meet such liabilities. Any insurance carrier or employer who may be adversely affected by the additional assessment may at any time prior to the sixtieth day after such additional assessment is ordered file a complaint challenging the validity of the additional assessment in the superior court in Maricopa county for a judicial review of the additional assessment. On judicial review the determination of the commission shall be upheld if supported by substantial evidence in the record considered as a whole.

G. In the event the injured employee is awarded additional compensation, under subsection A of this section, the commission retains jurisdiction to amend, alter or change the award upon a change in the physical condition of the injured employee resulting from the injury.

H. On receiving notice that the special fund may be liable under this chapter, the commission may spend monies from the special fund established by this section for expenses that are necessary to assist in the processing, payment or determination of liability of the fund. These expenses may include travel, discovery procedures and employing any legal, medical, rehabilitation, claims or labor market consultant, examiner or expert.

I. The commission shall cause an annual actuarial study of the special award fund to be made by a qualified actuary who is a member of the society of actuaries. The actuary shall make specific recommendations for maintaining the fund on a sound actuarial basis. The actuarial study shall be completed on or before September 1.

J. The special fund of the commission consists of all monies from premiums and assessments, except penalties assessed pursuant to this chapter, received and paid into the fund, property and securities acquired by the use of monies in the fund, interest earned on monies in the fund and other monies derived from the sale, use or lease of properties belonging to the fund. The special fund created by this section shall be administered by the

director of the industrial commission, subject to the authority of the industrial commission. The director of the commission with approval of the investment committee, in the administration of the special fund, may provide loans, subject to repayment, budgetary review and legislative appropriation, to the administrative fund for the purposes and subject to § 23-1081, acquire real property and acquire or construct a building or other improvements on the real property as may be necessary to house, contain, furnish, equip and maintain offices and space for departmental and operational facilities of the commission. The commission when using space constructed pursuant to this section shall make equal payments of rent on a semiannual basis, which shall be deposited in the special fund. The investment committee shall determine the amount of the rent, which must be at least equal to or greater than that determined by the joint committee on capital review for buildings of similar design and construction as provided by § 41-792.01.

K. There is established an investment committee consisting of the director and the chairman of the commission and three persons knowledgeable in investments and economics appointed by the governor. Of the members appointed by the governor, one shall be a professional in the investment business, one shall represent workers' compensation insurers and one shall represent self-insurers. The term of members appointed by the governor is three years, which shall begin on July 1 and end on June 30 three years later. The committee shall prescribe by rule investment policies and supervise the investment activities of the special fund.

L. Each member of the investment committee, other than the director of the commission, is eligible to receive from the special fund:

1. Compensation of fifty dollars for each day while in actual attendance at meetings of the investment committee.
2. Reimbursement for expenses pursuant to title 38, chapter 4, article 2.¹

M. The investment committee shall meet at least once every month.

N. The investment committee shall periodically review and assess the investment strategy.

O. The investment committee, by resolution, may invest and reinvest the surplus or reserves in the funds established under this chapter in any legal investments authorized under § 38-718.

P. In addition to the investments authorized under § 38-718, the investment committee may approve the investment in real property and improvements on real property to house and maintain offices of the commission, including spaces for its departmental and operational facilities. Title to the real estate and improvements on the real estate vests in the special fund of the commission, and the assets become part of the fund as provided by this section.

Q. The investment committee may appoint a custodian for the safekeeping of all or any portion of the investments owned by the special fund of the commission and may register stocks, bonds and other investments in the name of a nominee. Except for investments held by a custodian or in the name of a nominee, all securities purchased pursuant to subsection O of this section shall promptly be deposited with the state treasurer as custodian thereof, who shall collect the dividends, interest and principal thereof, and pay, when collected, into the special fund. The state treasurer shall pay all vouchers drawn for the purchase of securities. The director may sell any of the securities as the director deems appropriate, if authorized by resolution of the investment committee, and the proceeds therefrom shall be payable to the state treasurer for the account of the special fund upon delivery of the securities to the purchaser or the purchaser's agent.

Credits

Amended by Laws 1963, Ch. 5, § 1; Laws 1968, 4th S.S., Ch. 6, § 53, eff. Jan. 2, 1969; Laws 1970, Ch. 137, § 16; Laws 1971, Ch. 173, § 20; Laws 1973, Ch. 133, § 32; Laws 1980, Ch. 246, § 35; Laws 1981, Ch. 299, § 2; Laws 1983, Ch. 142, § 2, eff. April 19, 1983; Laws 1983, Ch. 224, § 11; Laws 1984, Ch. 188, § 36; Laws 1985, Ch. 39, § 12; Laws 1986, Ch. 85, § 2, eff. April 11, 1986; Laws 1986, Ch. 172, § 2, eff. Aug. 13, 1986; Laws 1986, Ch. 415, § 8; Laws 1988, Ch. 51, § 3; Laws 1995, Ch. 32, § 9, eff. March 30, 1995; Laws 1996, Ch. 102, § 22; Laws 1999, Ch. 331, § 10; Laws 2001, Ch. 201, § 6; Laws 2003, Ch. 180, § 12; Laws 2004, Ch. 307, § 4; Laws 2007, Ch. 148, § 3; Laws 2011, Ch. 157, § 14, eff. Jan.

1, 2013; Laws 2014, Ch. 186, § 16, eff. July 1, 2015; Laws 2014, Ch. 215, § 67; Laws 2015, Ch. 43, § 5.

Notes of Decisions (85)

Footnotes

1 Section 38-621 et seq.

A. R. S. § 23-1065, AZ ST § 23-1065

Current through the First Special and Second Regular Session of the Fifty-Third Legislature (2018), and includes Election Results from the November 6, 2018 General Election

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EXHIBIT 3

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 5. THE INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 7. SELF-INSURANCE REQUIREMENTS FOR WORKERS'

COMPENSATION POOLS ORGANIZED UNDER A.R.S. § 23-961.01

A. Identification of the rulemaking.

In 1997, the Arizona Legislature enacted A.R.S. § 23-961.01 which permits 2 or more employers that meet the criteria of § 23-961.01 to form workers' compensation pools. Workers' compensation pools organized under § 23-961.01 may apply to the Industrial Commission of Arizona for authority to self-insure for workers' compensation. Section G of A.R.S. § 23-961.01 specifically directs the Industrial Commission to promulgate rules to safeguard the solvency of pools organized under § 23-961.01 and to guarantee that injured workers receive benefits as required under the Arizona Workers' Compensation Act. The Legislature mandated that the rules include matters pertaining to classification and rating, loss reserves, investments, financial security, minimum and combined premiums, combined net worth, specific and aggregate excess insurance, pool homogeneity, and assessments necessary for participation in and administration of the workers' compensation system.

In response to A.R.S. § 23-961.01, the Industrial Commission adopted Article 7 to 20 A.A.C. 5. Article 7 includes new Sections addressing each of the matters specifically listed in A.R.S. § 23-961.01 which Sections are for the purpose of

safeguarding the solvency of the pools and guaranteeing that injured workers receive benefits as required under the Arizona Workers' Compensation Act:

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

Employers that meet the requirements of A.R.S. § 23-961.01 and Article 7 and that wish to join a workers' compensation pool for purposes of providing workers compensation insurance coverage to employees will be directly affected by and receive direct benefits from the adopted rules. Employee associations or organizations that form a workers' compensation pool will be directly affected by, bear the costs of, and receive direct benefits from the adopted rules.

Workers' compensation insurance carriers may be indirectly affected by Article 7 because employers may substitute coverage provided by a workers' compensation insurance carrier for coverage provided by a workers' compensation pool. The result is less premiums collected by the workers' compensation insurance carrier.

Other parties indirectly affected include 3rd-party claims processors and administrators who will benefit from contracts established with pools to process claims and administer the operation of the pools.

C. Cost benefit analysis

1. Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the rulemaking.

The Industrial Commission may incur costs associated with this rulemaking because the Industrial Commission anticipates an increase in workload that will need to be handled by adding additional staff (e.g. the processing of new applications for pools and renewal applications of existing pools). The Industrial Commission has established that two positions are necessary to cover the increased administrative duties at an initial cost of \$57,400 with an annual cost of \$52,400. The Industrial Commission believes, however, that the costs associated with hiring additional staff is the result of the enactment of A.R.S. § 23-961.01, rather than the adoption of Article 7. At this point in time, however, funding has not been authorized for these positions. For this reason, the Industrial Commission has transferred an existing, but vacant grade 17 position from its Ombudsman Division to its Administration Division.

The Industrial Commission also anticipates that it will need additional staff to assist the pools to develop and implement loss control programs. For these additional positions (safety consultants), the initial cost is anticipated to be \$114,800. Thereafter, the cost will be \$112,600 (annually). The Industrial Commission benefits from hiring additional staff to work with pools to develop loss control programs. An active and effective loss control program leads to fewer workers' compensation injuries. Fewer injuries result in greater employee productivity and decreased costs for workers' compensation expenses. This, in turn, leads to decreased premiums paid by employers. At

this point in time, however, funding has not been authorized for these positions.

The Industrial Commission also benefits from the rules because the rules are written to ensure financial solvency of a pool. Protecting the solvency of a pool translates to protecting the assets of the Special Fund, which is a fund administered by the Industrial Commission. If a pool is unable to process or pay workers' compensation claims, ultimately money from the Special Fund would be used to pay the benefits (to the extent the bonds, securities, and assets of a pool do not cover the liability of the pool).

The Industrial Commission also benefits from the rules because the rules provide specific time-frames and criteria for the processing of initial and renewal applications. This specificity will enable the Commission to process applications more efficiently.

The Special Fund of the Industrial Commission is funded through a tax on workers' compensation premiums. The Industrial Commission does not anticipate that state revenue generated by this tax will decrease or increase by the enactment of Article 7. Regardless of whether an employer is insured through a workers' compensation insurance carrier or is self-insured, premium taxes are required to be paid.

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

While it is difficult to state whether the impact is a result of the enabling statute or the addition of Article 7, the State Compensation Fund (SCF), a

quasi-state agency, may be affected by the enactment Article 7 because SCF is a workers' compensation insurance carrier that may experience a decrease in revenue caused by the loss of premiums dollars. This loss would be caused by employers choosing to join a pool rather than insuring with SCF. On the other hand, SCF may generate revenue if it markets itself as an entity (3rd-party service company) that can process workers' compensation claims on behalf of a workers' compensation pool.

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

An employer must pay a premium to a workers' compensation pool. The premium paid by an employer enables a pool to pay workers' compensation losses and administrative costs of the pool. If, however, the employer did not pay a premium to a workers' compensation pool, the employer would be required to pay a premium to a workers' compensation insurance carrier [see A.R.S. § 23-961(A)]. Therefore, the payment of a premium to a workers' compensation pool does not constitute an additional cost to an employer. Further, depending on market forces, an employer may save money by belonging to a pool. In the first year of operation for a pool, premiums paid to a pool could be between 5-9% below premiums charged by carriers and up to 12% below carrier premiums in future years. On the other hand, workers' compensation insurance carriers may respond to A.R.S. § 23-961.01 by offering competitive premiums. The result is that employers may

find it more cost efficient to remain insured with a traditional insurance carrier instead of joining a pool. Either scenario, the Industrial Commission does not believe that employers will incur additional costs associated with the adoption of Article 7.

An employer association that elects to form a workers' compensation pool will incur costs. Direct administrative costs to a pool, incurred on an annual basis, will include the following:

- 1) Cost of Administration. The costs for administration may vary depending on the salary or contract negotiated with an administrator. In general, the experience of the Industrial Commission with other self-insured pools demonstrates that administration costs are approximately 15% of total premiums received with maximum incurred costs being between \$150,000 to \$200,000 per year. This figure includes claims processing services, loss control services and underwriting services of a pool.
- 2) Specific Excess Insurance with \$250,000 self-insured retention. The cost to obtain specific excess insurance will vary depending on the size of a pool. In general, however, specific excess insurance with a \$250,000 self-insured retention will cost approximately 5% of total premiums received.
- 3) Aggregate Excess Insurance with a \$5 million or 110% of premiums retention. The cost to obtain aggregate excess insurance will vary depending on the size of a pool. In general, however,

aggregate excess insurance with the stated retention will cost a 3% of total premiums received.

- 4) One million dollars fidelity insurance. The cost to obtain fidelity insurance (covering of errors and omission involving financial and cash activities) is 3,000 to \$7,000.
- 5) Guaranty Bond (minimum amount \$250,000). The cost to obtain a guaranty bond will vary depending on the size of a pool. In general, however, the cost for a \$250,000 bond is between \$3,750 to \$5,000.
- 6) Audit of Financial Statements. The cost to obtain an audit of a financial statement will vary depending on the size of a pool. In general, however, the cost for an audit is approximately \$10,000.
- 7) Actuarial Review. The cost to obtain an actuarial review will vary depending on the size of a pool and the age, complexity, and number of active and closed workers' compensation claims. In general, however, the cost for an actuarial review is in the range of \$10,000.
- 8) Payment of Premium Taxes. Premium taxes will vary depending on the formula used by the pool to calculate its taxes. Taxes are affected by the amount of payroll, losses and premium charged to members. The cost associated with the payment of taxes is not, however, the result of the enactment of Article 7. The obligation to pay taxes arises under A.R.S. § 23-961.

In general, the Industrial Commission anticipates that the administrative costs listed above will account for 25% of the total costs incurred by a pool. The costs to obtain the items listed above is outweighed by the benefits associated with the listed items. In general, the items listed ensure that a pool has the ability to process and pay workers' compensation benefits to injured workers and serve to protect the solvency of a pool as well as the solvency of the Special Fund (fund that is statutorily responsible to pay claims of a pool that is unable to process and pay claims).

Specifically, an administrator ensures that the pool operates lawfully and discharges the duties and responsibilities of a pool. A pool cannot function without an administrator running the daily operations of the pool.

Excess insurance coverage protects a pool from excessive liability that can threaten the solvency of the pool. A specific maximum self-insured retention of \$250,000 and an aggregate self-insured retention of \$5 million or 110% of premiums collected means that a pool will not pay any greater than \$250,000 on any specific claim or any more than \$5 million (or 110% of premiums) for all claims. Requiring excess insurance to cover losses over the self-insured retention levels ensures that liabilities of a pool do not become unmanageable. While some claims may never reach the specific self-insured retention level, other claims easily reach that level (e.g. catastrophic claims, burn, head trauma, or back injuries).

Statistics generated from the processing of no insurance claims by the No Insurance Section of the Industrial Commission reveal that 2.2% of 675

active claims reached the \$250,000 threshold. On average, these claims reached the \$250,000 level within 4-5 years. However, 7 claims reached the \$250,000 level as follows:

1 claim	4 months
2 claims	9 months
2 claims	1 year
2 claims	2 years

For those claims that took 1 year or less to reach the \$250,000 level, the Special Fund has expended approximately \$2,432,200.00. This figure does not include the amount that must be reserved for future costs associated with the processing of these claims (millions of dollars).

Statistics provided by an excess insurance carrier that provides excess insurance coverage for self-insured pools across the country demonstrate that approximately 1.5% of claims processed will exceed the \$250,000 self-insured retention level within 3-5 years. The self-insured retention level can be exceeded in days or months for catastrophic injuries (including head, burn or back injuries).

Given the foregoing statistics, the Industrial Commission believes that the maximum self-insured retention levels are high enough to allow a pool to handle the majority of its own claims, but low enough to protect the pool from bankruptcy. The protection afforded by the retention levels adopted by the Industrial Commission also serves to protect the solvency of the Special Fund.

Claims processing services enable a pool to process claims under the Workers' Compensation Act. Loss control services result in fewer work-related injuries which, in turn, saves money for a pool and member employers. Underwriting services ensures the rates and premiums are properly written and charged. Without these services, a pool could not discharge its responsibilities under A.R.S. § 23-901 et seq.

Fidelity insurance provides protection to a pool from the unauthorized acts of pool employees. This protection translates to the protection of the pool, members of the pool, and the Special Fund. Likewise, a guaranty bond ensures that funds are available to pay workers' compensation claims in the event that a pool cannot process or pay benefits. The bond provides protection to the Special Fund.

The costs associated with financial audits and actuarial reviews are likewise outweighed by the benefits associated with the audits and reviews. A pool cannot assess its current financial picture or its future liabilities without these services. The ability to assess present and future solvency of a pool is critical to the existence of the pool.

The remaining costs incurred by a pool include the direct expenses paid and medical and compensation benefits paid to injured workers. The costs incurred for workers' compensation benefits is not a cost that is the result of the enactment of Article 7. The obligation to pay workers' compensation benefits arises under A.R.S. § 23-961.01 and A.R.S. § 23-901 et seq.

All costs incurred by a pool are covered by the premiums charged to members of the pool. In this regard, the costs incurred by a pool represent indirect costs to members of the pool. As previously noted, however, employers are required by law to obtain workers' compensation insurance. Therefore, premiums paid to a pool are not additional costs incurred by an employer.

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

The formation of new workers' compensation pools will generate more business for administrators and 3rd-party service companies which, in turn, will translate to the addition of more jobs. Aside from this possible impact, the Industrial Commission does not believe that the adopted rules will result in changes in employment in the private or public sector.

E. Statement of the probable impact of the rulemaking on small businesses.

1. Identification of the small business subject to the rulemaking.

Small businesses that wish to join workers' compensation pools may be affected by these rules.

2. Administrative and other costs required for compliance with the rulemaking.

The costs to a small business are as described above and therefore will be minimal to none. Small business may, in fact, benefit to a greater degree than other businesses for the reason that small businesses traditionally lack the

bargaining power of larger business. As a consequence, small business may pay higher premiums to traditional insurance carriers. Workers' compensation pools organized under A.R.S. § 23-961.01 offer small business a choice. By joining a pool, a small business has the opportunity to save money. On the other hand, traditional insurance carriers may offer better premiums to small businesses to attract and keep the insurance business.

3. Description of the methods that the agency may use to reduce the impact on small businesses.

a. Establishing less costly compliance requirements in the rulemaking for small businesses.

A workers' compensation pool does not meet the definition of "small business" for the reason that a pool is not independently owned and operated. As to members of a pool, Arizona Revised Statute § 23-961(A) requires that every employer be insured for workers' compensation insurance. Therefore, because an employer is required to obtain workers' compensation coverage for its employees, the adopted rules cannot provide a less costly compliance requirement.

b. Establishing less costly schedules or less stringent deadlines for compliance in the rulemaking.

The Industrial Commission does not believe that the time-frames adopted in Article 7 are unreasonable. Further, the time-frames adopted in Article 7 apply to pools that wish to apply for or renew self-insurance authority, not to members that join a pool.

c. Exemption of small businesses from any or all requirements of the rulemaking.

Article 7 governs pools that have organized to arrange for workers' compensation insurance coverage for member employers. As previously noted, a small business may join a pool. The requirements to join (as set forth in A.R.S. § 23-961.01 and Article 7) are for the purpose of ensuring the solvency of a pool and ensuring that workers' compensation claims are processed and paid under the Workers' Compensation Act. For these reasons, if a small business wishes to join a workers' compensation pool, it cannot be exempt from the requirements of Article 7.

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

The Industrial Commission does not anticipate a negative impact on private persons or consumers as a result of the adopted rules. The Industrial Commission believes, however, that workers whose employers are members of a workers' compensation pool will benefit from the adopted rules if the pool implements an effective and active loss control program. An active and effective loss control program results in improved work place safety. Improved work place safety means that work place injuries will decline. The Industrial Commission also believes that consumers may benefit from the adopted rules for the same reason. A decline in work place injuries means

lower premiums charged to a business. Lower premium costs incurred by a business may mean savings to consumers of the business.

F. Statement of the probable effect on state revenue.

It is not anticipated that tax revenues generated from workers' compensation premiums will increase or decrease as taxes collected for insurance carriers will decrease but taxes collected for workers compensation pools will increase correspondingly.

G. Description of any less intrusive or less costly alternative methods of achieving the purpose of the rulemaking.

The purpose of adopting Article 7 is to develop a process by which employer associations or organizations may form workers' compensation pools for the purpose of providing workers' compensation insurance coverage to member employers. As part of this process, and in recognition of the mandate of A.R.S. § 23-961.01, the Industrial Commission adopted rules to ensure the solvency of the pools and ensure that pools process and pay workers' compensation benefits as required under the Workers' Compensation Act. In adopting these rules, the Industrial Commission also intended to protect the assets of the Special Fund. In light of the foregoing purposes, the Industrial Commission does not believe that there are less intrusive or less costly alternative methods of achieving the purposes of the rulemaking.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

**ARTICLE 7. SELF-INSURANCE REQUIRMENTS FOR WORKERS
COMPENSATION POOLS ORGANIZED UNDER A.R.S. § 23-961.01**

RULE 715. AGGREGATE AND SPECIFIC INSURANCE POLICIES

1. Identification of the rulemaking:

Until 1997, Arizona law mandated that employers “secure workers’ compensation to their employees” by either: (1) acquiring insurance from a carrier licensed to write workers’ compensation insurance in the state or (2) obtaining authorization from the Industrial Commission of Arizona (Commission) to self-insure. *See* A.R.S. § 23-961(A). In 1997, the Arizona Legislature added “self-insurance pools” as a third mechanism for securing workers’ compensation. *See* A.R.S. §§ 23-961(A), 23-961.01. Specifically, A.R.S. § 23-961.01(A) permits two or more employers who are engaged in similar industries to form a workers’ compensation pool to provide for the direct payment and administration of workers’ compensation claims.

A.R.S. § 23-961.01(F) directs the Commission to “adopt rules necessary for safeguarding the solvency of [self-insurance] pools and guaranteeing that injured workers receive benefits required under [A.R.S. Title 23, Chapter 6, Workers’ Compensation].” The rules “shall include, at a minimum, matters pertaining to [among other things] . . . specific and aggregate excess insurance . . . necessary for participation in and administration of the workers’ compensation system.” A.R.S. § 23-961.01(F).

“Specific excess insurance,” in this context, refers to insurance coverage purchased from an insurer who will be liable for the payment of any amount of a particular workers’ compensation claim in excess of a retained predetermined amount (the specific retention) paid directly by the self-insurance pool. Once a pool has paid the specific retention for a particular claim, the specific excess insurer would be obligated to pay all remaining amounts due on that claim (with no upper limit). Specific excess insurance mitigates a pool’s risk resulting from any particular claim.

“Aggregate excess insurance,” in this context, refers to coverage purchased from an insurer who will be liable for the payment of any amount of the aggregate of all a pool’s workers’

compensation claims in excess of a retained predetermined amount (the aggregate retention) paid directly by the pool. Once the pool has paid the aggregate retention amount, the aggregate excess insurer would be obligated to pay all remaining claim liabilities on all claims (subject to policy limits). Aggregate excess insurance mitigates a pool's overall risk from all claims.

In 1998, following the enactment of A.R.S. § 23-961.01, the Commission adopted rules (Title 20, Chapter 5, Article 7) to implement the new legislation, including a rule (R20-5-715(D)) which established excess coverage and retention requirements for self-insurance pools. Specifically, the maximum permissible retention amounts were set at \$250,000 (specific retention) and "110% of collected premiums" (for aggregate retention). The minimum aggregate insurance coverage limit was set at \$5,000,000.

In 1998, when R20-5-715 was implemented, the excess insurance required by the rule was widely available in the insurance market at competitive prices. Today, however, Arizona employers have been effectively precluded from forming self-insurance pools because the required excess insurance products are either unavailable in the insurance market or are cost prohibitive. This is evidenced by the fact that no self-insurance pools under A.R.S. § 23-961.01 are currently in operation in Arizona. In short, the excess insurance requirements of R20-5-715(D) have become an impediment to the formation of self-insurance pools, frustrating the intent of A.R.S. § 23-961.01. The Commission seeks to remove these impediments by amending the rule to reflect present economic realities within the excess insurance industry.

The proposed amendments will allow self-insurance pools to acquire necessary excess coverage more easily and in a cost-effective manner. In lieu of a maximum specific retention amount of \$250,000, the proposed amendments authorize a range of specific retention amounts from \$100,000 up to \$1,250,000. In lieu of a maximum aggregate retention amount of "110% of collected premiums," the proposed amendments authorize a maximum aggregate retention amount of "150% of collected premiums." And in lieu of a minimum aggregate excess coverage limit of \$5,000,000, the proposed amendment authorizes a minimum coverage amount of \$1,000,000. Finally, the proposed amendments give the Commission flexibility to approve deviations from the authorized specific retention range where a self-insurance pool can demonstrate sufficient financial security and loss control procedures to justify a higher specific retention, consistent with the approval process contemplated in A.R.S. §§ 23-961(A)(2) and 23-961.01(B). Each of these proposed amendments seeks to ease the regulatory burden on employers who may be interested in

forming self-insurance pools by authorizing excess insurance products that are more accessible in the current insurance market and that are not cost prohibitive.

The proposed amendments are designed to make self-insurance pools a viable and cost-effective option for employers to provide workers' compensation to their employees. The proposed amendments will promote the statutory objectives of A.R.S. § 23-961.01(F), while continuing to ensure that self-insurance pools are financially able to provide for the payment and administration of workers' compensation claims.

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

EMPLOYERS and EMPLOYEES: Arizona employers that participate in self-insurance pools under A.R.S. § 23-961.01 are the primary entities who will directly benefit from the proposed rulemaking. The proposed amendments ease the regulatory burden on employers who participate in self-insurance pools by authorizing excess insurance products that are cost-effective and more accessible in the current insurance market. The Commission anticipates that the proposed amendments will eliminate certain barriers to participating in self-insurance pools and, in effect, make self-insurance pools a viable option for some employers for securing workers' compensation. Arizona employers, both large and small, who participate in a self-insurance pool will benefit economically from the proposed amendments due to the authorization of more-affordable and accessible excess insurance.

In addition, incentivizing the use of self-insurance pools will indirectly benefit Arizona employers and employees. Similar to individual employers who self-insure, the Commission anticipates that employers who join self-insurance pools will implement more effective safety programs in an effort to control losses and manage costs. Consequently, increasing in the number of self-insurance pools will likely increase workplace safety and reduce the number of industrial injuries. Increased use of self-insurance pools will result in more-educated employers, more manageable workers' compensation programs, and an overall reduction in costs.

INSURERS: As a result of the proposed rulemaking, Arizona employers may elect to participate in a self-insurance pool in lieu of purchasing workers' compensation insurance under A.R.S. § 23-961(A)(1). A shift from workers' compensation insurance to self-insurance pools would result in a decrease in sales of workers' compensation insurance policies and an increase in sales of specific and aggregate excess insurance policies. Although some impact on the insurance

industry is expected, the Commission does not believe the impact of the proposed amendments will be significant for any particular insurance carrier.

SPECIAL FUND: The proposed rulemaking may indirectly impact on the Commission's Special Fund Division/No Insurance Section (Special Fund), which provides workers' compensation benefits to injured employees of uninsured employers. If currently-uninsured employers elect to participate in a self-insurance pool as a result of the proposed rulemaking, the Special Fund would benefit because workers' compensation liabilities of the formerly-uninsured employers would be shifted from the Special Fund to self-insurance pools. The Commission, however, believes the overall impact on the Special Fund will be minimal, as it is likely that the majority of uninsured employers will not participate in a self-insurance pool.

3. A cost benefit analysis of the following:

- (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 the proposed rulemaking. In the event the proposed amendments increase the use of self-insurance pools, the Commission will be required to evaluate an increased number of pools pursuant to the approval process contemplated in A.R.S. §§ 23-961(A)(2) and 23-961.01(B). Furthermore, the Commission may be asked to approve deviations from the authorized specific excess insurance retention range, consistent with the approval process contemplated in A.R.S. §§ 23-961(A)(2) and 23-961.01(B). The Commission, however, does not anticipate that any new full-time employees will be necessary perform these administrative responsibilities.

Additionally, the proposed rulemaking may indirectly impact on the Commission's Special Fund Division/No Insurance Section (Special Fund), which provides workers' compensation benefits to injured employees of uninsured employers. If currently-uninsured employers elect to participate in a self-insurance pool as a result of the proposed rulemaking, the workers' compensation liabilities of the formerly-uninsured employers would be shifted from the Special Fund to self-insurance pools. The Commission, however, believes the overall impact on the Special Fund will be minimal, as it is likely that the majority of uninsured employers will not participate in a self-insurance pool.

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

The Commission does not anticipate that the amended rule will impact political subdivisions. Workers' compensation pools for public agencies are governed by A.R.S. § 11-952.01 and Title 20, Chapter 5, Article 2 of the Arizona Administrative Code.

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

As discussed above, the proposed amendments ease the regulatory burden on all employers who participate in self-insurance pools under A.R.S. § 23-961.01. Arizona businesses, both large and small, who participate in a self-insurance pool will benefit economically from the proposed amendments due to the authorization of more-affordable and accessible excess insurance. The Commission anticipates that the proposed amendments will make self-insurance pools a viable alternative for some employers for securing workers' compensation.

Moreover, the Commission anticipates that employers who join self-insurance pools will implement more effective safety programs in an effort to control losses and manage costs. As a result, an increase in the number of self-insurance pools will likely increase workplace safety and reduce the overall number of industrial injuries. Increased use of self-insurance pools will result in more-educated employers, more manageable workers' compensation programs, and an overall reduction in costs.

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

The Commission does not anticipate that the proposed amendments will impact employment in public agencies or political subdivisions. Workers' compensation pools for public agencies are governed by A.R.S. § 11-952.01 and Title 20, Chapter 5, Article 2 of the Arizona Administrative Code.

The Commission anticipates that the impact on private employment will be insignificant. Financial savings generated as a result of the proposed amendments for employers that elect to participate in a self-insurance pool could result in increases in private employment if employers redirect the savings towards employment.

5. Impact on small businesses:

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

Any small business that qualifies as an employer under A.R.S. § 23-902 and elects to participate in a self-insurance pool under A.R.S. § 23-961.01 would be subject to the proposed amendments.

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

No administrative or other costs are directly associated with the proposed amendments. Although administrative and other costs are involved in forming a workers' compensation self-insurance pool and acquiring necessary excess insurance, those costs are attributable to the statutory and regulatory requirements of A.R.S. § 23-961.01 and Title 20, Chapter 5, Article 7 of the Arizona Administrative Code. The proposed amendments are intended to reduce costs associated with obtaining necessary excess insurance.

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

In the event a small business chooses not to participate in a self-insurance pool, the business will not be impacted by the proposed amendments. In the event a small business chooses to participate in a self-insurance pool, the business will benefit as a result of the proposed amendments. Because the proposed amendments will not negatively impact small businesses, the Commission has not considered methods to reduce the impact of the proposed amendments on small businesses.

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

The Commission does not anticipate that private persons or consumers will be directly affected by the proposed amendments. At most, the Commission anticipates that employers who participate in self-insurance pools will implement more effective safety programs in an effort to control losses and manage costs. As a result, an increase in the number of self-insurance pools should lead to improvements in workplace safety and reduce the number of industrial injuries, thereby benefiting Arizona employees.

6. Probable effect on state revenues:

The Commission does not anticipate the proposed amendments will have any impact on state revenues.

7. Less intrusive or less costly alternative methods considered:

The Commission believes that the proposed amendments are the least intrusive and least costly method of making self-insurance pools under A.R.S. § 23-961.01 a more viable option for securing workers' compensation. The Commission did not consider alternative methods.

8. Data on which the rule is based:

No studies were performed to provide a basis for these rules and, therefore, no original empirical data exists. The Commission has explained the impact of the proposed amendments in qualitative terms.

INDUSTRIAL COMMISSION (F19-0610)

Title 20, Chapter 5, Article 4, Arizona Boilers and Lined Hot Water Heaters



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 4, 2019

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

FROM: Council Staff

DATE: May 6, 2019

SUBJECT: INDUSTRIAL COMMISSION OF ARIZONA (ICA)
Title 20, Chapter 5, Article 4, Arizona Boilers and Lined Hot Water Heaters

This five year review report (5YRR) relates to all Sections in Title 20, Chapter 5, Article 4 related to regulation of boilers and lined hot water storage heaters operated in Arizona. These rules do not apply to boilers and lined hot water storage heaters regulated by the U.S. Government, operated in private residences or apartment complexes of six units or less, and those operated on Indian reservations. The rules also do not apply to hot water heaters where (1) heat input does not exceed 200,000 BTU per hour; (2) water temperature does not exceed 210 degrees Fahrenheit; and (3) nominal water containing capacity is not more than 120 gallons. The rules also establish the requirements and certification parameters for individuals requesting certification as special inspectors of boilers or lined water storage heaters.

In its previous 5YRR in 2014, the Commission indicated it would initiate rulemaking to amend R20-5-411 to provide more clarity regarding the parameters of hydrostatic tests and R20-5-416 to define maximum allowable working pressure. The Commission did not complete the proposed rulemaking as indicated in the 2014 five-year review report. The Commission indicates it did not pursue a rulemaking on Article 4 due to higher priority rulemakings and significant turnover in the legal division during this time period.

Proposed Action

The Commission indicates that, in addition to amending rules R20-5-411 and R20-5-416 outlined above as per the prior 5YRR, it will take action to amend rules R20-5-402(11), R20-5-403, and R20-5-420(C)(1) to ensure consistency with statutory changes completed in 2016 and 2017, described in more detail below. Also, the Commission indicates it will conduct a thorough review of updated National Consensus Standards to determine whether adoption is appropriate in the following rules: R20-5-404, R20-5-406, R20-5-407, R20-5-415, and R20-5-416. The Commission anticipates completing the necessary rulemaking within two years from the approval of this report.

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

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

2. Summary of the agency's economic impact comparison and identification of stakeholders:

Stakeholders include the Commission and owners or users of a boiler, hot water heater or pressure vessel equipment installed in Arizona. The economic impact of the rules has been consistent with the economic impact set forth in the previously approved five-year review report on August 5, 2014. The rules have a limited economic impact on consumers, while protecting them from the unsafe operation of boilers, lined hot water heaters, and pressure vessels. The adoption of these codes and standards has no bearing on the market cost of this equipment. The current market price is derived from many factors with national code or standard requirements being part of the cost equation. The amendments had no effect to currently installed boilers, hot water heaters or pressure vessels and did not generate an additional cost to business revenues or payrolls.

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

The probable costs of the rules do not exceed the probable benefits of the rules. The Commission believes the rules impose the least burden and costs on the regulated community.

4. Has the agency received any written criticisms of the rules over the last five years?

The Commission has not received any written criticism of the rules within the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?

Yes. The Commission indicates that the rules are clear, concise, and understandable. The Commission indicates that the rules are generally consistent with other rules and statutes except for the following as a result of statutory changes in 2016 and 2017:

- **R20-5-402(11)** - Inconsistent with the definition of “boiler” in A.R.S. § 23-471(2);
- **R20-5-403** - Inconsistent with A.R.S. § 23-486 with respect to the composition of the Boiler Advisory Board;
- **R20-5-420(C)(1)** - Inconsistent with A.R.S. § 23-485 with respect to comity of out-of-state inspector qualifications.

The Commission indicates that all the rules are effective in achieving their objectives.

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

The Commission indicates that the rules are enforced as written.

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

Not applicable. There are no corresponding federal laws.

8. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Not applicable. None of the rules in Article 4 were adopted or amended after July 29, 2010.

9. Conclusion

The rules are clear, concise, understandable, and effective. The Commission proposes to amend the rules to be consistent with changes pursuant to 2016 and 2017 statutory changes. Also, the Commission indicates it will conduct a thorough review of updated National Consensus Standards to determine whether adoption is appropriate in the following rules: R20-5-404, R20-5-406, R20-5-407, R20-5-415, and R20-5-416. The Commission anticipates completing the necessary rulemaking within two years from the approval of this report. Council staff recommends approval of this report.

THE INDUSTRIAL COMMISSION OF ARIZONA
OFFICE OF THE DIRECTOR



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March 29, 2019

Sent via e-mail to grrc@azdoa.gov
Nicole Sornsin, Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

Re: A.A.C. Title 20, Chapter 5, Article 4, Five-year Review Report

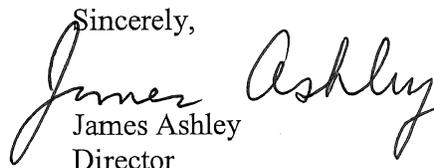
Dear Ms. Sornsin:

The Industrial Commission of Arizona (the "Commission") submits for approval by the Governor's Regulatory Review Council (the "Council") the attached Five-year Review Report on 20 A.A.C. 5, Article 4. The Commission has timely filed this report on or before Friday, March 29, 2019, after receiving a 120-day extension from the Council.

An electronic copy of this cover letter, the report, the rules being reviewed, the general and specific statutes authorizing the rules, and economic impact statements from 2009 is concurrently submitted by e-mail to Krishna Jhaveri. The Commission believes that the report complies with the requirements of A.R.S. § 41-1056.

The Commission has reviewed all rules in Article 4 and has complied with A.R.S. § 41-1091, which requires the Commission to annually publish a directory summarizing the subject matter of all currently applicable rules and substantive policy statements, by posting directories of its current rules and substantive policy statements on the Commission's website, as required by A.R.S. § 41-1091.01(1) & (2). Should you have any questions concerning the report, please contact Chief Counsel Gaetano Testini at (602) 542-5905 or Attorney Stephen Ball at (602) 542-3556.

Sincerely,


James Ashley
Director

SDB/lr
Enclosure

FIVE-YEAR-REVIEW REPORT
TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS,
AND INSURANCE
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA
ARTICLE 4. ARIZONA BOILERS AND LINED HOT
WATER HEATERS

FIVE-YEAR-REVIEW REPORT
TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA
ARTICLE 4. ARIZONA BOILERS AND LINED HOT WATER HEATERS

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3.	RULES REVIEWED	Attached
4.	GENERAL AND SPECIFIC STATUTES	Attached

FIVE-YEAR REVIEW SUMMARY

The Industrial Commission of Arizona (the “Commission”) was created in 1925 as a result of legislation (Arizona Workman’s Compensation Act) implementing the constitutional provisions establishing a workers’ compensation system. The scope of the Commission includes other labor-related issues, such as occupational safety and health, youth employment, resolution of wage-related disputes, minimum wage, vocational rehabilitation, workers’ compensation coverage for claimants of uninsured employers, and self-insured employers.

Certification Regarding Compliance with A.R.S. § 41-1091

In the cover letter for this report, the Commission’s Director certifies that the Commission is in compliance with A.R.S. § 41-1091 with respect to the substantive policy statements relating to the rules in Article 4, as well as other substantive policy statements and all rules, which are available on the Commission’s website.

About Article 4

These rules regulate all boilers and lined hot water storage heaters operated in Arizona, except for those boilers and lined hot water storage heaters regulated by the United States Government, those operated in private residences or apartment complexes of not more than six units, and those operated on Indian reservations. In addition, lined hot water heaters that meet the following criteria are not within the scope of the rules: (1) heat input does not exceed 200,000 BTU per hour; (2) water temperature does not exceed 210 degrees Fahrenheit; and (3) nominal water containing capacity of not more than 120 gallons. The rules also establish the requirements and certification parameters for individuals requesting certification as special inspectors of boilers or lined hot water storage heaters.

In 2009, the Commission completed a final rulemaking, which included significant changes to the rules, including the repeal of several rules.

2016-2017 Legislative Changes

In 2016, A.R.S. §§ 23-474, 23-475, and 23-486 were amended to reflect changes to the inspection authority of the Division of Occupational Safety and Health and the composition of the Boiler Advisory Board. In 2017, A.R.S. §§ 23-471, 23-473, 23-475, 23-478, 23-485, 23-486 and 23-488 were amended to add definitions of “boiler” and “pressure vessel,” insert the term “pressure vessel” where appropriate, and clarify the Commission’s requirements for certification of special inspectors.

FIVE-YEAR REVIEW REPORT

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 4. ARIZONA BOILERS AND LINED HOT WATER HEATERS

1. **General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules**

The rules in Article 4 have general and specific authorization under A.R.S. §§ 23-107; 23-108.01; 23-108.03; 23-474; 23-475; 23-476; and 23-485.

2. **Objective of the rules, including the purposes for the existence of the rules**

The Commission's overarching objectives regarding Article 4 are to insure safety with respect to installation, repair, and maintenance of all boilers, lined hot water heaters, and pressure vessels operated in Arizona.

R20-5-401. Applicability

R20-5-401. Defines the scope of Article 4. The rule is necessary in order to provide the scope and parameters of the rules contained in Article 4.

R20-5-402. Definitions

R20-5-402. Defines terms that are utilized in R20-5-403 through R20-5-432. The rule is necessary in order to provide definitions of the terms contained in the other rules of Article 4.

R20-5-403. Boiler Advisory Board

R20-5-403. Establishes the parameters of the boiler advisory board pursuant to A.R.S. § 23-474, and to set forth the term of service for the board's members. The rule is necessary to clarify A.R.S. § 23-474, which requires the Commission

to establish a boiler advisory board and to promulgate standards and regulations for boilers, and lined hot water storage heaters.

R20-5-404. Standards for Boilers, Lined Hot Water Storage Heaters and Pressure Vessels

R20-5-404. Establishes the standards with which an owner, user, or operator of a boiler installed, repaired, replaced, or reinstalled, must comply. The rule clarifies that Arizona follows the standards developed by the American Society of Mechanical Engineers (“ASME”), and incorporates the provisions of the ASME’s Boiler and Pressure Vessel Code manual. The rule also sets forth compliance standards pertaining to oil-fired lined hot water storage heaters, and gas-fired lined hot water storage heaters. These storage heaters are required to comply with the standards of the American National Standards Institute (“ANSI”), and incorporates the provisions of the ANSI’s American National Standard for Gas Water Heaters manual; the National Standard for Controls and Safety Devices for Automatically Fired Boilers manual; and the National Fuel Gas Code manual. The rule further clarifies the installation, maintenance and repair requirements for boilers and lined hot water storage heaters. The rule is necessary in order to provide specific standards to be followed in the installation, repair, or replacement of boilers and lined hot water heaters. The standards incorporated into the rule benefit the public and consumers in that they prevent accidents from the incorrect installation, repair or replacement of these types of equipment.

R20-5-406. Repairs and Alterations

R20-5-406. Establishes that when a boiler is in need of repair or alteration, the owner, user, or operator of the boiler, shall consult with an authorized inspector before having the repairs or alternations made. The intent of the rule is to have such repairs and alterations made under the supervision and with the approval of an authorized inspector so that all repairs and alterations comply with the provisions of the ANSI’s National Board Inspection Code. The rule

also sets forth that no one is permitted to remove or repair a safety appliance of a boiler or lined hot water storage heater in operation, and can only remove or repair a safety appliance not in operation as provided under the ASME Code. The rule further specifies that repairs of fittings or appliances shall comply with the requirements of the National Board Inspection Code and that the replacement of fittings or appliances shall comply with the requirements of the ASME Boiler and Pressure Vessel Code manual. The rule is necessary in order to provide the relevant standards for safety compliance in the removal, repair, replacement, and alteration of a boiler or lined hot water storage heater.

R20-5-407. Inspection of Boilers, Lined Hot Water Storage Heaters, Direct Fired Jacketed Steam Kettles and Issuance of Inspection Certificates

R20-5-407. Establishes standards for compliance by authorized inspectors. The rule also sets forth that failure to comply with the required inspection or testing under this Article will result in the withholding of the inspection certificate until compliance is demonstrated. The rule further specifies that authorized inspectors shall not engage in the sale of any object or device relating to boilers, lined hot water storage heaters, or equipment associated with boilers and lined hot water storage heaters. In addition, special inspectors shall submit inspection reports to the Division on forms meeting the requisites of the National Board Inspection Code.

The rule specifies the time frames and procedures for the Division to issue an inspection certificate, the format for identification tags on steam boilers, the condemnation of an unfit boiler or lined hot water storage heater, and clarifies that for any condition not covered by this Article, the ASME Code applies. The rule is necessary in order to provide the relevant time frames and procedures for safety inspections of a boiler or lined hot water storage heater. The rule is also necessary to give the procedures for “tagging” an inspected boiler or lined hot water storage heater, and for the condemnation of an unfit unit. The rule is also necessary to clarify that in the event there

is an issue regarding boilers or lined hot water storage heaters that is not addressed in this Article, the provisions of the ASME Code control.

R20-5-408. Frequency of Inspection

R20-5-408. Sets requirements and procedures for inspections of boilers and lined hot water storage heaters. The rule specifies that authorized inspectors shall perform the inspections and that the Division issues the inspection certificates. The rule establishes very specific factors for safety measurements to be performed by authorized inspectors and the time frames for such inspections. The rule is necessary in order to provide the relevant time frames and procedures for safety inspections of a boiler or lined hot water storage heater.

R20-5-409. Notification and Preparation for Inspection

R20-5-409. Sets the requirements and procedures for inspections of boilers and lined hot water storage heaters to actually occur. The rule specifies the exact requirements that must be completed by the owner, user or operator prior to an inspection. The procedures are necessary for the safety of the inspector and to permit a more effective inspection.

R20-5-410. Report of Accident

R20-5-410. Sets the requirements and procedures for notification of the Division in the event of an explosion, severe over-heating, or personal injury involving a boiler or lined hot water storage heater. The rule specifies the exact things that must be done by the owner, user or operator in the event of an accident involving a boiler or lined hot water storage heater. The procedures are necessary for the safety of the personnel involved in the incident and the general public.

R20-5-411. Hydrostatic Tests

R20-5-411. Establishes the technical requirements and procedures for a hydrostatic test. The rule specifies the exact things that must be done by the owner, user or operator in the performance of a hydrostatic test.

R20-5-412. Automatic Low-water Fuel Cutoff Devices or Combined Water Feeding and Fuel Cutoff Devices

R20-5-412. Establishes the technical requirements and procedures for the use of automatic low-water fuel cutoff devices or combined water feeding and fuel cutoff devices in boilers and lined hot water storage heaters. The rule specifies the procedures to be followed and the standards for installation and operation of low-water fuel cutoff devices or combined water feeding and fuel cutoff devices. The rule is very technical and aimed toward establishing standards for safety to protect the users and operators of such units as well as the inspectors who must inspect such units.

R20-5-413. Safety and Safety Relief Valves

R20-5-413. Establishes the technical requirements and procedures for the use of safety relief valve devices in boilers and lined hot water storage heaters. The rule incorporates standards for safety valves from the ASME Boiler and Pressure Vessel Code of 2007. The rule specifies the technical procedures to be followed and the standards for implementation regarding installation and operation of safety relief valve devices. The rule is very technical and aimed toward establishing standards for safety to protect the users and operators of such units as well as the inspectors who must inspect such units.

R20-5-415. Boiler Blowdown, Blowoff Equipment and Drains

R20-5-415. Establishes that blowdown from a boiler is a hazard to life and property and that such blowdown must be handled in a safe manner by using appropriate equipment to safely discharge the blowdown. The rule provides technical guidelines and procedures for the use of piping and valve size in boilers and lined hot water storage heaters to effectively handle the blowdown and

blowoff. The rule incorporates equipment standards from the National Board Ruled Recommendations for the Design and Construction of Boiler Blowoff Systems and quick-opening valves constructed in accordance with the ASME 1991 edition of Power Piping. The rule specifies the technical procedures to be followed and the standards for implementation regarding installation and operation of blowdown and blowoff piping and valve sizes. The rule is very technical and aimed toward establishing standards for safety to protect the users and operators of such units as well as the inspectors who must inspect such units.

R20-5-416. Maximum Allowable Working Pressure

R20-5-416. Establishes that the ASME Code under which a boiler was constructed and stamped determines the maximum allowable working pressure for that boiler. The rule is necessary to determine the maximum allowable working pressure for a boiler.

R20-5-417. Maintenance and Operation of Boilers, Hot Water Heaters and Direct Fired Jacketed Steam Kettles

R20-5-417. Establishes that an owner, user or operator of a boiler constructed under the ASME Code, is required to comply with the manufacturer's maintenance and operation instructions for the boiler. The rule also sets forth additional preventive maintenance schedules and basic knowledge requirements for the operators of a power boiler. The rule is necessary to maintain safety standards in compliance with the ASME Code, to establish preventive maintenance schedules, and to set minimum job qualifications for boiler operators. The rules corresponding by reference to the ASME is used for the purpose of the International Boiler and Pressure Vessel Code to establish rules of safety — relating only to pressure integrity — governing the design, fabrication, and inspection of boilers and pressure vessels, and nuclear power plant components during construction. The objective of the rules is

to provide a margin for deterioration in service. Advancements in design and material and the evidence of experience are constantly being added.

R20-5-418. Non-standard Boilers

R20-5-418. Establishes that an owner, user or operator of a boiler not constructed under the ASME Code, it must be removed from service unless the owner has been granted a variance pursuant to R20-5-429. The rule is necessary to establish that if a boiler is not a stamped ASME boiler, that it must be approved and subject to the requirements set forth in the variance rule.

R20-5-419. Request to Reinstall Boiler or Lined Hot Water Heater

R20-5-419. Establishes the parameters under which an owner or user may submit a request to the Division, for permission to reinstall a boiler or lined hot water heater. The rule sets forth the time frames applicable to the grant or denial of a request, and the time within which an owner or user must contest an order of the Division. The rule is necessary to set forth the procedure and time frames for an owner or user to request permission to reinstall a boiler or lined hot water heater, for the Division to issue its order, and for the owner or user to contest an order of the Division.

R20-5-420. Special Inspector Certificate under A.R.S. § 23-485

R20-5-420. Establishes the procedure and time frames for a person to apply for, and receive, a Special Inspector Certificate under A.R.S. § 23-485. The rule specifies the documentation necessary for an applicant to submit to the Division, the notices issued by the Division, the dates of the written examination, the issuance of the Special Inspector Certificate, and the procedure available for a hearing on the denial of a Special Inspector Certificate. The rule specifies the process and the Division's procedures in compliance with A.R.S. § 23-485.

R20-5-429. Variance

- R20-5-429. Authorizes a variance if the boiler, water heater or pressure vessel does not bear an ASME stamp.
- R20-5-430. Forced Circulation Hot Water Heaters
- R20-5-430. Specifies safety controls for hot water heaters that require forced circulation to prevent overheating.
- R20-5-431. Code Cases
- R20-5-431. Permits code cases used by ASME Code Committee for design, fabrication and testing of boilers and pressure vessels.
- R20-5-432. Historical Boilers
- R20-5-432. Requires that certificate inspection occurs at the time of the initial inspection and every three years thereafter.

3. **Effectiveness of the rules in achieving their objectives, including a summary of any available data supporting the conclusion reached**

All of the rules in Article 4 are effective in achieving their respective objectives.

4. **Consistency of the rules 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**

As a result of the statutory changes in 2016 and 2017, R20-5-402(11) is inconsistent with the definition of Boiler in A.R.S. § 23-471(2); R20-5-403 is inconsistent with A.R.S. § 23-486 with respect to the composition of the Boiler Advisory Board; and R20-5-420(C)(1) is inconsistent with A.R.S. § 23-485 with respect to comity of out-of-state inspector qualifications.

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

The Commission enforces the rules in Article 4 as written.

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

The rules are clear, concise, and understandable.

7. **Written criticisms of the rules received by the agency within the five years immediately preceding the five-year review report**

The Commission has not received any written criticisms of the Article 4 rules.

8. **A comparison of the estimated economic, small business, and consumer impact of the rules with the economic, small business, and consumer impact statement prepared on the last making of the rules or, if no economic, small business, and consumer impact statement was prepared on the last making of the rules, an assessment of the actual economic, small business, and consumer impact of the rules**

The economic impact of the rules has been consistent with the economic impact set forth in the previously approved five-year review report on August 5, 2014. The rules have a limited economic impact on consumers, while protecting them from unsafe operation of boilers, lined hot water heaters, and pressure vessels.

9. **Any analysis submitted to the agency completed by another person regarding the rules' impact on this state's business competitiveness as compared to the competitiveness of businesses in other states**

No person has submitted an analysis to the Commission regarding the reviewed rules' impact on this state's business competitiveness.

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

The previous five-year-review report stated that the Commission would initiate a rulemaking to amend R20-5-411 (to provide more clarity regarding the

parameters of hydrostatic tests) and R20-5-416 (define maximum allowable working pressure). The agency did not complete the proposed rulemaking as indicated, in the 2014 five-year review report. However, as indicated in Section 14, the Commission plans to conduct a thorough review of updated national consensus standards and will initiate rulemaking as appropriate.

11. **A determination after analysis that probable benefits outweigh probable costs and that the rules impose the least burden and costs on persons regulated**

The probable costs of the rules reviewed do not exceed the probable benefits of the rules. The Commission believes that the rules impose the least burden on the regulated community.

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

There are no federal statutory requirements related to the installation, repair, and maintenance of boilers, lined hot water heaters, and pressure vessels.

13. **For rules adopted or amended after July 29, 2010 that require issuance of a regulatory permit, license or agency authorization, whether the rules comply with A.R.S. § 41-1037.**

None of the rules in Article 4 were adopted or amended after July 29, 2010.

14. **Proposed course of action**

The Commission will take action to amend the rules previously identified in Section 4 to ensure consistency with the statutory changes completed in 2016 and 2017. This will include the following:

R20-5-402 will be amended to adopt the definition of “Boiler” in A.R.S. § 23-471(2).

R20-5-403 will be amended to conform to the statutory composition of the Boiler Advisory Group in A.R.S. § 23-486.

R20-5-420(C)(1) will be amended to eliminate the acceptance of out-of-state certificates of competency, consistent with A.R.S. § 23-485.

In addition, the Commission will conduct a thorough review of updated National Consensus Standards to determine whether adoption is appropriate in the following rules: R20-5-404, R20-5-406, R20-5-407, R20-5-415, and R20-5-416. The Commission anticipates completing the necessary rulemaking within two years from the approval of this report.

RULES REVIEWED

ARTICLE 4. ARIZONA BOILERS AND LINED HOT WATER HEATERS

R20-5-401. Applicability

This Article applies to all boilers, lined hot water heaters and pressure vessels operated in Arizona, except the following:

1. Boilers, lined hot water heaters and pressure vessels regulated by the United States Government;
2. Boilers, lined hot water heaters and pressure vessels operated in private residences or apartment complexes of not more than six units; and
3. Boilers, lined hot water heaters and pressure vessels operated on Indian reservations.
4. A lined hot water heater that does not exceed any of the following:
 - a. Heat input of 200,000 BTU per hour,
 - b. Water temperature of 210° F, and
 - c. Nominal water containing capacity of 120 gallons.

R20-5-402. Definitions

In this Article, unless the text otherwise requires:

1. “Act” means A.R.S. Title 23, Chapter 2, Article 11.
2. “Alteration” means any change in the item described on the original manufacturer’s data report which affects the pressure-containing capability of the boiler or pressure vessel, including but not limited to:
 - a. Non physical changes such as an increase in the maximum allowable working pressure either internal or external, or
 - b. A reduction in minimum design temperature of a boiler or pressure vessel requiring additional mechanical tests.
3. “ANSI” means American National Standards Institute, Inc., located at 25 W. 43rd Street, 4th Floor, New York, NY 10036 or at <http://www.ansi.org/>.
4. “Apartment house” means a building with multiple family dwelling units, not used for commercial purposes, including condominiums and townhouses, where boilers are located in a common area outside of the individual dwelling units, such as a boiler room.
5. “Applicant” means an individual requesting permission to act as a special inspector under A.R.S. § 23-485.
6. “ASME Code” means the American Society of Mechanical Engineers Boiler and Pressure Vessel Code, Sections I, II, IV, V, VIII and IX, published by ASME International.

7. "ASME International" means a not for profit professional organization that promotes the art, science and practice of mechanical and multidisciplinary engineering and allied sciences throughout the world.
8. "Authorized Inspector" means an authorized representative under A.R.S. § 23-471(1) or a special inspector under A.R.S. § 23-485.
9. "Authorized representative" means the boiler chief or boiler inspector employed by the Division.
10. "Blowdown tank" or "Blowdown separator" means an ASME-stamped vessel designed to receive discharged steam or hot water from a boiler blowoff or blowdown piping system.
11. "Boiler" means a closed vessel in which fluid is heated for use external to itself by the direct application of heat resulting from the combustion of fuel, solid, liquid, or gaseous, or by the use of electricity.
12. "Certificate of Competency" means a person who has passed the National Board Exam.
13. "Certificate Inspection" means an internal inspection, when construction allows; otherwise, it means as complete an inspection as possible.
14. "Condemned" means a boiler or lined hot water heater that has been inspected and found to be unsafe by the Director or authorized inspector and has been stamped or tagged with the code XXX AZ8 XXX.
15. "CSD-1" means Controls and Safety Devices for Automatically Fired Boilers, published by ASME International, incorporated by reference in R20-5-404(A)(4).
16. "Direct fired jacketed steam kettle" means a pressure vessel with inner and outer walls that is subject to steam pressure and stress, is used to boil or heat liquids or to cook food, and falls under the scope of Section VIII, Division 1, Appendix 19 (Electrically Heated or Gas Fired Jacketed Steam Kettles) of the ASME Boiler and Pressure Vessel Code incorporated by reference in R20-5-404(A).
17. "External inspection" means an examination of a boiler or lined hot water heater performed by an authorized inspector when the boiler or lined hot water heater is in operation.
18. "Forced circulation hot water heater" means a hot water heater used for potable water, a hot water heater requiring movement of water to prevent overheating and failure of the tubes or coils, and has no definitive waterline.
19. "Fully attended power boiler" means a power boiler that is operated by an individual who meets the requirements of R20-5-408(C), and whose primary function is the care, maintenance, and operation of the boiler and the equipment associated with the boiler system.
20. "High temperature water boiler" means a boiler in which water is heated and operates at a pressure in excess of 160 psig (1.1 MPa) and/or temperature in excess of 250° F.

21. "Historical boilers" means steam boilers of riveted construction, preserved, restored, or maintained for hobby or demonstration use.
22. "Inspection certificate" means a document issued by the Division for the operation of a boiler, lined hot water heater or direct fired jacketed steam kettles when a certificate inspection has been successfully completed.
23. "Internal inspection" means a complete examination of the internal and external surfaces of a boiler or lined hot water heater by an authorized inspector after the boiler or lined hot water heater is shut down.
24. "Lined hot water heater" means the same as lined hot water storage heater defined in A.R.S. § 23-471(10) as a vessel which is closed except for openings through which water can flow, that includes the apparatus by which heat is generated and on which all controls and safety devices necessary to prevent pressures greater than 160 psig (1100 kPa gage) and water temperature greater than 210° F are provided, in which potable water is heated by the combustion of fuels, electricity, or any other heat source and removed for external use.
25. "MAWP" means maximum allowable working pressure.
26. "National Board Commissioned Inspector" means an individual who holds a valid and current National Board Commission issued by the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, OH 43229-1183.
27. "National Board Registration Number" means a unique number issued to a boiler, hot water heater or pressure vessel by the manufacturer and recorded with the National Board of Boiler and Pressure Vessel Inspectors.
28. "NFPA" means National Fire Protection Association.
29. "Non-Standard Boiler" means any boiler, hot water heater or pressure vessel that is not constructed or maintained to the standards incorporated by reference of this Article.
30. "Owner" or "Operator" means any individual or organization, including this state and all political subdivisions of this state, who have title, control or duty to control, the operation of one or more boilers, lined hot water heaters or pressure vessels.
31. "Portable boiler" means a boiler permanently affixed to a trailer with wheels, that is totally self-contained while operating, and not attached to any other object either by pipe, hose or wire.
32. "Relief valve" means an ASME-stamped automatic pressure relieving device designed for liquid service which is actuated by the pressure upstream of the valve and opens further with an increase in pressure above the stamped pressure.
33. "Repairs" means work necessary to restore a boiler, lined hot water heater or pressure vessel to operating condition that complies with this Article.
34. "Safety relief valve" means an ASME-stamped automatically pressure-actuated relieving device designed for use either as a safety valve or as a relief valve.

35. "Safety valve" means an ASME-stamped automatic pressure relieving device designed for steam or vapor service which is actuated by the pressure upstream of the valve and characterized by full opening pop-action.

36. "Secondhand" means a boiler, lined hot water heater or pressure vessel that has changed both location and ownership since original installation.

37. "Shelter" means a permanent structure that provides protection from the weather.

38. "Special Inspector" means any authorized inspector who is issued an Arizona Commission but is not employed by the state of Arizona.

39. "State Identification Number" means a unique number assigned by the Division to a boiler, hot water heater or pressure vessel installed in Arizona.

40. "User" means a person or entity that does not have legal title to a boiler, lined hot water heater or pressure vessel, but has control and responsibility for the operation of a boiler, lined hot water heater or pressure vessel.

R20-5-403. Boiler Advisory Board

A. Members of the boiler advisory board appointed by the Commission pursuant to A.R.S. § 23-474(2) shall serve for a period of three years. At the end of each three year term, the Commission may extend a member's term an additional three years or replace any member with an individual representing similar interest within the industry. The board shall be composed of persons in the boiler industry and shall be balanced in representation with respect to industry, owner/operators, labor and the public.

B. The board shall hold an annual meeting and such other meetings as may be appropriate and shall conduct business at times and places arranged by the Commission.

R20-5-404. Standards for Boilers, Lined Hot Water Heaters and Pressure Vessels

A. The following apply to this Article:

1. An owner or user of a boiler installed, repaired, replaced, or reinstalled in Arizona, six months after the effective date of this Article shall comply with the 2007 ASME Boiler and Pressure Vessel Code, Sections I, II, IV, V, VIII Division 1, 2, 3, IX, and B31.1 Power Piping, and addenda as of July 1, 2007, incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from ASME International at Three Park Avenue, New York, NY 10016-5990 or at <http://www.asme.org/>.

2. An owner or user of a boiler, lined hot water heater or pressure vessel installed, repaired, replaced, or reinstalled in Arizona, before the effective date of this Article shall comply with subsection (A)(1), or the ASME Boiler and Pressure Vessel Code in effect at the time of the last installation, repair, replacement, or reinstallation of the boiler, lined hot water heater or pressure vessel in Arizona.

3. An owner or user of a gas-fired lined hot water heater installed, operated, repaired, replaced, or reinstalled in Arizona shall comply with the American National Standard for Gas Water Heaters, ANSI Z21.10.3-2004, incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from ANSI, Attn: Customer Service Department, 25 W. 43rd Street, 4th Floor, New York, NY 10036 or at <http://www.ansi.org/>.

4. An owner or user of a boiler installed, repaired, replaced or reinstalled in Arizona after the effective date of this Article shall comply with the American National Standard for Controls and Safety Devices for Automatically Fired Boilers, ANSI/ASME CSD-1-2006, incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from ASME International, Three Park Avenue, New York, NY 10016-5990 or at <http://www.asme.org/>.

5. An owner or user of a boiler installed, repaired, replaced, or reinstalled in Arizona before the effective date of this Article shall comply with the American National Standard for Controls and Safety Devices for Automatically Fired Boilers in effect at the time of the last installation, repair, replacement or reinstallation of a boiler in Arizona. As an alternative, an owner or user of a boiler described in this subsection may comply with subsection (A)(4).

6. A permanent source of outside air shall be provided for each boiler and lined hot water heater room to assure complete combustion of the fuel as required by ANSI Z223.1-2006, NFPA 54, National Fuel Gas Code incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from ANSI, Attn: Customer Service Department, 25 W. 43rd Street, 4th Floor, New York, NY 10036 or at <http://www.ansi.org/>.

B. The following registration requirements apply to this Article:

1. All boilers and lined hot water heaters, including reinstalled and secondhand boilers, shall be registered with the National Board of Boiler and Pressure Vessel Inspectors except for:

- a. Non-standard boilers installed up to six months after the effective date of this Section,
- b. Cast iron boilers, and
- c. Cast aluminum boilers.

2. All fired and unfired pressure vessels installed or reinstalled on or after July 1, 2009, shall be registered with the National Board of Boiler and Pressure Vessel Inspectors.

C. The following installation, maintenance, and repair requirements apply to this Article.

1. An owner or user shall keep a signed copy of the Manufacturer's Data Report for a boiler or lined hot water heater at the location of the boiler or lined hot water heater and make the report available for review upon request from an authorized inspector.
2. A boiler shall have masonry or structural supports of sufficient strength and rigidity to safely support the boiler and its contents without any vibration in the boiler or its connecting piping.
3. There shall be at least 36 in. (915 mm) of clearance on each side of the boiler or lined hot water heater. Alternative clearances according to the manufacturer's recommendations are subject to approval by the Division prior to installation of boiler or lined hot water heater.
4. A boiler with a manhole shall have at least five feet clearance between the boiler manhole and any wall, ceiling, or piping.
5. A newly constructed boiler room in excess of 500 square feet of floor area and containing one or more boilers with a fuel capacity of 1,000,000 BTU per hour or a heating capacity greater than 285 Kw (electric), shall have at least two exits on each level of the boiler or boilers. The owner or user shall ensure each exit is remotely located from other exits.
6. An owner or user shall keep a boiler or lined hot water heater room clean and with no obstructions to the boiler or lined hot water heater.
7. An owner or user shall not store flammable or explosive materials in a boiler or lined hot water heater room.
8. An owner or user shall not store combustibles less than three feet from any part of a boiler or lined hot water heater.
9. If a boiler or lined hot water heater is moved outside Arizona for temporary use or repairs, the owner or user shall not reinstall the boiler or lined hot water heater in Arizona until the owner or user notifies and receives verbal or written approval from the Division under R20-5-419 to reinstall the boiler or lined hot water heater. If the Division grants approval to reinstall the boiler or lined hot water heater, the owner or user shall not operate the reinstalled boiler or lined hot water heater until the owner or user receives an inspection certificate from the Division under this Article.
10. Before a new power boiler or a used or secondhand boiler or pressure vessel is installed, an inspection shall be made by an authorized inspector of this state, or by a National Board Commission Inspector. This inspection is to assess the integrity of the vessel and evaluate the original design specification. Prior to installation, an application shall be filed by the owner or user of the boiler or pressure vessel with the Division for approval. This application shall contain the following information:
 - a. Name of the owner or user;
 - b. Mailing address of owner or user;
 - c. Business telephone number of owner or user;

- d. Installation name and address;
- e. Installation date;
- f. Start up date;
- g. Name and address of boiler/pressure vessel insurance company;
- h. Arizona serial number of the boiler/pressure vessel being replaced, if applicable;
- i. Description of the new, used or secondhand power boiler/ pressure vessel as to include:
 - i. Manufacture's name,
 - ii. Date manufactured,
 - iii. Maximum allowable pressure or temperature of boiler/pressure vessel, and
 - iv. National Board registration number;
- j. Name, address, business phone number, cell phone number, fax number and state contractor's license number of company or individual that will be installing the object;
- k. Name, title and phone number of the contact person on the site of installation; and
- l. Signature, title and date of the person submitting the application.

11. Before the owner or user installing a used boiler or pressure vessel, the boiler or pressure vessel shall pass a hydrostatic test that is witnessed by an authorized inspector, authorized representative or by any National Board Commissioned inspector in accordance with R20-5-411.

12. An owner or user of a portable boiler shall notify an authorized inspector before installing the portable boiler and shall not operate the portable boiler until the owner or user receives an inspection certificate from the Division.

R20-5-406. Repairs and Alterations

A. If repairs or alterations may affect the working pressure or safety of a boiler, an owner, user, or operator shall consult with an authorized inspector before having the repairs or alterations made. The authorized inspector shall provide the owner, user, or operator information regarding the best method to repair or alter the boiler. The owner, user, or operator shall ensure that an authorized inspector inspects and approves the repairs and alterations after the repairs or alterations are made.

B. Repairs and alterations to boilers shall conform to the applicable provisions of the National Board Inspection Code, ANSI/ NB-23-2007 Edition and 2007 addenda, incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007, and may be obtained from the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, OH 43229-1183 or at <http://www.nationalboard.org/>.

C. An owner or user shall not permit an individual to remove or repair a safety appliance of a boiler or lined hot water heater in operation. An owner or user shall not permit a person to remove or repair a safety appliance of a boiler or lined hot water heater not in operation except as provided under the ASME Code. If an owner or user permits a person to remove a safety appliance from a boiler or lined hot water heater as provided under the ASME Code, then the owner or user shall ensure that the safety appliance is reinstalled in proper working order before the boiler or lined hot water heater is placed back into operation.

D. No person shall alter in any manner a safety valve, relief valve, or safety relief valve, except by an organization qualified in accordance with The National Board Inspection Code, ANSI/NB-23 2007 Edition and 2007 addenda incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007, and may be obtained from the National Board of Boiler and Pressure Vessel Inspectors at 1055 Crupper Avenue, Columbus, OH 43229-1183 or at <http://www.nationalboard.org/>.

E. Repairs of fittings or appliances shall comply with the requirements of the National Board Inspection Code, ANSI/NB-23-2007 Edition and 2007 addenda incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, OH 43229-1183 or at <http://www.nationalboard.org/>.

F. Beginning six months after the effective date of this Section replacement of fittings or appliances shall comply with the requirements of the 2007 ASME Boiler and Pressure Vessel Code, Sections I, II, IV, V, VIII, Division 1, 2, 3, IX and B31.1 Power Piping, and addenda, incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007. A copy of the incorporated material may also be obtained from ASME International, Three Park Avenue, New York, NY 10016-5990 or at <http://www.asme.org>.

R20-5-407. Inspection of Boilers, Lined Hot Water Heaters, Direct Fired Jacketed Steam Kettles and Issuance of Inspection Certificates

A. An authorized inspector shall comply with the guidelines set forth in The National Board Inspection Code, ANSI/NB-23-2007 Edition and 2007 addenda, incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, OH 43229-1183 or at <http://www.nationalboard.org/>.

B. If an owner, user, or operator fails to comply with the requirements for an inspection or pressure test under this Article, the Division shall withhold the inspection certificate until the owner, user, or operator complies with the requirements.

C. An authorized inspector shall not engage in the sale of any object or device relating to boilers, lined hot water heaters, direct fired jacketed steam kettles or equipment associated with boilers, or lined hot water heaters or direct fired jacketed steam kettles.

D. Under A.R.S. § 23-485(D), the Special Inspector shall file the inspection reports by entering data into the Division's Webbased inspection entry form, by submitting a paper inspection report issued by the Division or by electronic transfer of data between the insurance company's database and the Division's database. The inspection report shall contain the following:

1. Whether it is a Certificate or non-Certificate inspection;
2. Whether it is an internal or external inspection;
3. Name of location, address and phone number of the object;
4. Name, address and phone number of owner or responsible party;
5. Contact person's name and phone number at the inspection location;
6. State Identification Number;
7. Certificate due date;
8. Certificate duration;
9. Whether the object is active, inactive or scrapped;
10. MAWP permitted or allowed;
11. National Board registration number;
12. Name of the manufacturer and the year the object was built;
13. Special location in plant, if applicable;
14. Boiler type;
15. Purpose of the boiler;
16. Specify type of fuel used;
17. Whether the firing method is automatic, manual or unknown;
18. Whether the fuel train is in compliance with CSD-1, NFPA 85, Z21.10.3 or other;
19. Whether the boiler is fully attended as per R20-5-408(C);
20. Heating Surface/BTU Input/ Kilowatt (Kw) Input, as applicable;
21. Whether the heating surface type is stamped, computed or unknown;

22. Minimum safety valve relief capacity required;
23. Whether the minimum safety valve relief capacity type is BTU/Hr, LBS/Hr or unknown;
24. Number of temperature/pressure controls, as applicable;
25. Owner number assigned by the owner to specifically identify object's location;
26. Inspection date;
27. Whether the certificate is posted;
28. Safety Valve Total Capacity;
29. Safety Valve #1 set pressure;
30. Safety Valve #2 set pressure;
31. Safety Valve #3 set pressure;
32. Whether the object has been hydro tested;
33. Hydro Test (psi), if applicable;
34. Whether Pressure/Altitude Gage was tested;
35. Whether of the condition of the object is okay to issue a certificate;
36. Inspection comments, condition of boiler;
37. Violations noted;
38. Inspector name and Arizona Commission number; and
39. National Board Commission number.

E. The Division shall issue to an owner or user an inspection certificate within 30 calendar days of receipt of an inspection report that documents a boiler, lined hot water heater or direct fired jacketed steam kettle that complies with the Act and this Article. An owner or user of a boiler, lined hot water heater or direct fired jacketed steam kettle shall post the inspection certificate in the establishment where the boiler, lined hot water heater or direct fired jacketed steam kettle is located.

F. An owner, user, or operator shall ensure that an authorized inspector tags or stamps a steam boiler with an identification number assigned by the Division immediately after installing, but before operating, a new steam boiler, or when an authorized inspector performs an initial certificate inspection of an existing steam boiler. The identification number shall be at least 5/16" in height and in the following format: AZ-# # # #.

G. The Division shall mark with a metal dye stamp a boiler or lined hot water heater identified by the Division as not safe for further service, with the code "XXX AZ8 XXX" which shall designate that the boiler or lined hot water heater is condemned.

H. For any conditions not covered by this Article, the applicable provisions of the ASME Code that was in effect in Arizona at the time of the installation of the boiler or lined hot water heater shall apply.

R20-5-408. Frequency of Inspection

A. An owner, user, or operator of a power boiler shall ensure that an authorized inspector performs a certificate inspection and external inspection of the power boiler every 12 months. An authorized inspector shall perform the external inspection while the power boiler is in operation to ensure that safety devices of the power boiler are operating properly.

B. An authorized inspector shall perform an internal inspection and pressure test on a boiler, lined hot water heater or pressure vessel if the inspector determines from an external inspection of the boiler, lined hot water heater or pressure vessel that continued operation of the boiler, lined hot water heater or pressure vessel is a danger to the public or worker safety.

C. The Division shall issue a 12 month inspection certificate to an owner or user to operate a fully attended power boiler if:

1. An owner or user ensures that an authorized inspector performs an external safety inspection and audit of the operational methods and logs of the fully attended power boiler at least every 12 months and performs an internal inspection of the fully attended power boiler at least every 36 months;

2. Continuous boiler water treatment is under the direct supervision of persons trained and experienced in water treatment for the purpose of controlling and limiting corrosion and deposits.

3. Records are available for review, that indicate:

a. The date, time, and reason the boiler is out of service; and

b. Daily analysis of water samples that adequately show the conditions of the water and elements or characteristics that are capable of producing corrosion or other deterioration to the boiler or its parts; and

4. Controls, safety devices, instrumentation, and other equipment necessary for safe operation are current, in service, calibrated, and meet the requirements of an appropriate safety code for the size boilers, such as NFPA 85, ASME CSD-1 Controls and Safety Devices for Automatically Fired Boilers, National Board Inspection Code ANSI/NB-23, and state requirements.

5. Inspection reports of an authorized inspector document that the fully attended power boiler complies with A.R.S. § 23-471 et seq. and this Article.

D. An owner, user, or operator of a direct-fired jacketed steam kettle shall ensure that an authorized inspector performs a certificate inspection of the direct-fired jacketed steam kettle every 24 months.

E. An owner, user, or operator of a heating or process boiler, not exceeding 15 p.s.i. maximum allowable working pressure, steam or vapor, shall ensure that an authorized inspector performs a certificate inspection of the heating or process boiler every 24 months.

F. An owner or user of a hot water heating or hot water supply boiler, or lined hot water heater shall ensure that an authorized inspector performs a certificate and external inspection of the hot water heating or hot water supply boiler or lined hot water heater at the time the hot water heating or hot water supply boiler or lined hot water heater is installed. An inspection certificate issued by the Division following an inspection under this subsection shall not state an expiration date.

R20-5-409. Notification and Preparation for Inspection

A. An authorized inspector shall perform a certificate inspection at a time mutually agreeable to the inspector and owner, user, or operator.

B. Before an authorized inspector performs an internal inspection of a boiler, an owner, user, or operator shall:

1. Cool the furnace and combustion chambers;
2. Drain the water from the boiler;
3. Remove the manhole and handhole plates, wash-out plugs, and inspection plugs in water column connections;
4. Remove insulation or brickwork if necessary to determine the condition of the boiler, headers, furnace, supports, and other parts;
5. Remove the pressure gauge for testing;
6. Prevent any leakage of steam or hot water into the boiler by disconnecting the involved pipe or valve;
7. Close, tag, and padlock the non-return and steam stop valves before opening the manhole or handhole covers and entering any part of the steam generating unit that is connected to a common header with other boilers. Open the free blow drain or cock between the non-return and steam stop valves;
8. Close, tag, and padlock the blowoff valves after draining the boiler: and
9. Open all drains and vent lines.

R20-5-410. Report of Accident

An owner or user shall notify the Division within 24 hours of an explosion, severe overheating, or personal injury involving a boiler, lined hot water heater or direct fired jacketed steam kettle. A person shall not remove or disturb the involved boiler, lined hot water heater, direct fired jacketed steam kettle or parts of the boiler, lined hot water heater or direct fired jacketed steam

kettle before an investigation by an authorized inspector, except for the purpose of preventing personal injury or limiting consequential damage.

R20-5-411. Hydrostatic Tests

The owner or user shall perform a hydrostatic or pneumatic pressure test in accordance with the code incorporated by reference in R20-5-404(A) and R20-5-406(B).

R20-5-412. Automatic Low-water Fuel Cutoff Devices or Combined Water Feeding and Fuel Cutoff Devices

A. An owner, user, or operator shall ensure that low-water fuel cutoff devices or combined water feeding and fuel cutoff devices do not interfere with an operator's or inspector's ability to safely clean, repair, or inspect a boiler or lined hot water heater.

B. A low-water fuel cutoff device shall have a pressure rating not less than the set pressure of the safety valve or safety relief valve.

C. In addition to the requirements of subsections (A) and (B), all low-water fuel cutoffs and flow sensing devices shall be constructed and installed in accordance with applicable ASME Code and standards for boilers and steam jacked kettles in R20-5-404(A).

R20-5-413. Safety and Safety Relief Valves

A. A valve shall not be placed between a safety valve or a safety relief valve and installed on a boiler or lined hot water heater, or between a safety valve or a safety relief valve and the discharge pipe attached to the boiler or lined hot water heater.

B. When a power boiler is supplied with feed-water directly from a water main without the use of a feeding apparatus, safety valves shall not be set at a pressure greater than 94% of the lowest pressure obtained in the water main feeding the boiler;

C. Safety valves, safety relief valves and relief valves shall conform to the requirements of the 2007 ASME Boiler and Pressure Vessel Code, Section I, IV or VIII, and addenda as of January 1, 2008, incorporated by reference as applicable. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ and may be obtained from the ASME, Three Park Avenue, New York, NY 10016-5990 or at <http://www.asme.org/>.

R20-5-415. Boiler Blowdown, Blowoff Equipment and Drains

A. Except as provided in this Section, an owner or user of blowdown and blowoff equipment shall comply with the National Board Rules and Recommendations for the Design and Construction of Boiler Blowoff Systems, 1991 Edition, incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from the National Board of

Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, OH 43229-1183 or at <http://www.nationalboard.org/>.

- B. Blowdown from a boiler is a hazard to life and property.
- C. Blowdown from a boiler shall pass through blowdown equipment that reduces pressure and temperature to levels not exceeding 5 p.s.i.g. and 140° F.
- D. The thickness of a blowdown vessel shall be at least 3/16”.
- E. All blowdown equipment shall be fitted with openings that allow cleaning and inspection of the equipment.
- F. Blowdown separators may be used with boilers instead of boiler blowdown tanks, provided that blowdown separators are operated with a temperature gauge and water cooler to prevent drain water temperature from exceeding 140° F.
- G. In addition to the requirements of subsections (A) through (F), the following requirements apply to blowdown piping, valves and drains for power boilers: Each power boiler and high temperature water boiler shall be installed and maintained according to ASME Code, Section 1 and B31.1, incorporated by reference in R20-5-404, at the time of installation.
- H. In addition to the requirements of subsections (A) through (F), the following requirements apply to bottom blowdown or drain valves for heating boilers and hot water heaters:
 - 1. A hot water heating boiler or hot water heater shall have a bottom blowdown or drain pipe connection fitted with a valve or cock connected with the lowest available water space with the minimum size of blowdown piping and valves as required by ASME Code, Section IV, incorporated by reference, in R20-5-404(A).
 - 2. Discharge outlets of blowdown pipes, safety valves and other piping shall be located and structurally supported to prevent injury to individuals.

R20-5-416. Maximum Allowable Working Pressure

- A. The ASME Code under which a boiler was constructed and stamped shall determine the maximum allowable working pressure for the ASME-stamped boiler.
- B. If components in the boiler or hot water system such as valves, pumps, expansion tanks, storage tanks or piping have a lesser working pressure rating than the boiler or hot water heater, the pressure setting for the safety or safety relief valve on the boiler or hot water heater shall be based upon the component with the lowest maximum allowable working pressure rating.

R20-5-417. Maintenance and Operation of Boilers, Hot Water Heaters and Direct Fired Jacketed Steam Kettles

- A. An owner or user of a boiler, hot water heater or direct fired jacketed steam kettle constructed under the ASME Code, Sections I, IV or VIII Division 1, incorporated by reference in R20-5-404(A) shall comply with the manufacturer’s maintenance and operation instructions for the boiler, hot water heater or direct fired jacketed steam kettle.

B. In addition to the requirements of subsection (A), an owner or user of a boiler constructed under the ASME Code, Sections I, IV, shall comply with the following preventive maintenance schedule if the boiler contains the component or system listed.

1. On a daily basis, the owner or user shall:

- a. Test the low-water fuel cutoff and alarm, and
- b. Check the burner flame for proper combustion.

2. On a weekly basis, the owner or user shall:

- a. Check for proper ignition, and
- b. Check the flame failure detection system.

3. On a monthly basis, the owner or user shall:

- a. Test all fan and air pressure interlocks,
- b. Check the main burner safety shutoff valve,
- c. Check the low fire start switch,
- d. Test fuel pressure and temperature interlocks of oilfired units, and
- e. Test the high and low fuel pressure switch of gasfired units.

4. Every six months, the owner or user shall:

- a. Inspect burner components;
- b. Check flame failure system components, such as vacuum tubes, amplifier and relays;
- c. Check wiring of all interlocks and shutoff valves;
- d. Recalibrate all indicating and recording gauges; and
- e. Check steam and blowdown piping and valves.

5. Annually, the owner or user shall:

- a. Replace vacuum tubes, scanners, or flame rods in the flame failure system according to the manufacturer's instructions;
- b. Check all coils and diaphragms; and
- c. Test operating parts of all safety shutoff and control valves.

C. An owner or user of a power boiler or high temperature boiler shall designate an individual who meets the requirements of subsection (D) to operate the boiler. An owner or user may operate the boiler if the owner or user meets the requirements of subsection (D).

D. An operator of a power boiler or high temperature water boiler shall meet the following minimum requirements:

1. Knowledge of and an ability to explain the function and operation of all safety controls of the boiler,
2. Ability to start the boiler in a safe manner,
3. Knowledge of all safe methods of feeding water to the boiler,
4. Knowledge of and the ability to blow down the boiler in a safe manner,
5. Knowledge of safety procedures to follow if water exceeds or drops below permissible safety levels, and
6. Knowledge of and the ability to safely shut down the boiler.

R20-5-418. Non-standard Boilers

An owner or user shall remove from service a boiler, hot water heater or pressure vessel that does not bear an ASME stamp unless the boiler owner or user request a variance under R20-5-429.

R20-5-419. Request to Reinstall Boiler or Lined Hot Water Heater

A. The Division shall grant or deny approval to reinstall a boiler or lined hot water heater within three business days after an owner or user requests approval to reinstall the boiler or lined hot water heater. The order of the Division granting or denying approval to reinstall a boiler shall be in writing.

B. The Division shall grant approval to reinstall a boiler or lined hot water heater if the boiler or lined hot water heater complies with A.R.S. § 23-471 et seq. and this Article. The Division shall deny approval to reinstall a boiler or lined hot water heater if the boiler or lined hot water heater does not comply with A.R.S. § 23-471 et seq. and this Article.

C. An order of the Division denying approval to reinstall a boiler shall be final unless an owner or user requests a hearing under A.R.S. § 23-479 within 15 days after the Division mails the order. The owner or user requesting a hearing shall have the burden to prove that a boiler meets the requirements of A.R.S. § 23-471 et seq. and this Article.

R20-5-420. Special Inspector Certificate under A.R.S. § 23-485

A. Review Time-frames.

1. Administrative Completeness Review.

- a. The Division shall determine whether an application to take a written examination or request for a special inspector certificate under A.R.S. § 23-485 is complete within three days of receipt of the application or request. The Division shall inform the applicant whether the application or request is complete or incomplete by written notice. If the

application or request is incomplete, the Division shall include in its written notice to the applicant a complete list of the missing information.

b. The Division shall deem an application or request withdrawn if an applicant fails to file a complete application or request within 10 days of being notified by the Division that the application or request is incomplete, unless the applicant obtains an extension to provide the missing information. An applicant may obtain an extension to submit the missing information by filing a written request with the Division no later than 10 days after the Division mails notice that the application or request is incomplete. The written request for an extension shall state the reasons the applicant is unable to meet the 10-day deadline. If an extension will enable the applicant to assemble and submit the missing information, the Division shall grant an extension of not more than 10 days and provide written notice of the extension to the applicant.

2. Substantive review.

a. Application to take written examination under A.R.S. § 23-485(A). Within three days after the Division deems an application complete under subsection (B), the Division shall determine whether the applicant is eligible to take the National Board Examination.

b. Request for special inspector certificate under A.R.S. § 23-485. Within three days after the Division deems a request complete under subsection (C), the Division shall determine whether the applicant meets the criteria of A.R.S. § 23-485 and subsection (C).

3. Overall review. The overall review period shall be six days, unless extended under A.R.S. § 41-1072 et seq.

B. Application to take Written Examination under A.R.S. § 23-485(A).

1. An individual requesting to take the written examination under A.R.S. § 23-485(A) shall complete an application to take the National Board Examination and submit the application to the Division at least 45 days before the date of the examination.

2. The application to take the National Board Examination shall be filed with the Division. An application is considered filed when it is received at the office of the Division and stamped by the Division with the date of filing.

3. An application to take the National Board Examination shall be on a legible form, paper or electronic, issued to the Division, with the following information:

- a. Full legal name,
- b. State or country of residency,
- c. Mailing address,
- d. Telephone number,
- e. E-mail address, and

f. Employer's name and address.

C. Application for Special Inspector Certificate under A.R.S. §23-485. An application for a special inspector certificate under A.R.S. § 23-485 is deemed complete under subsection (A)(1) when the following is filed with the Division:

1. The applicant provides written documentation that the applicant holds a certificate of competency as an inspector of boilers or lined hot water heaters for a state that has a standard of examination equal to that of Arizona or the applicant is a National Board Commissioned Inspector, and

2. The applicant provides proof of employment as a full time inspector for a company conducting business in Arizona and whose duties as an inspector include making inspections of boilers or lined hot water heaters to be used or insured by the company and not for resale.

D. If an applicant meets the criteria of A.R.S. § 23-485 and subsection (C), the Division shall issue a certificate to the applicant under subsection (C). If an applicant fails to meet the criteria of A.R.S. § 23-485 and subsection (C), the Division shall issue a written notice denying eligibility to the applicant. The Commission shall deem the notice denying eligibility final if an applicant does not request a hearing within 15 calendar days after the Division mails the notice.

E. Written Examination under A.R.S. § 23-485(A).

1. The written examination described in A.R.S. § 23-485(A) shall be the National Board Examination of the National Board of Boiler and Pressure Vessel Inspectors.

2. The Division shall administer the National Board Examination the first Wednesday and Thursday of every March, June, September, and December to eligible applicants. Within two days after the Division administers the National Board Examination, the Division shall return the examinations of eligible applicants to the National Board of Boiler and Pressure Vessel Inspectors. Examinations shall be graded by the National Board of Boiler and Pressure Vessel Inspectors.

3. The Division shall provide written notice to an applicant of the applicant's grade for the National Board Examination within three days after the Division receives notice of the grade from the National Board of Boiler and Pressure Vessel Inspectors.

4. The Division shall issue a certificate of competency to an applicant who passes the National Board Examination.

F. Issuance of Special Inspector Certificate. The Division shall issue a special inspector certificate, A.R.S. § 23-485, to an applicant no later than 15 calendar days after the Division determines that an applicant meets the criteria of A.R.S. § 23-485 and subsection (C).

G. Hearing on Denial of Eligibility for Special Inspector Certificate.

1. A request for hearing protesting a notice of eligibility shall be in writing and signed by the applicant or the applicant's legal representative. The applicant shall file the request for hearing with the Division.

2. The Commission shall hold a hearing under A.R.S. § 41-1065. The hearing shall be stenographically recorded.
3. The Chair of the Commission or designee shall preside over hearings held under this Section. The Chair shall apply the provisions of A.R.S. § 41-1062 et seq. to hearings held under this Section and shall have the authority and power of a presiding officer as described in A.R.S. §41-1062.
4. A decision of the Commission to deny or grant eligibility for a special inspector certificate shall be based upon the criteria set forth in A.R.S. § 23-485 and this Section and shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting. After a decision is rendered at a public meeting, the Commission shall issue a written decision upon hearing which shall include findings of fact and conclusions of law, separately stated. An order of the Commission denying a special inspector certificate is final unless an applicant files a request for review within 15 days after the Commission mails its order.
5. A request for review shall be based upon one or more of the following grounds which have materially affected the rights of an applicant:
 - a. Irregularities in the hearing proceedings or any order or abuse of discretion whereby the applicant seeking review was deprived of a fair hearing;
 - b. Misconduct by the Division;
 - c. Accident or surprise which could not have been prevented by ordinary prudence;
 - d. Newly discovered material evidence that could not have been discovered with reasonable diligence and produced at the hearing;
 - e. Excessive or insufficient sanctions or penalties imposed at hearing;
 - f. Error in the admission or rejection of evidence, or errors of law occurring at, or during the course of, the hearing;
 - g. Bias or prejudice of the Division; and
 - h. The order, decision, or findings of fact are not justified by the evidence or are contrary to law.
6. The Commission shall issue a decision upon review no later than 30 days after receiving a request for review.
7. The Commission's decision upon review is final unless an applicant seeks judicial review as provided in A.R.S. §23-483.

R20-5-429. Variance

A. Any owner or user may apply to the Director for a variance from the requirements of this Article, upon demonstrating the construction, installation, and operation of the boiler or pressure

vessel will maintain the same level of safety as prescribed by this Chapter. The Director shall issue a variance if the Director determines that the proponent of the variance has demonstrated the construction, installation, and operation of the boiler or pressure vessel will maintain the same level of safety as prescribed by this Chapter. The variance issued shall prescribe the construction, installation, operation, maintenance, and repair conditions that the owner or user shall maintain.

B. A variance may be modified or revoked upon application by an owner, user or the Director, on the Director's own motion at any time after six months from issuance if the owner or user has not complied with the variance or if the variance does not protect the health and safety of employees or general public.

C. The application for a variance shall be made on the form issued by the Division and contains the following information:

1. Owner or user's name and company name;
2. Mailing address;
3. Telephone number;
4. Fax number;
5. Contact person;
6. Contact person's telephone number;
7. Address or location of proposed variance;
8. Type of facility to include;
 - a. Variance description;
 - b. Justification for variance;
 - c. Component or system involved;
 - d. Supporting documentation for variance;
 - e. Identify the statute, rule, code or standard to justify the variance; and
9. Printed name and title of owner or user, signature of owner or user and date.

D. If an owner or user does not agree with the variance issued or revoked by the Director, a request for a hearing under A.R.S. §23-479 can be made with the Commission.

R20-5-430. Forced Circulation Hot Water Heaters

A. All water tube or coil-type hot water heaters that require forced circulation to prevent overheating and failure of the tubes or coils shall have a safety control, to prevent burner operation at a flow rate inadequate to protect the hot water heater unit against overheating, at all

allowable firing rates. The safety control shall shut down the burner and prevent restarting until an adequate flow is restored.

B. All water tube or coil-type hot water heaters that require forced circulation to prevent overheating and failure of the tubes or coils, shall have a manually operated remote shutdown switch or circuit breaker and shall be located just outside the hot water heater room door and marked for easy identification. The shutdown switch shall be installed in a manner to safeguard against tampering. If a hot water heater room door is on the building exterior, the switch shall be located just inside the door. If there is more than one door to the hot water heater room there shall be a switch located at each door. The remote shutdown switch or circuit breaker shall disconnect all power to the burner controls.

R20-5-431. Code Cases

Code cases approved for use by the ASME Code Committee are allowed to be used in the design, fabrication and testing of boilers and pressure vessels provided approval from the Chief Boiler Inspector is obtained prior to use.

R20-5-432. Historical Boilers

Historical boilers shall require an initial Certificate inspection by an authorized inspector, followed by a Certificate inspection every three years thereafter if stored inside a shelter, or annually if stored outdoors. The initial Certificate inspection shall include ultrasonic thickness testing of all pressure boundaries. Thinning of the pressure retaining boundary shall be monitored and recorded on the inspection report, in accordance with R20-5-407(D), to the owner and the Division's electronic copy.

**GENERAL AND
SPECIFIC
STATUTES**

A.R.S. 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.23-108.01

A.R.S. 23-108.01. Powers and duties of director

A. The director of the commission, under the supervision of the commission, shall administer the policies, powers and duties of the commission as prescribed by this chapter, and chapters 2 and 6 of this title.

B. The director of the commission may deny the salary of a commissioner if the commissioner does not provide documentation that explains what commission duties were completed for the day in which the commissioner is seeking a salary or if the commission duties were not related to preparing for or attending a commission meeting.

A.R.S. 23-108.03. Performance of certain powers and duties

A. The industrial commission shall be responsible for determining the policy of the commission.

B. Any powers and duties prescribed by law to the commission in this chapter and chapters 2 and 6 of this title, whether ministerial or discretionary, may by resolution be delegated by the commission to the director or any of its department heads or assistants, provided, that the commission shall not delegate its power or duty to:

1. Make rules and regulations.
2. Commute awards to a lump sum.
3. License self-insurers.

C. The commission shall be responsible for the official acts of its employees acting in the name of the commission and by its delegated authority.

A.R.S. 23-471. Definitions

In this article, unless the context otherwise requires:

1. "Authorized representative" means the boiler chief and boiler inspector employed by the division.
2. "Boiler" means a closed vessel in which water or other liquid is heated, steam or vapor is generated or steam or vapor is superheated, or any combination thereof, under pressure or vacuum for a use that is external to itself, by the direct application of heat from the combustion of fuels or from electricity.
3. "Certificate" means a certificate of competency.
4. "Certificate inspection" means an internal inspection, when construction permits, otherwise it means as complete an inspection as possible.

5. "Commission" means the industrial commission of Arizona.
6. "Director" means the director of the division of occupational safety and health.
7. "Division" means the division of occupational safety and health of the commission.
8. "Heating boilers" means a steam or vapor boiler operating at a pressure not exceeding fifteen pounds per square inch or a hot water boiler operating at a pressure not exceeding one hundred sixty pounds per square inch or a temperature not exceeding two hundred fifty degrees Fahrenheit.
9. "High temperature water boiler" means a water boiler intended for operation at pressures in excess of one hundred sixty pounds per square inch or temperatures in excess of two hundred fifty degrees Fahrenheit.
10. "Interested party" means the commission, agents of the commission and any owner or operator who has been issued a notice of violation.
11. "Lined hot water heater" means a fired lined water heater with linings providing corrosion resistance for supplying potable hot water for commercial purposes. Lined hot water heaters are exempted when none of the following limitations are exceeded:
 - (a) Heat input of two hundred thousand British thermal units per hour.
 - (b) Water temperature of two hundred ten degrees Fahrenheit.
 - (c) Nominal water-containing capacity of one hundred twenty gallons.
12. "Owner" or "operator" means any individual or type of organization, including this state and all political subdivisions of this state, that has title to or controls, or has the duty to control, the operation of one or more boilers, pressure vessels or lined hot water heaters.
13. "Power boiler" means a boiler in which steam or other vapor is generated at a pressure more than fifteen pounds per square inch.
14. "Pressure vessel" means a container for the containment of pressure, either internal or external. The pressure may be obtained from an external source, or by the application of heat from a direct or indirect source, or any combination thereof.
15. "Process boiler" means a heating boiler or a power boiler used for processing purposes where the make-up water exceeds ten percent.

A.R.S. 23-474. Duties of commission

The commission shall:

1. Administer this article through the division of occupational safety and health.
2. Adopt standards and regulations pursuant to section 23-475 and adopt other rules as are necessary.
3. Exercise other powers as are necessary to carry out the duties and requirements of this article.

A.R.S. 23-475. Duties of division

The division shall:

1. Certify special inspectors as provided in section 23-485.
2. Inspect boilers, pressure vessels and lined hot water heaters under this article, except that beginning on July 1, 2017 the division may not inspect boilers, pressure vessels and lined hot water heaters.
3. Establish a schedule to require regular boiler, pressure vessel and lined hot water heater inspections.
4. Recommend standards, regulations and amendments to the standards and regulations to the commission for approval or disapproval.
5. Enforce, under section 23-478, all standards and regulations adopted by the commission.

A.R.S. 23-476. Safety standards and regulations

A. Safety standards and regulations shall be formulated in the following manner:

1. The division shall either propose adoption of national consensus standards or federal standards or draft such regulations as it considers necessary after conducting sufficient investigation through the division's employees and through consultation with the boiler advisory board and other persons knowledgeable in the business for which the standards or regulations are being formulated.

2. Proposed standards or regulations, or both, shall be submitted to the commission for its approval.

B. Any person who may be adversely affected by a standard or regulation issued pursuant to this article may at any time prior to the sixtieth day after such standard or regulation is promulgated file a complaint challenging the validity of such standard or regulation with the superior court of the county in which the person resides or has his or her principal place of business, for a judicial review of such standard or regulation. The filing of such a complaint shall not, unless otherwise ordered by the court, operate as a stay of the standard or regulation. The determinations of the commission shall be conclusive if supported by substantial evidence in the record considered as a whole.

C. In case of conflict between standards and regulations, the regulations shall take precedence.

A.R.S. 23-485. Special inspectors; civil liability

A. The division, on the request of any company that has received a certificate of accreditation from either the national board of boiler and pressure vessel inspectors or the American society of mechanical engineers as an authorized inspection agency or an owner-user inspection organization, may issue to any inspector of that company a certificate as a special inspector. Before receiving a certificate, the inspector must demonstrate that the inspector holds a current commission issued by the national board of boiler and pressure vessel inspectors.

B. A certificate as a special inspector for a company operating boilers, pressure vessels or lined hot water heaters in this state shall be issued only if, in addition to meeting the requirements of this section, the inspector is employed full time by such company and the inspector's duties include making inspections of boilers, pressure vessels or lined hot water heaters to be used by such company and not for resale.

C. Each company employing such special inspectors, within sixty days after each boiler, pressure vessel or lined hot water heater inspection made by the inspectors, shall file a report of the inspection with the division on appropriate forms or make entry into the division's computer database.

D. All insurance companies shall notify the division of all boilers, pressure vessels or lined hot water heaters on which insurance is written. All insurance companies shall also notify the division of all boilers, pressure vessels or hot water heaters on which insurance is cancelled, not renewed or suspended because of unsafe conditions.

E. The furnishing of a certificate inspection, as authorized by the commission pursuant to section 23-475, that is conducted incidental to the issuance or renewal of boiler and machinery insurance or a contractual certificate inspection when performed in accordance with the standards and regulations adopted by the commission shall not subject an insurer, a noninsurer, whether domestic or foreign, or a contracted inspection organization, its agents or its employees to liability for damages for any act or omission in the course of performing inspections as provided by this section. This subsection does not apply if the gross negligence of the insurer, noninsurer or contracted inspection organization, its agent or its employee created the condition that was the proximate cause of the injury, death or loss.

A.R.S. 41-1037. General permits; issuance of traditional permit

A. If an agency proposes a new rule or an amendment to an existing rule that requires the issuance of a regulatory permit, license or agency authorization, the agency shall use a general permit if the facilities, activities or practices in the class are substantially similar in nature unless any of the following applies:

1. A general permit is prohibited by federal law.
2. The issuance of an alternative type of permit, license or authorization is specifically authorized by state statute.
3. The issuance of a general permit is not technically feasible or would not meet the applicable statutory requirements.
4. The issuance of a general permit would result in additional regulatory requirements or costs being placed on the permit applicant.
5. The permit, license or authorization is issued pursuant to section 8-126, 8-503, 8-505, 23-504, 36-592, 36-594.01, 36-595, 36-596, 36-596.54, 41-1967.01 or 46-807.

6. The permit, license or authorization is issued pursuant to title V of the clean air act.

B. The agency retains the authority to revoke an applicant's ability to operate under a general permit and to require the applicant to obtain a traditional permit if the applicant is in substantial noncompliance with the applicable requirements for the general permit.

DEPARTMENT OF CHILD SAFETY (F19-0609)

Title 21, Chapter 1, Article 2, Comprehensive Medical and Dental Program



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 4, 2019

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

FROM: Council Staff

DATE: May 6, 2019

SUBJECT: ARIZONA DEPARTMENT OF CHILD SAFETY (DCS)
Title 21, Chapter 1, Article 2, Comprehensive Medical and Dental Program

This five year review report (5YRR) relates to all Sections in Title 21, Chapter 1, Article 2 related to the Comprehensive Medical and Dental Program (CMDP). These rules were adopted by exempt rulemaking in November 2015.

The CMDP is the medical and dental health plan for Medicaid eligible children placed in out-of-home care and functions as the integrated health plan (providing medical, dental, and behavioral health services) for children who are not Medicaid eligible. CMDP complies with AHCCCS regulations and covers a full scope of services including immunizations, inpatient and outpatient hospital services, physician services, medications, and dental services. CMDP also covers services for children in out-of-home care who reside outside of Arizona when these children remain in DCS custody and do not qualify for Medicaid in the receiving state.

This is the first 5YRR for these rules.

Proposed Action

The Department does not propose to take any action regarding these rules unless there are statutory changes.

The Department indicates that the 2019 Fifty-Fourth Legislature-First Regular Session includes an introduction to a bill which impacts the services currently being provided by CMDP and the current rules. If the bill passes, the Department indicates it will request an exception to the rulemaking moratorium and, with approval, proceed with rulemaking to address necessary changes to the rules resulting from the statutory change, with the target date of completion of January 2021.

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

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

2. Summary of the agency's economic impact comparison and identification of stakeholders:

There were no economic, small business, and consumer impact statements prepared for Article 2 as part of the exempt rulemaking.

As of January 2019, there were over 13,269 children enrolled in the Comprehensive Medical and Dental Program (CMDP). Within the Department, the CMDP unit employs 67 full-time employees. For fiscal year 2019, CMDP had a total funding of \$48 million.

Stakeholders include the Department, physicians, dentists, therapists, medical equipment suppliers, other health care practitioners, other state agencies, care providers, and the children enrolled in CMDP.

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

The Department has determined that the rules under review pose the least cost and burden on businesses, the regulated public, and the general public.

4. Has the agency received any written criticisms of the rules over the last five years?

The Department indicates that it has not received written criticisms of these rules since they were finalized under exempt rulemaking in November 2015. The Department indicates that during the rulemaking activities, it received public comments through public hearings and an on-line survey. The Department indicates comments received included requests to review language to ensure that the rules encompass all settings for out-of-home care; include language describing coverage for young adults if eligible; and expand the language for interpretation and translation services to be available at no charge to the parents, guardians, custodians, or the CMDP member. The Department reviewed and incorporated comments where applicable in the final rule package in 2015.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?

The Department indicates that the rules are clear, concise, understandable, consistent with other rules and statutes, and effective.

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

The Department indicates that the rules are enforced as written.

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

The Department indicates that the rules are not more stringent than corresponding federal laws.

8. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

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

9. Conclusion

The rules are clear, concise, understandable, consistent, and effective. The Department enforces the rules as written. As indicated above, the Department proposes to take no action regarding these rules unless there is a statutory change affecting the rules. The Department indicates that the 2019 Fifty-Fourth Legislature-First Regular Session includes an introduction to a bill which impacts the services currently being provided by CMDP and the current rules. If the bill passes, the Department indicates it will request an exception to the rulemaking moratorium and, with approval, proceed with rulemaking to address necessary changes to the rules resulting from the statutory change, with the target date of completion of January 2021. Council staff recommends approval of this report.



Arizona Department of Child Safety

Douglas A. Ducey
Governor

Gregory McKay
Director

March 28, 2019

Ms. Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Five-Year Review Report for A.A.C. Title 21, Chapter 1 Department of Child Safety – Administration, Article 2 Comprehensive Medical and Dental Program

Dear Ms. Sornsin:

In compliance with A.R.S. § 41-1056, enclosed is the Department's five-year-review report of A.A.C. Title 21, Chapter 1, Article 2 Comprehensive Medical and Dental Program. All of the rules in Chapter 1, Article 2 have been reviewed, and none of them have been rescheduled for review under A.R.S. § 41-1056(H), or are being requested to expire under A.R.S § 41-1056(J). The agency is in compliance with A.R.S. § 41-1091.

For any questions, please contact Angie Trevino, Rules Development and Policy Specialist, at (602) 255-2569, Angelica.Trevino@azdcs.gov or Shawn Fuller, General Counsel, at (602) 255-2554, Shawn.Fuller@azdcs.gov.

Sincerely,

A handwritten signature in black ink, appearing to be "Gregory McKay". The signature is stylized with large loops and a long horizontal stroke.

Gregory McKay
Director

Enclosure

ARIZONA DEPARTMENT OF CHILD SAFETY

Five-Year-Review Report

Title 21. Child Safety

Chapter 1. Department of Child Safety - Administration

Article 2. Comprehensive Medical and Dental Program

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 8-453(A)(5)

Specific Statutory Authority: A.R.S. § 8-512

2. The objective of each rule:

Rule	Objective
R21-1-201. Definitions	The objective of this rule is to provide a uniform set of definitions used throughout this Article.
R21-1-202. Eligible Member	The objective of this rule is to outline the distinction between an eligible and non- eligible member. The rule also explains the Department’s responsibility to notify AHCCCS when a member no longer meets membership eligibility.
R21-1-203. Expectations, Limitations, and Exclusions	The objective of this rule is to describe services the Department will not cover.
R21-1-204. Prior Authorization	The objective of this rule is to explain the prior authorization criteria.
R21-1-205. Coordination of Benefits	The objective of this rule is to explain the Department’s actions to obtain information on other insurance for the purposes of handling coordination of benefits.
R21-1-206. Identification Card	The objective of this rule is to describe how the Department issues identification cards for children receiving services through this program and criteria for when the identification card must be returned to the Department.
R21-1-207. Payment and Review of Claims	The objective of this rule is to describe submission requirements for payment of a claim.

R21-1-208. Abuse and Misuse of the Program	The objective of this rule is to establish the Department's requirement to monitor program compliance and develop a process for investigating reports of alleged abuse.
R21-1-209. Administration of the Program	The objective of this rule is to describe how the Department can administer the program through contracted providers.
R21-1-210. Program Practices	The objective of this rule is to explain that services provided are subject to all federal and state laws, regulations and rules regarding a member's confidential health and personal information; literacy and culture.
R21-1-211. Consent for Treatment	The objective of this rule is to describe when consent is necessary before medical treatment is rendered.
R21-1-212. AHCCCS Fee Schedule	The objective of this rule is to explain that CMDP's payment for services rendered are in accordance with the AHCCCS fee schedule unless otherwise permitted by statute or by agreement between AHCCCS and the Department.
R21-1-213. Claim Disputes and Appeals	The objective of this rule is to identify governance of claim disputes and appeals.

3. **Are the rules effective in achieving their objectives?** Yes X No ___
4. **Are the rules consistent with other rules and statutes?** Yes X No ___
5. **Are the rules enforced as written?** Yes X No ___
6. **Are the rules clear, concise, and understandable?** Yes X No ___
7. **Has the agency received written criticisms of the rules within the last five years?** Yes X No ___

The Department of Child Safety (DCS) has not received written criticisms of the rules subject to this report since they were finalized under exempt rulemaking in November 2015. During the rulemaking activities in 2015, the Department received public comments through public hearings and through an on-line survey. Comments received included requests to review language to ensure that the rules encompass all settings for out-of-home care; include language describing coverage for young adults if eligible; and expand the language for interpretation and translation services to be available at no charge to the parents, guardians, custodians or the CMDP member. The Department reviewed and incorporated comments where applicable in the final rule package in 2015.

8. Economic, small business, and consumer impact comparison:

The Department adopted the rules in Chapter 1 Article 2 under its own title (Title 21. Child Safety) on November 30, 2015. There were no economic, small business, and consumer impact statements prepared as part of the exempt rulemaking.

CMDP is the medical and dental health plan for Medicaid eligible children placed in out-of-home care and functions as the integrated health plan (providing medical, dental and behavioral health services) for children who are not Medicaid eligible. CMDP complies with Arizona Health Care Cost Containment System (AHCCCS) regulations and covers a full scope of services according to the federal mandates of the Early Periodic Screening, Diagnosis, and Treatment (EPSDT) program. These services range from immunizations, inpatient and outpatient hospital services, physician services, medications, dental services. EPSDT also includes diagnostic, screening, preventive and rehabilitative services. CMDP professional staff and consultants perform consultation, peer review, prior authorization, and utilization and quality management to optimize the delivery of high quality health care services appropriate to the needs of each child. Medical and Dental services are currently reimbursed through a fee-for-service model based upon AHCCCS fee schedules. CMDP also covers services for children in out-of-home care and who reside outside of Arizona when these children remain in DCS custody and do not qualify for Medicaid in the receiving state.

The rules in this article affect small business such as physicians, dentists, therapists, durable medical equipment suppliers, and other health care practitioners. The rules also affect children in out-of-home care, out-of-home care providers, and other state agencies.

Population affected

As of January 31, 2019, there were 13,269 children enrolled in CMDP. Of those children enrolled, approximately 96%, or 12,768 were Medicaid eligible and 4% or 501 were non-Medicaid eligible.

Employees

There are 67 full-time employees working in the CMDP unit within the Department.

Funding

CMDP services are funded through a combination of federal and general fund dollars. Total funding for CMDP is approximately \$48 million for state fiscal year 2019. CMDP also seeks funds obtained from the coordination of benefits with third party insurers.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ___ No X

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

This is the first review of the rules in Title 21, Chapter 1, Article 2. The rules in this Article were made by final exempt rulemaking at 21 A.A.R. 2554, October 30, 2015 and became effective November 30, 2015.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department believes the current rules pose the minimum cost and burden on business, the regulated public and on the general public.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

Federal laws 42 U.S.C. Ch. 67, §§ 5101 et seq.; 42 U.S.C. Ch. 7, Subchapters IV/Part B and IV/Part E; and 42 U.S.C. § 670 et seq.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

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

14. **Proposed course of action**

The Department has reviewed the current rules and does not plan any additional rulemaking activity for these rules unless there are statutory changes.

The 2019 Fifty-Fourth Legislature-First Regular Session includes an introduction to a bill, which impacts the services currently being provided by CMDP and the current rules. If the bill ultimately passes, the Department will work with the Governor's office to request an exception from the moratorium and approval to proceed with rulemaking to address the needed changes that would result from statute changes, with a target date of completion of January 2021.

ARTICLE 2. COMPREHENSIVE MEDICAL AND DENTAL PROGRAM**R21-1-201. Definitions**

The definitions in A.R.S. § 8-501 and the following definitions apply to this Article.

1. "AHCCCS" means the Arizona Health Care Cost Containment System, which is the State's program for medical assistance available under Title XIX of the Social Security Act and state public insurance statutes, A.R.S. Title 36, Chapter 29.
2. "AHCCCS fee schedule" means the allowable amounts established by AHCCCS for medical, dental, and behavioral health services under A.R.S. § 36-2904.
3. "Behavioral health recipient" means a Title XIX or Title XXI CMDP Member who is eligible for, and is receiving the behavioral health services through Medicaid behavioral health contractors.
4. "Child Safety Worker" means the same as A.R.S. § 8-801.
5. "CMDP" or "Comprehensive Medical and Dental Program" means the program authorized by A.R.S. § 8-512 and these rules.
6. "CMDP Member" means the same as in A.R.S. § 8-512, a child who is:
 1. In a voluntary placement pursuant to section 8-806.
 2. In the custody of the department in an out-of-home placement.
 3. In the custody of a probation department and placed in foster care. The department shall not provide this care if the cost exceeds funds currently appropriated and available for that purpose.
7. "Covered services" means those benefits as described in A.R.S. Title 36, Chapter 29, Article 1 and contained in the approved Medicaid State Plan.
8. "Department" or "DCS" means the Department of Child Safety.
9. "Director" means the Director of the Department of Child Safety.
10. "Foster parent" means the same as A.R.S. § 8-501.
11. "Medically necessary" means a covered service provided by a physician, or other licensed practitioner in the healing arts within the scope of practice under state law to prevent disease, disability, or other adverse health conditions or their progression, or to prolong life.
12. "Non-Title XIX Behavioral Health recipient," "non-Title XIX" or "State Only Member" means a CMDP Member who is not eligible for Title XIX or Title XXI, and is receiving all covered services including behavioral health services through CMDP.
13. "Out-of-home care provider" means the person or entity with whom a child resides in out-of-home placement.
14. "Out-of-home placement" means the same as A.R.S. § 8-501.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-202. Eligible Member

- A. The Department shall provide CMDP to a CMDP Member under A.R.S. § 8-512 and this Article.
- B. The Department shall not provide CMDP care and services to:
 1. An individual who no longer meets the eligibility in A.R.S. § 8-512 and this Article;
 2. A child under the Bureau of Indian Affairs foster care program; or

3. A child placed in Arizona by another state whether voluntarily or under jurisdiction of the court of another state.
- C. AHCCCS determines the eligibility of a CMDP Member for Title XIX and Title XXI services, and CMDP shall notify AHCCCS if a Title XIX and Title XXI eligible CMDP Member no longer meets the criteria for coverage in A.R.S. § 8-512 and this Article.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-203. Exceptions, Limitations, and Exclusions

The Department shall not pay for a CMDP Member:

1. The cost of any medical or dental service that:
 - a. Is not medically necessary for prevention, diagnosis, or treatment of a condition, illness, or injury; or
 - b. Any health or medical service that is not eligible for reimbursement by AHCCCS in 9 A.A.C. 22, Article 2, and includes cosmetic procedures, experimental treatment, and personal care items.
2. The portion of the cost of any covered service that exceeds the charges set by the current and approved AHCCCS fee schedule. A medical, dental, or other health provider shall not submit a claim for charges that exceed the AHCCCS fee schedule to any party, including:
 - a. The Department, its representatives, or any fiscal intermediary the Department may contract with to administer this program;
 - b. The CMDP Member;
 - c. The CMDP Member's;
 - i. Guardian,
 - ii. Custodian,
 - iii. Estate,
 - iv. Foster parent, or
 - v. Birth parent.
3. The cost of care and services payable through any federal, state, county, or municipal program to which a CMDP Member may be entitled, except for the cost of care and services in excess of any such program.
4. The cost of care and services payable through an insurance carrier that provides coverage for the CMDP Member under A.R.S. § 8-512, except for the cost of care and services in excess of any such insurance benefits.
5. Any admission, service, item, or otherwise uncovered service identified in A.R.S. Title 36, Chapter 29, Article 1, or the approved Medicaid State Plan.
6. The cost of care and services provided to a behavioral health recipient received through Medicaid behavioral health contractors.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-204. Prior Authorization

- A. Medical, dental, and other health providers may be required to obtain authorization from CMDP before certain covered services are rendered in order for those services to be paid for under this Article and A.R.S. § 8-512.
- B. The Department shall not pay for any covered service that requires prior authorization and was:
 1. Not submitted for prior authorization; or
 2. Submitted but the Department did not grant prior authorization.
- C. Medical and dental providers shall be required by CMDP to obtain prior authorization for certain services according to the

provisions of A.R.S. Title 36, Chapter 29, Article 1, and 9 A.A.C. 22, Article 1.

- D.** In instances where a prior authorization is required for a covered service but not obtained by the medical, dental, or other health provider, the medical, dental, or other health provider shall not submit a bill for a covered service to any party, including:
1. The Department;
 2. The Department's representatives;
 3. Any fiscal intermediaries the Department may contract with to administer this program;
 4. The CMDP Member;
 5. The CMDP Member's:
 - a. Guardian,
 - b. Custodian,
 - c. Estate,
 - d. Foster Parent, or
 - e. Birth parent.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-205. Coordination of Benefits

- A.** The Department shall determine the possible existence of any primary insurance coverage for a CMDP Member.
- B.** The Department shall request that the court include a statement in the court order requiring a parent, guardian, or custodian of a CMDP Member to cooperate with the Department in coordinating benefits with any existing health insurance carrier, and to maintain any health insurance coverage presently existing which covers a CMDP Member.
- C.** The Department shall advise the court when a parent or guardian of a CMDP Member refuses to cooperate with CMDP in providing or signing any document required to coordinate insurance benefits, or if the parent, guardian, or custodian fails to maintain any existing insurance coverage for the CMDP Member.
- D.** In a voluntary placement, the parent or guardian shall cooperate with CMDP by providing and signing appropriate documents required to coordinate health insurance benefits.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-206. Identification Card

- A.** The Department shall issue a CMDP identification card for each CMDP Member.
- B.** The Department shall, upon placement, inform the out-of-home care provider in writing that:
 1. The identification card is not transferable;
 2. The out-of-home care provider shall only use the card for medical, dental, or other covered services for the CMDP Member whose name appears on the card; and
 3. The out-of-home care provider shall only use the card while the CMDP Member remains eligible for CMDP coverage.
- C.** The Department shall give the out-of-home care provider oral and written instructions regarding the use of the identification card when procuring medical care, dental care, or other covered services for the CMDP Member.
- D.** The Department shall provide the name and contact information of the CMDP Member's behavioral health services provider.
- E.** An out-of-home care provider shall return the CMDP Member's identification card when the CMDP Member is:
 1. No longer in out-of-home placement;

2. Placed with another out-of-home care provider; or
 3. Runs away from the out-of-home placement.
- F.** The out-of-home care provider who has possession of the card shall:
1. Immediately return the identification card to the Department under subsections (E)(1) and (2); or
 2. Have seven days from the date the CMDP Member runs away from the out-of-home care provider to return the card to the Department under subsection (E)(3).

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-207. Payment and Review of Claims

- A.** A medical, dental, or health provider shall submit a claim for payment in the manner prescribed by the Department.
- B.** CMDP shall not pay a claim for a covered service if the CMDP Member does not keep an appointment, or if a covered service was not provided.
- C.** A medical, dental, or other healthcare provider shall provide a covered service to the CMDP Member before submitting a claim for the covered service to CMDP.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-208. Abuse and Misuse of the Program

- A.** The Department shall establish a procedure to investigate any alleged abuse of CMDP. If the Department substantiates abuse, the Department shall take administrative action and may take legal action.
- B.** The Department shall monitor the activity of CMDP to ensure compliance with the program requirements.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-209. Administration of the Program

- A.** The Department may contract with any insurer, insurance plan, hospital service plan, or any health service plan authorized to do business in this State, with any fiscal intermediary, or with any combination of such plans or methods as permitted in A.R.S. Title 36, Chapter 29, Article 1.
- B.** Any contract with any of the entities listed in subsection (A), shall:
 1. Be specific as to the responsibilities of each party to the contract;
 2. Provide for reasonable payment to the contractor for its administrative services as required by the contract; and
 3. Be consistent with the rules in this Article and authorizing legislation. The parties may make changes to the contract by mutual consent signed by an authorized representative of the Department and the contractor to be consistent with current rules and legislation.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-210. Program Practices

- A.** All Federal and State laws, regulations, and rules regarding the disclosure and use of confidential health and personal information concerning a CMDP Member shall apply to all covered services provided under this Article.
- B.** All Federal and State non-discrimination laws, regulations, and rules shall apply to all covered services provided under this Article.

- C. The Department shall take into account the CMDP Member's and out-of-home care provider's literacy and culture and make interpreters and translation services available to a CMDP Member at no cost.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-211. Consent for Treatment

- A. For a CMDP Member in voluntary placement only, the Department shall obtain consent of the parent or guardian for medical treatment involving surgery, general anesthesia, or blood transfusion of the CMDP Member, except for an emergency situation described in subsection (B).
- B. In case of an emergency, in which the CMDP Member in voluntary placement is in need of immediate hospitalization, medical attention, or surgery, and when the parents of a CMDP Member in voluntary placement cannot readily be located, the out-of-home care provider or the Child Safety Worker may give consent.
- C. For a CMDP Member under R21-1-201(6)(2) who is in the custody of the Department in an out-of-home placement, the Department shall, if possible, obtain the consent of the parent or guardian of the CMDP Member for surgery, general anesthesia, or blood transfusion.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-212. AHCCCS Fee Schedule

- A. CMDP shall pay a medical, dental, and health provider in accordance with the established AHCCCS fee schedule unless otherwise permitted by A.R.S. § 8-512, or in the contract between the Department and AHCCCS.
- B. A current AHCCCS fee schedule is available for a medical, dental, other health provider, and CMDP Member on the AHCCCS website, <http://www.azahcccs.gov/>. The Department shall also make the fee schedule available upon request.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-213. Claim Disputes and Appeals

- A. Claim disputes are governed by the Medicaid rules in 9 A.A.C. Chapter 34.
- B. Appeals by Title XIX and Title XXI eligible CMDP Members are governed by the Medicaid rules for State Hearings in 9 A.A.C. Chapter 34.
- C. Appeals by State-Only Members are governed by Article 3 of this Chapter.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

ARTICLE 3. APPEALS AND HEARING PROCEDURES

R21-1-301. Definitions

The following definitions apply in this Article.

1. "Administration" means the Department's organizational unit responsible for licensing or providing benefits or services that are the subject of an adverse action. The administrations covered by this Article are: OLR, CMDP, ILP, TILP, adoption subsidy and guardianship subsidy.
2. "Administrative appeal" means a written request to the Department to contest an adverse action at an administrative hearing.

3. "Administrative Law Judge" or "ALJ" means the same as A.R.S. § 41-1092(1).
4. "Adoption agency" means the same as "agency" in A.R.S. § 8-101(2).
5. "Adoption subsidy" means the same as A.R.S. § 8-141(A)(1) and includes the non-recurring adoption expense program under A.R.S. § 8-161 et seq.
6. "Adverse action" means the denial, suspension, or revocation of a foster home license, Child Welfare Agency license, and adoption agency license, or a denial or reduction of guardianship subsidy, adoption subsidy, or CMDP, ILP, or TILP services.
7. "Appealable agency action" means the same as A.R.S. § 41-1092(3).
8. "Appellant" means the party who requests a hearing with the Department to challenge an adverse action under R21-1-303.
9. "Applicant" means a person who has applied for a license issued by the Department or for benefits or services provided by the Department. Benefits and services under this Article include CMDP, ILP, TILP, guardianship subsidy, and adoption subsidy.
10. "Child Welfare Agency" means a person licensed by the Department to engage in the activities defined in A.R.S. § 8-501(A)(1).
11. "CMDP" means the Comprehensive Medical and Dental Program described in A.R.S. § 8-512.
12. "Client" means a person who is licensed or receiving benefits or services from one or more of the Administrations covered by this Article.
13. "Corrective action plan" means a written proposal specified by OLR for a foster parent, or a Child Welfare Agency to remedy the violation of a licensing requirement within a specified time-frame.
14. "Department" or "DCS" means the Arizona Department of Child Safety.
15. "Foster Home" means the same as A.R.S. § 8-501(A)(5) and includes a "Group Foster Home" defined in A.R.S. § 8-501(A)(7).
16. "Foster parent" means the same as A.R.S. § 8-501, and includes anyone licensed for any type of foster home including a group home.
17. "Guardianship subsidy" means the program described in A.R.S. § 8-814.
18. "Independent Living Program" or "ILP" means an array of assistance and support services that DCS provides, contracts, refers, or otherwise arranges to help a person eligible under A.R.S. § 8-521, to transition to adulthood by building the skills and resources necessary to ensure personal safety, well-being, and permanency into adulthood.
19. "Licensee" means a person currently licensed as a foster parent, Child Welfare Agency, or adoption agency.
20. "Noncompliance Status" means the Department has received and substantiated a complaint or a Department representative has observed a violation of an adoption agency's license that does not endanger the health, safety, or well-being of a client.
21. "Office of Administrative Hearings" or "OAH" means the State's independent, quasi-judicial, administrative hearing body defined in A.R.S. § 41-1092.01.
22. "Office of Licensing and Regulation" or "OLR" means the administration in the Department responsible for licensing a foster home, Child Welfare Agency and adoption agency.

8-453. Powers and duties

A. The director shall:

1. Carry out the purposes of the department prescribed in section 8-451.
2. Provide transparency by being open and accountable to the public for the actions of the department.
3. Develop a data system that enables persons and entities that are charged with a responsibility relating to child safety to access all relevant information relating to an abused, neglected or abandoned child as provided by law.
4. Subject to title 41, chapter 4, article 4 and, as applicable, articles 5 and 6, employ deputy directors and other key personnel based on qualifications that are prescribed by the director.
5. Adopt rules to implement the purposes of the department and the duties and powers of the director.
6. Petition, as necessary to implement the case plan established under section 8-824 or 8-845, for the appointment of a guardian or a temporary guardian under title 14, chapter 5 for children who are in custody of the department pursuant to court order. Persons applying to be guardians or temporary guardians under this section shall be fingerprinted. A foster parent or certified adoptive parent already fingerprinted is not required to be fingerprinted again, if the foster parent or certified adoptive parent is the person applying to be the guardian or temporary guardian.
7. Cooperate with other agencies of this state, county and municipal agencies, faith-based organizations and community social services agencies, if available, to achieve the purposes of this chapter.
8. Exchange information, including case specific information, and cooperate with the department of economic security for the administration of the department of economic security's programs.
9. Administer child welfare activities, including:
 - (a) Cross-jurisdictional placements pursuant to section 8-548.
 - (b) Providing the cost of care of:
 - (i) Children who are in temporary custody, are the subject of a dependency petition or are adjudicated by the court as dependent and who are in out-of-home placement, except state institutions.
 - (ii) Children who are voluntarily placed in out-of-home placement pursuant to section 8-806.
 - (iii) Children who are the subject of a dependency petition or are adjudicated dependent and who are in the custody of the department and ordered by the court pursuant to section 8-845 to reside in an independent living program pursuant to section 8-521.
 - (c) Providing services for children placed in adoption.
10. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

11. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of funds.
 12. Coordinate with, contract with or assist other departments, agencies and institutions of this state and local and federal governments in the furtherance of the department's purposes, objectives and programs.
 13. Accept and disburse grants, matching funds and direct payments from public or private agencies for the conduct of programs that are consistent with the overall purposes and objectives of the department.
 14. Collect monies owed to the department.
 15. Act as an agent of the federal government in furtherance of any functions of the department.
 16. Carry on research and compile statistics relating to the child welfare program throughout this state, including all phases of dependency.
 17. Cooperate with the superior court in all matters related to this title and title 13.
 18. Provide the cost of care and transitional independent living services for a person under twenty-one years of age pursuant to section 8-521.01.
 19. Ensure that all criminal conduct allegations and reports of imminent risk of harm are investigated.
 20. Ensure the department's compliance with the Indian child welfare act of 1978 (P.L. 95-608; 92 Stat. 3069; 25 United States Code sections 1901 through 1963).
 21. Strengthen relationships with tribal child protection agencies or programs.
- B. The director may:
1. Take administrative action to improve the efficiency of the department.
 2. Contract with a private entity to provide any functions or services pursuant to this title.
 3. Apply for, accept, receive and expend public and private gifts or grants of money or property on the terms and conditions as may be imposed by the donor and for any purpose provided for by this title.
 4. Reimburse department volunteers, designated by the director, for expenses in transporting clients of the department on official business. Volunteers reimbursed for expenses are not eligible for workers' compensation under title 23, chapter 6.
- C. The department shall administer individual and family services, including sections on services to children and youth and other related functions in furtherance of social service programs under the social security act, as amended, title IV, parts B and E, grants to states for aid and services to needy families with children and for child-welfare services, title XX, grants to states for services and other related federal acts and titles.
- D. If the department has responsibility for the care, custody or control of a child or is paying the cost of care for a child, the department may serve as representative payee to receive and administer social

security and veterans administration benefits and other benefits payable to the child. Notwithstanding any law to the contrary, the department:

1. Shall deposit, pursuant to sections 35-146 and 35-147, any monies it receives to be retained separate and apart from the state general fund on the books of the department of administration.
2. May use these monies to defray the cost of care and services expended by the department for the benefit, welfare and best interests of the child and invest any of the monies that the director determines are not necessary for immediate use.
3. Shall maintain separate records to account for the receipt, investment and disposition of monies received for each child.
4. On termination of the department's responsibility for the child, shall release any monies remaining to the child's credit pursuant to the requirements of the funding source or, in the absence of any requirements, shall release the remaining monies to:
 - (a) The child, if the child is at least eighteen years of age or is emancipated.
 - (b) The person who is responsible for the child if the child is a minor and not emancipated.

E. Subsection D of this section does not apply to benefits that are payable to or for the benefit of a child receiving services under title 36.

F. Notwithstanding any other law, a state or local governmental agency or a private entity is not subject to civil liability for the disclosure of information that is made in good faith to the department pursuant to this section.

G. Notwithstanding section 41-192, the department may employ legal counsel to provide legal advice to the director. The attorney general shall represent the department in any administrative or judicial proceeding pursuant to title 41, chapter 1, article 5.

H. The total amount of state monies that may be spent in any fiscal year by the department for foster care as provided in subsection A, paragraph 9, subdivision (b) of this section may not exceed the amount appropriated or authorized by section 35-173 for that purpose. This section 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.

~~8-512. Comprehensive medical and dental care; guidelines~~

A. The department shall provide comprehensive medical and dental care, as prescribed by rules of the department, for each child who is:

- ~~1. In a voluntary placement pursuant to section 8-806.~~
2. In the custody of the department in an out-of-home placement.
3. In the custody of a probation department and placed in foster care. The department shall not provide this care if the cost exceeds funds currently appropriated and available for that purpose.

B. On or before October 1, 2015, the department of child safety, in collaboration with the department of health services and the Arizona health care cost containment system administration, shall:

1. Determine the most efficient and effective way to provide comprehensive medical, dental and behavioral health services, including behavioral health diagnostic, evaluation and treatment services for children who are provided care pursuant to subsection A of this section.
2. Determine the number of disruptions of placements in foster care by age of child due to behavioral health management issues and the extent each child is receiving behavioral health services.
3. Determine the number of adopted children who have entered foster care due to the adoptive parents' inability to receive behavioral health services to adequately meet the needs of the child and parents.
4. Submit a report of its recommendations for providing services pursuant to this subsection to the governor, the speaker of the house of representatives and the president of the senate and shall provide a copy of its report to the secretary of state. The collaborative determination shall consider an administratively integrated system.

C. The comprehensive medical and dental care consists of those benefits provided by the Arizona health care cost containment system benefit as prescribed in title 36, chapter 29, article 1 and as set forth in the approved medicaid state plan.

D. Any provider that has a provider agreement registration may be employed through the comprehensive medical and dental program by the foster parent, relative, certified adoptive parent, agency or department having responsibility for the care of the child.

E. The department shall reimburse a provider according to the rates established by the Arizona health care cost containment system administration pursuant to title 36, chapter 29, article 1.

F. The department shall use the Arizona health care cost containment system administration rates as identified in subsection E of this section for any child eligible for services under this section.

G. The department shall require providers to submit claims for medical and dental services pursuant to section 36-2903.01.

H. The department shall require that the provider pursue other third party payors before submitting a claim to the department. Payment received by a provider from the department is considered payment by the department of the department's liability for the bill. A provider may collect any unpaid portion of its bill from other third party payors or in situations covered by title 33, chapter 7, article 3.

I. The department shall not pay claims for services pursuant to this section that are submitted more than one hundred eighty days after the date of the service for which the payment is claimed.

J. The department may provide for payment through an insurance plan, hospital service plan, medical service plan, or any other health service plan authorized to do business in this state, fiscal intermediary or a combination of such plans or methods. The state shall not be liable for and the department shall not pay to any plan or intermediary any portion of the cost of comprehensive medical and dental care in excess of funds appropriated and available for such purpose at the time the plan or intermediary incurs the expense for such care.

K. The total amount of state monies that may be spent in any fiscal year by the department for comprehensive medical and dental care shall not exceed the amount appropriated or authorized by section 35-173 for that purpose. This section shall not be construed to impose a duty on an officer, agent or employee of this state to discharge a responsibility or to create any right in a person or group if the discharge or right would require an expenditure of state monies in excess of the expenditure authorized by legislative appropriation for that specific purpose.

DEPARTMENT OF AGRICULTURE (F19-0611)
Title 3, Chapter 4, All Articles, Plant Services Division



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 4, 2019

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

FROM: Council Staff

DATE: May 6, 2019

SUBJECT: ARIZONA DEPARTMENT OF AGRICULTURE
Title 3, Chapter 4, Articles 1-5 and 7-9

This five year review report (5YRR) from the Department of Agriculture relates to all Sections in Title 3, Chapter 4, Articles 1-5 and 7-9 governing the Plant Services Division. The rules address the following:

- Article 1: General Provisions
- Article 2: Quarantine
- Article 3: Nursery Certification Program
- Article 4: Seeds
- Article 5: Colored Cotton
- Article 7: Fruit and Vegetable Standardization
- Article 8: Citrus Fruit Standardization
- Article 9: Biotechnology

In a previous 5YRR for these rules in 2014, the Department proposed to amend a number of rules to address the issues identified therein, but did not proceed with a rulemaking. In the most recent 5YRR for these rules in May 2019, the Department indicated it has submitted a request for an exemption from the rulemaking moratorium to conduct a rulemaking to address the issues identified below and in the report.

Proposed Action

The Department has submitted a request for an exemption from the rulemaking moratorium to conduct a rulemaking to address the issues identified below and in the report.

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

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

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Department has determined that the economic impact does not differ significantly from what was determined in the last economic, small business, and consumer impact statement (EIS) from the most recent rulemaking in 2013.

The stakeholders include the Department, agricultural producers, agricultural importers, and agricultural exporters.

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

The Department has determined that the rules under review provide the least intrusive and least costly method of achieving the regulatory objective. The Department has determined that the costs to regulated persons by the rule, such as paperwork and other compliance costs will be outweighed by the overall benefit of agricultural health and safety.

4. Has the agency received any written criticisms of the rules over the last five years?

No. The Department has not received written criticisms of the rules over the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?

Yes. The Department indicates that a number of the rules are not effective in achieving their objectives. The Department also indicates that a number of its rules are inconsistent with other rules and statutes.

However, the Department states that the rules as they are written are clear, concise, and understandable.

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

Yes. For the reasons stated in the 5YRR, the Department indicates that the following rules are not enforced as written:

- R3-4-202 (Transportation and Packaging)
- R3-4-204 (Boll Weevil and Pink Bollworm Pests: Interior Quarantine)
- R3-4-218 (Boll Weevil and Pink Bollworm Pests: Exterior Quarantine)
- R3-4-229 (Nut Tree Pests)
- R3-4-231 (Nut Pests)
- R3-4-234 (Nematode Pests)

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

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

8. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

No. The rules do not require a permit or a license. R3-4-301 (Nursery Certification) establishes and sets fees for a voluntary nursery certification program and is not a required permit or license. This rule was adopted and became effective on January 17, 1989.

9. Conclusion

The Department has submitted a requires for an exemption from the rulemaking moratorium to conduct a rulemaking to address the issues with these rules identified above and in the 5YRR. That rulemaking will result in rules that are more clear, concise , understandable, and effective. The amended rules will also be consistent with other applicable statutes and rules. Council staff recommends approval of this report.



Arizona Department of Agriculture

Plant Services Division
1688 W. Adams Street, Phoenix, Arizona 85007
P: (602) 542-0994 F: (602) 542-1004

April 4, 2019

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

RE: Five-Year Review Report for A.A.C. Title 3, Chapter 4

Dear Ms. Sornsin:

Enclosed please find the Arizona Department of Agriculture's five-year review report for A.A. C. Title 3, Chapter 4.

The Office reviewed all the rules in the article. It does not intend for any rules to expire under A.R.S 41-1056(J).

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

Please contact Jamie Legg at (602) 542-0992 jlegg@azda.gov, or Chris McCormack and (602) 542-8334 cmccormack@azda.gov with any questions about this report.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Grant".

Jeff Grant, Deputy Director
Arizona Department of Agriculture

Governor’s Regulatory Review Council

Five-Year-Review Report Template

A.A.C. Title 3, Chapter 4

Article 1 - 5 & 7 - 9

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 3-107(A)(1), 3-201.01

Specific Statutory Authority: A.R.S. § 3-208(B), 3-217

2. The objective of each rule:

Rule	Objective
R3-4-101	The objective of this rule is to establish definitions that would apply to A.A.C. Title 3, Chapter 4.
R3-4-102	The objective of this rule is to establish general provisions for administrative completeness and substantive reviews of license or permit applications.
R3-4-201	The objective of this rule is to establish definitions that would apply to A.A.C. Title 3, Chapter 4, Article 2.
R3-4-202	The objective of this rule is to establish transportation and packaging requirements on any commodity shipped or transported into this state. This rule requires that any commodity shipped or transported into the state shall be inspected to determine whether the commodity is free of all pests subject to federal and state laws and rules at a Port-of-Entry, bulk mail facility or at destination.
R3-4-204	The objective of this rule establishes a cotton pest control program by detailing requirements for processing cotton gin trash, limiting movement of covered cotton commodities, and establishing cultural practices corresponding to each of the state’s cultural zones for the prevention and treatment of boll weevil and pink bollworm infestations within the state.
R3-4-218	The objective of this rule establishes an area under quarantine for cotton boll weevil and pink bollworm pest to protect Arizona cotton growers. Lists covered cotton commodities and other host commodities, with restrictions and guidelines for permits and certificates to allow the shipment of an otherwise prohibited product.
R3-4-219	The objective of this rule is to protect Arizona citrus growers from ten (10) listed citrus fruit surfaces pests by establishing a nationwide quarantine, listing the commodities

	covered and outlining the restrictions and exemptions for regulated commodities to gain entry into this state.
R3-4-220	The objective of this rule is to protect Arizona citrus growers from four (4) listed viral diseases of citrus and four (4) listed arthropod pests of citrus by establishing a nationwide quarantine, listing the commodities covered and outlining the restrictions and exemptions for regulated commodities to gain entry into this state.
R3-4-226	The objective of this rule is to protect Arizona agriculture from four (4) listed scale insect pests by establishing a defined quarantine area, listing the commodities covered and outlining the restrictions and exemptions for regulated commodities to gain entry into this state.
R3-4-228	The objective of this rule is to protect Arizona agriculture (primarily corn) from the European corn borer by establishing a defined quarantine area, listing the commodities covered and outlining the restrictions and exemptions for regulated commodities to gain entry into this state.
R3-4-229	The objective of this rule is to protect Arizona's nut industry from two (2) listed arthropod pests and one (1) viral disease by establishing a defined quarantine area, listing the commodities covered and outlining the restrictions and exemptions for regulated commodities to gain entry into this state.
R3-4-231	The objective of this rule is to protect Arizona's nut industry from four (4) listed arthropod pests by establishing a defined quarantine area, listing the commodities covered and outlining the restrictions and exemptions for regulated commodities to gain entry into this state.
R3-4-233	The objective of this rule is to protect Arizona's lettuce industry by establishing a nationwide quarantine area, listing the commodities covered and outlining the restrictions and exemptions for regulated commodities to gain entry into this state, and establishing cultural practices to protect the industry from lettuce mosaic virus.
R3-4-234	The objective of this rule is to protect Arizona agriculture from two (2) listed nematode pests by establishing a defined quarantine area, listing the commodities covered and outlining the restrictions and exemptions for regulated commodities to gain entry into this state.
R3-4-238	The objective of this rule is to protect Arizona agriculture from three (3) listed whitefly pests by establishing a defined quarantine area, listing the commodities covered and outlining the restrictions and exemptions for regulated commodities to gain entry into this state.

R3-4-239	The objective of this rule is to protect Arizona agriculture and the public from imported fire ants by adopting the defined quarantine area, the commodities covered and restrictions defined in 7 CFR 301.81 Subpart – Imported Fire Ants.
R3-4-240	The objective of this rule is to protect Arizona agriculture (primarily deciduous fruit) from two (2) listed arthropod pests by establishing a nationwide quarantine area, listing the commodities covered and outlining the restrictions and exemptions for regulated commodities to gain entry into this state.
R3-4-241	The objective of this rule is to protect Arizona agriculture (primarily palms) from a plant pathogen, lethal yellowing of palms, and its vector, <i>Myndus crudus</i> , by establishing a defined quarantine area, listing the commodities covered and outlining the restrictions and exemptions for regulated commodities to gain entry into this state.
R3-4-242	The objective of this rule is to protect Arizona agriculture (primarily citrus) from the brown citrus aphid by establishing a defined quarantine area, listing the commodities covered and outlining the restrictions and exemptions for regulated commodities to gain entry into this state.
R3-4-244	The objective of this rule is to protect Arizona agriculture by controlling or preventing the movement of twenty-four (24) listed noxious weeds.
R3-4-245	The objective of this rule is to protect Arizona agriculture by prohibiting fifty-six (56) listed noxious weeds from entering this state.
R3-4-246	The objective of this rule is to protect Arizona agriculture from the Caribbean fruit fly by establishing a defined quarantine area, listing the commodities covered and outlining the restrictions and exemptions for regulated commodities to gain entry into this state.
R3-4-248	The objective of this rule is to protect Arizona agriculture from the Japanese beetle by adopting the defined quarantine area, the commodities covered and restrictions defined in 7 CFR 301.48 Subpart – Japanese Beetle and the U.S. Domestic Japanese Beetle Harmonization Plant.
R3-4-301	The objective of this rule is to establish and set fees for nursery certification programs.
R3-4-401	The objective of this rule is to establish definitions that would apply to A.A.C. Title 3, Chapter 4, Article 4.
R3-4-402	The objective of this rule is to establish labeling requirements for seed sold for planting.
R3-4-403	The objective of this rule is to protect Arizona agriculture by prohibiting fifty-five (55) noxious weed seeds from contaminating seed sold for planting and placing contamination thresholds on thirteen (13) noxious weed seeds in seed sold for planting.
R3-4-404	The objective of this rule is to establish germination standards for seeds sold for planting

R3-4-405	The objective of this rule is to establish minimum requirements for seed-certifying agencies.
R3-4-406	The objective of this rule is to adopt the taking, handling, analyzing and testing of seed samples as prescribed in the Federal Seed Act Regulations 7 CFR 201.39 through 201.65 and describe who is responsible for the costs of seed sampling.
R3-4-407	The objective of this rule is to establish and set fees for phytosanitary field inspections.
R3-4-408	The objective of this rule is to establish and set fees for seed dealer and seed labeler licenses.
R3-4-409	The objective of this rule is to establish and set penalties for violations of A.A.C Title 3, Chapter 4, Article 4.
R3-4-501	The objective of this rule is to protect Arizona cotton from cross pollination between colored cotton and white cotton by establishing an area of separation, reporting and processing requirements.
R3-4-743	The objective of this rule is to establish recordkeeping and reporting requirements for fruit and vegetable shippers for the purpose of fruit and vegetable standardizations.
R3-4-816	The objective of this rule is to establish recordkeeping and reporting requirements for citrus fruit shippers for the purpose of citrus fruit and standardizations.
R3-4-901	The objective of this rule is to protect Arizona agriculture and the public by acknowledging and adopting the USDA

3. **Are the rules effective in achieving their objectives?** Yes ___ No X

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation
R3-4-101	No. Multiple definitions are no longer current or the rules in which they pertain have been repealed, revoked or re-written.
R3-4-102	No. Multiple definitions are no longer current and are not consistent through the Article.
R3-4-201	No. Multiple definitions are no longer current or the rules in which they pertain have been repealed, revoked or re-written.

R3-4-202	No. This rule was written with the Ports-of-Entry as a primary component for conducting inspections. With those facilities closed to agricultural inspections, the goals and objectives are not achievable at current staffing levels.
R3-4-204	No. This rule is no longer relevant as written with the recent declaration of eradication of the pink bollworm by the USDA.
R3-4-218	No. This rule is no longer relevant as written with the recent declaration of eradication of the pink bollworm by the USDA.
R3-4-219	Yes.
R3-4-220	No. This rule does not take into account current diseases of concern or modern growing practices that are effective in mitigating disease risks.
R3-4-226	Yes.
R3-4-228	Yes.
R3-4-229	No. There has been one organism name change and multiple infested area changes since the rule was written.
R3-4-231	No. There has been one organism name change and multiple infested area changes since the rule was amended.
R3-4-233	Yes.
R3-4-234	Yes.
R3-4-238	Yes.
R3-4-239	No. The Code of Federal Regulation and Federal Domestic Order this rule supports have been amended since the rule was amended.
R3-4-240	Yes.
R3-4-241	Yes.
R3-4-242	Yes.
R3-4-244	No. There have been multiple name changes since this rule was amended.
R3-4-245	No. There have been multiple name changes since this rule was amended.
R3-4-246	Yes.
R3-4-248	No. The supporting documentation (The U.S. Domestic Japanese Beetle Harmonization Plant) has been amended since this rule was amended.
R3-4-301	Yes.
R3-4-401	Yes.
R3-4-402	Yes.
R3-4-403	Yes.
R3-4-404	Yes.

R3-4-405	Yes.
R3-4-406	Yes.
R3-4-407	Yes.
R3-4-408	Yes.
R3-4-409	Yes.
R3-4-501	No. One official definition reference has changed
R3-4-743	Yes.
R3-4-816	Yes.
R3-4-901	Yes

4. **Are the rules consistent with other rules and statutes?** Yes ___ No X

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation
R3-4-101	No. Multiple definitions are no longer current or the rules in which they pertain have been repealed, revoked or re-written.
R3-4-102	Yes.
R3-4-201	No. Multiple definitions are no longer current or the rules in which they pertain have been repealed, revoked or re-written.
R3-4-202	Yes.
R3-4-204	No. This rule is no longer relevant as written with the recent declaration of eradication of the pink bollworm by the USDA.
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R3-4-220	Yes.
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R3-4-229	No. There has been one organism name change and multiple infested area changes since the rule was written.
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R3-4-233	Yes.
R3-4-234	Yes.

R3-4-238	Yes.
R3-4-239	No. The Code of Federal Regulation and Federal Domestic Order this rule supports have been amended since the rule was amended.
R3-4-240	Yes.
R3-4-241	Yes.
R3-4-242	Yes.
R3-4-244	No. There have been multiple name changes since this rule was amended.
R3-4-245	No. There have been multiple name changes since this rule was amended.
R3-4-246	Yes.
R3-4-248	No. The supporting documentation (The U.S. Domestic Japanese Beetle Harmonization Plant) has been amended since this rule was amended.
R3-4-301	Yes.
R3-4-401	Yes.
R3-4-402	Yes.
R3-4-403	Yes.
R3-4-404	Yes.
R3-4-405	Yes.
R3-4-406	Yes.
R3-4-407	Yes.
R3-4-408	Yes.
R3-4-409	Yes.
R3-4-501	No. One official definition reference has changed
R3-4-743	Yes.
R3-4-816	Yes.
R3-4-901	Yes

5. **Are the rules enforced as written?** Yes No

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.

Rule	Explanation
R3-4-101	Yes.
R3-4-102	Yes.
R3-4-201	Yes.

R3-4-202	No. This rule was written with the Ports-of-Entry as a primary component for conducting inspections. With those facilities closed to agricultural inspections, the goals and objectives are not achievable at current staffing levels.
R3-4-204	No. This rule is no longer enforced as written with the recent declaration of eradication of the pink bollworm by the USDA.
R3-4-218	No. This rule is no longer enforced as written with the recent declaration of eradication of the pink bollworm by the USDA.
R3-4-219	Yes.
R3-4-220	Yes.
R3-4-226	Yes.
R3-4-228	Yes.
R3-4-229	No. There is currently one Director's Administrative Order (DAO 18-01 Nut and Nut Tree Pests) supplementing this rule.
R3-4-231	No. There is currently one Director's Administrative Order (DAO 18-01 Nut and Nut Tree Pests) supplementing this rule.
R3-4-233	Yes.
R3-4-234	No. The Department currently does not have the staffing or facilities to conduct the necessary testing to confirm the commodity is pest free.
R3-4-238	Yes.
R3-4-239	Yes.
R3-4-240	Yes.
R3-4-241	Yes.
R3-4-242	Yes.
R3-4-244	Yes.
R3-4-245	Yes.
R3-4-246	Yes.
R3-4-248	Yes.
R3-4-301	Yes.
R3-4-401	Yes.
R3-4-402	Yes.
R3-4-403	Yes.
R3-4-404	Yes.
R3-4-405	Yes.
R3-4-406	Yes.

R3-4-407	Yes.
R3-4-408	Yes.
R3-4-409	Yes.
R3-4-501	Yes.
R3-4-743	Yes.
R3-4-816	Yes.
R3-4-901	Yes

6. **Are the rules clear, concise, and understandable?** Yes No

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

If yes, please fill out the table below:

Commenter	Comment	Agency's Response

8. **Economic, small business, and consumer impact comparison:**

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

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

No. The Department has submitted a Request for Approval of Rule Making to address outdated and inconsistent information written in the rules. Additionally, the Department has conducted a review of rules with interested stakeholders and is streamlining rules to reduce the regulatory burden, provide consistency with current operating practices, and make the rules more clear and concise.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department has determined that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

14. **Proposed course of action**

The Department has submitted a Request for Approval of Rule Making to address outdated and inconsistent information written in the rules. Additionally, the Department has conducted a review of rules with interested stakeholders and is streamlining rules to reduce the regulatory burden, provide consistency with current operating practices, and make the rules more clear and concise.

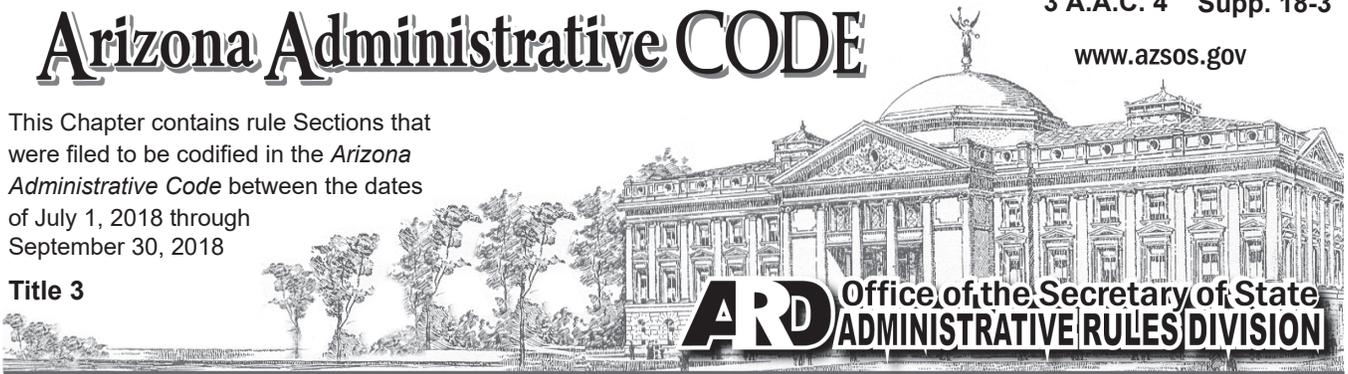
Arizona Administrative CODE

3 A.A.C. 4 Supp. 18-3

www.azsos.gov

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of July 1, 2018 through September 30, 2018

Title 3



TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE - PLANT SERVICES DIVISION

The table of contents on the first page contains quick links to the referenced page numbers in this Chapter. Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

Sections, Parts, Exhibits, Tables or Appendices codified in this supplement. The list provided contains quick links to the updated rules.

[R3-4-301.](#) [Nursery Certification](#) 24

Questions about these rules? Contact:

Name: G. John Caravetta, Associate Director
Address: Arizona Department of Agriculture
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Phoenix, AZ 85007
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Fax: (602) 542-0922
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The release of this Chapter in Supp. 18-3 replaces Supp. 17-2, 46 pages

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into titles. Titles are divided into chapters. A chapter includes state agency rules. Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each chapter.

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2018 is cited as Supp. 18-1.

Please note: The Office publishes by chapter, not by individual rule section. Therefore there might be only a few sections codified in each chapter released in a supplement. Historical notes at the end of a section provide an effective date and information when a rule was last updated.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate chapters of the *Administrative Code* in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, www.azleg.gov. An agency’s authority

note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in a chapter can be found at the Secretary of State’s website, under Services-> Legislative Filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at www.azsos.gov/rules, click on the *Administrative Register* link.

Editor’s notes at the beginning of a chapter provide information about rulemaking sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

EXEMPTIONS AND PAPER COLOR

At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

PERSONAL USE/COMMERCIAL USE

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Rhonda Paschal, managing rules editor, assisted with the editing of this chapter.



Administrative Rules Division
 The Arizona Secretary of State electronically publishes each A.A.C. Chapter with a digital certificate. The certificate-based signature displays the date and time the document was signed and can be validated in Adobe Acrobat Reader.

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE - PLANT SERVICES DIVISION

Authority: A.R.S. §§ 3-107, 3-201 et seq., 3-441 et seq., and 3-481 et seq.

Title 3, Chapter 4, Article 1, Sections R3-4-101 through R3-4-109 renumbered from Title 3, Chapter 1, Article 1, Sections R3-1-01 through R3-1-09; Title 3, Chapter 4, Article 2, Sections R3-4-201 through R3-4-248 renumbered from Title 3, Chapter 1, Article 2, Sections R3-1-50 through R3-1-77; Title 3, Chapter 4, Article 3, Sections R3-4-301 through R3-4-307 renumbered from Title 3, Chapter 1, Article 3, Sections R3-1-301 through R3-1-307; Title 3, Chapter 4, Article 4, Sections R3-4-401 through R3-4-408 renumbered from Title 3, Chapter 1, Article 4, Sections R3-1-401 through R3-1-408; Title 3, Chapter 4, Article 5, Sections R3-4-501 through R3-4-504 renumbered from Title 3, Chapter 1, Article 5, Sections R3-1-501 through R3-1-504; Title 3, Chapter 4, Article 6, Sections R3-4-601 through R3-4-633 and Appendix 1 renumbered from Title 3, Chapter 1, Article 6, Sections R3-1-601 through R3-1-633 and Appendix 1; Title 3, Chapter 4, Article 7, Sections R3-4-701 through R3-4-708 renumbered from Title 3, Chapter 7, Article 1, Sections R3-7-101 through R3-7-108; Title 3, Chapter 4, Article 8, Sections R3-4-801 through R3-4-807 renumbered from Title 3, Chapter 7, Article 2, Sections R3-7-201 through R3-7-207 (Supp. 91-4).

ARTICLE 1. GENERAL PROVISIONS

Title 3, Chapter 4, Article 1, Sections R3-4-101 through R3-4-109 renumbered from Title 3, Chapter 1, Article 1, Sections R3-1-01 through R3-1-09 (Supp. 91-4).

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CHAPTER 4. DEPARTMENT OF AGRICULTURE - PLANT SERVICES DIVISION

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(Authority: A.R.S. § 3-205.02 et seq.)

Article 5, consisting of Section R3-4-501 renumbered from R3-4-205 and amended, effective April 9, 1998 (Supp. 98-2).

Article 5, consisting of Sections R3-4-501 through R3-4-506, repealed by summary action with an interim effective date of February 10, 1995; interim effective date of February 10, 1995 now the permanent date (Supp. 96-3).

Article 5, consisting of Sections R3-4-501 through R3-4-505 adopted effective October 15, 1993 (Supp. 93-4).

Article 5, consisting of Sections R3-4-501 through R3-4-504 repealed effective October 15, 1993 (Supp. 93-4).

Title 3, Chapter 4, Article 5, Sections R3-4-501 through R3-4-504 renumbered from Title 3, Chapter 1, Article 5, Sections R3-1-501 through R3-1-504 (Supp. 91-4).

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Article 6, consisting of Sections R3-4-601 through R3-4-618 and Appendix A, adopted effective July 6, 1993 (Supp. 93-3).

Article 6, consisting of Sections R3-4-601 through R3-4-633 and Appendix A, repealed effective July 6, 1993 (Supp. 93-3).

Title 3, Chapter 4, Article 6, Sections R3-4-601 through R3-4-633 and Appendix 1 renumbered from Title 3, Chapter 1, Article 6, Sections R3-1-601 through R3-1-633 and Appendix 1.

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(Authority: A.R.S. § 3-481 et seq.)

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ARTICLE 8. CITRUS FRUIT STANDARDIZATION

(Authority: A.R.S. § 3-441 et seq.)

Title 3, Chapter 4, Article 8, Sections R3-4-801 through R3-4-807 renumbered from Title 3, Chapter 7, Article 2, Sections R3-7-201 through R3-7-207 (Supp. 91-4).

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ARTICLE 9. BIOTECHNOLOGY

Article 9, consisting of Section R3-4-901, adopted effective November 22, 1993 (Supp. 93-4).

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CHAPTER 4. DEPARTMENT OF AGRICULTURE - PLANT SERVICES DIVISION

ARTICLE 1. GENERAL PROVISIONS

R3-4-101. Definitions

In addition to the definitions provided in A.R.S. §§ 3-201, 3-231, 3-441, and 3-481, the following definitions apply to this Chapter:

“Appliance” means any box, tray, container, ladder, tent, vehicle, implement, or any article or thing that is or may be used in growing, harvesting, handling, packing, or transporting any agricultural commodity.

“Aquatic” means living or growing in or on water.

“Bulk container” means a container used solely for transporting a commodity in bulk quantities.

“Carrier” means any plant or thing that can transport or harbor a plant pest.

“Certificate” means an original document issued by the Department, the United States Department of Agriculture, or authorized officer of the state of origin, stating name, quantity, and nature of the regulated commodity, and the information required by a specific regulation.

“Commodity” means any plant, produce, soil, material, or thing that may be subject to federal and state laws and rules.

“Container” means any box, crate, lug, chest, basket, carton, barrel, keg, drum, can, sack, or other receptacle for a commodity.

“Cotton lint” means the remnant produced when cottonseed is processed in a gin.

“Cotton plant” means all parts of *Gossypium* spp. whether wild or domesticated, except manufactured cotton products.

“Cotton products” include seed cotton, cotton lint, cotton linters, motes, cotton waste, gin trash, cottonseed, and cotton hulls.

“Cotton stubble” means the basal part of a cotton plant that remains attached to the soil after harvest.

“Cotton waste” includes all waste products from the processing of cotton at gins and cottonseed-oil mills, in any form or under any trade designation.

“Defoliate” means to remove the leaves from a plant.

“Diseased” means an abnormal condition of a plant resulting from an infection.

“Gin trash” means organic waste or materials resulting from ginning cotton.

“Head leaves” means all leaves that enfold the compact portion of a head of lettuce or cabbage.

“Host” means a plant on or in which a pest can live or reproduce, or both.

“Husk” means the membranous outer envelope of many seeds and fruit, such as an ear of corn or a nut.

“Infested” means any plant or other material on or in which a pest is found.

“Inspector” means an employee of the Department or other governmental agency who enforces any law or rule of the Department.

“Label” means all tags and other written, printed, or graphic representations in any form, accompanying or pertaining to a plant or other commodity.

“Lot” means any one group of plants or things, whether or not containerized that is set apart or is separate from any other group.

“Nursery” means real property or other premises on or in which nursery stock is propagated, grown, or cultivated or from which source nursery stock is offered for distribution or sale. (A.R.S. § 3-201(5))

“Permit” means an official document authorizing the movement of a host plant and carrier.

“Person” means an individual, partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, a public or private organization of any character, or another agency.

“Plant” or “crop” includes every kind of vegetation, wild or domesticated, and any part thereof, as well as seed, fruit or other natural product of such vegetation. (A.R.S. § 3-201(8))

“Reshipment” means the shipment of a commodity after receipt from another shipping point.

“Sell” means to exchange for money or its equivalent including to offer, expose, or possess a commodity for sale or to otherwise exchange, barter, or trade.

“Serious damage” means any injury or defect rising from any circumstance, natural or mechanical, that affects the appearance or the edible or shipping quality of a commodity, or lot.

“Soil” means any non-liquid combination of organic, or organic and inorganic material in which plants can grow.

“Stub or soca cotton” means cotton stalks of a previous crop that begin to show signs of growth.

“Subcontainer” means any container being used within another container.

“Transport” means moving an article from one point to another.

“Treatment” means an application of a substance as either a spray, mist, dust, granule, or fumigant; or a process in which a substance or procedure is used to control or eradicate a plant pest.

“Vector” means an organism (usually an insect) that may carry a pathogen from one host plant to another.

“Vehicle” means an automotive device, such as a car, bus, truck, or private or recreational vehicle.

“Volunteer cotton” means a sprout from seed of a previous crop.

“Wrapper leaves” means all leaves that do not closely enfold the compact portion of the head of lettuce or cabbage.

Historical Note

Former Rule 1; Amended effective June 16, 1977 (Supp. 77-3). Section R3-1-01 renumbered to R3-4-101 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2). New Section R3-4-101 renumbered from R3-4-102 without change, effective October 8, 1998 (Supp. 98-4). Amended by final rulemaking at 5 A.A.R. 2521, effective July 15, 1999 (Supp. 99-3). Amended by final rulemaking at 19 A.A.R. 3860, effective January 4, 2014 (Supp. 13-4).

R3-4-102. Licensing Time-frames

A. Overall time-frame. The Department shall issue or deny a license within the overall time-frames listed in Table 1 after

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receipt of the complete application. The overall time-frame is the total of the number of days provided for the administrative completeness review and the substantive review.

- B. Administrative completeness review.**
1. The administrative completeness review time-frame established in Table 1 begins on the date the Department receives the application. The Department shall notify the applicant in writing within the administrative completeness review time-frame whether the application or request is incomplete. The notice shall specify what information is missing. If the Department does not provide notice to the applicant within the administrative completeness review time-frame, the Department considers the application complete.
 2. An applicant with an incomplete license application shall supply the missing information within the completion request period established in Table 1. The administrative completeness review time-frame is suspended from the date the Department mails the notice of missing information to the applicant until the date the Department receives the information.
 3. If the applicant fails to submit the missing information before the expiration of the completion request period, the Department shall close the file, unless the applicant requests an extension. An applicant whose file has been closed may obtain a license by submitting a new application.
- C. Substantive review.** The substantive review time-frame established in Table 1 shall begin after the application is administratively complete.
1. If the Department makes a comprehensive written request for additional information, the applicant shall submit the additional information identified by the request within the additional information period provided in Table 1. The substantive review time-frame is suspended from the date of the Department request until the information is received by the Department. If the applicant fails to provide the information identified in the written request within the additional information period, the Department shall deny the license.
 2. The Department shall issue a written notice granting or denying a license within the substantive review time-frame. If the application is denied, the Department shall send the applicant written notice explaining the reason for the denial with citations to supporting statutes or rules, the applicant's right to seek a fair hearing, and the time period in which the applicant may appeal the denial.

Historical Note

Former Rule 2; Amended effective June 19, 1978 (Supp. 78-3). Section R3-1-02 renumbered to R3-4-102 (Supp.

91-4). Section repealed, new Section adopted effective January 6, 1994 (Supp. 94-1). Section R3-4-102 renumbered to R3-4-101; new Section R3-4-102 adopted effective October 8, 1998 (Supp. 98-4).

R3-4-103. Repealed**Historical Note**

Former Rule 3. Section R3-1-03 renumbered to R3-4-103 (Supp. 91-4). Repealed effective September 22, 1994 (Supp. 94-3).

R3-4-104. Repealed**Historical Note**

Former Rule 4. Section R3-1-04 renumbered to R3-4-104 (Supp. 91-4). Repealed effective September 22, 1994 (Supp. 94-3).

R3-4-105. Repealed**Historical Note**

Former Rule 5. Section R3-1-05 renumbered to R3-4-105 (Supp. 91-4). Amended effective September 22, 1994 (Supp. 94-3). Section repealed by final rulemaking at 6 A.A.R. 41, effective December 8, 1999 (Supp. 99-4).

R3-4-106. Repealed**Historical Note**

Former Rule 6. Section R3-1-06 renumbered to R3-4-106 (Supp. 91-4). Repealed effective September 22, 1994 (Supp. 94-3).

R3-4-107. Repealed**Historical Note**

Former Rule 7. Section R3-1-07 renumbered to R3-4-107 (Supp. 91-4). Amended effective September 22, 1994 (Supp. 94-3). Section repealed by final rulemaking at 19 A.A.R. 3860, effective January 4, 2014 (Supp. 13-4).

R3-4-108. Repealed**Historical Note**

Former Rule 8. Section R3-1-08 renumbered to R3-4-108 (Supp. 91-4). Repealed effective September 22, 1994 (Supp. 94-3).

R3-4-109. Repealed**Historical Note**

Former Rule 9. Section R3-1-09 renumbered to R3-4-109 (Supp. 91-4). Repealed effective September 22, 1994 (Supp. 94-3).

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Table 1. Time-frames (Calendar Days)

License	Authority	Administrative Completeness Review	Response to Completion Request	Substantive Completeness Review	Response to Additional Information	Overall Time-frame
QUARANTINE						
Boll Weevil and Pink Bollworm	R3-4-204(D)	14	14	30	30	44
Small-Grain Crop Approval	R3-4-204(E)(4)(b)	14	14	30	30	44
Boll Weevil and Pink Bollworm	R3-4-218	14	14	30	30	44
Citrus Fruit Surface Pest	R3-4-219	14	14	60	30	74
European Corn Borer	R3-4-228	14	14	30	30	44
Lettuce Mosaic	R3-4-233	14	14	30	30	44
Noxious Weeds Regulated and Restricted Prohibited	R3-4-244 R3-4-245	14	14	30	30	44
Plum Curculio and Apple Maggot	R3-4-240	14	14	60	30	74
Colored Cotton	A.R.S. § 3-205.02 R3-4-501	14	0	0	0	14
NURSERY						
General Nursery Stock Inspection	R3-4-301(B)	30	14	1 yr	14	1 yr, 30 days
Special Nursery Stock Inspection: Ozonium Root Rot	R3-4-301(C)					
• Method of Growing		7	14	60	14	67
• New		7	14	30	14	37
• Renewal		7	14	4 yrs	14	4 yrs, 7 days
• Indicator Crop Planted on Applicant's Property						
Special Nursery Stock Inspection: Rose Mosaic	R3-4-301(C)	7	14	180	14	187
Special Nursery Stock Inspection: Brown Garden Snail	R3-4-301(C)	7	14	30	14	37
Special Nursery Stock Inspection: Other	R3-4-301(C)	7	14	30	14	37
Phytosanitary Field Inspection	A.R.S. § 3-233(A)(7) R3-4-407	30	7	210	7	240
STANDARDIZATION						
Experimental Pack and Product for Fruit and Vegetables	A.R.S. § 3-487 R3-4-740	7	7	7	7	14
Experimental Pack and Product for Citrus Fruit	A.R.S. § 3-445 R3-4-814	7	7	7	7	14
Citrus Fruit Dealer, Packer, or Shipper License	A.R.S. § 3-449	14	14	14	14	28
Fruit and Vegetable Dealer, Packer, or Shipper License	A.R.S. § 3-492	14	14	14	14	28
SEED DEALERS AND LABELERS						
Seed Dealer	A.R.S. § 3-235 R3-4-408	14	14	14	14	28
Seed Labeler	A.R.S. § 3-235 R3-4-408	14	14	14	14	28

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Historical Note

Table 1 adopted effective October 8, 1998 (Supp. 98-4). Amended by final rulemaking at 7 A.A.R. 3812, effective August 10, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 3633, effective August 7, 2002 (Supp. 02-3). Amended by final rulemaking at 8 A.A.R. 4454, effective October 2, 2002 (Supp. 02-4). Amended Section references under Arizona Native Plants to correspond to recodification at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 10 A.A.R. 2665, effective June 8, 2004 (Supp. 04-2). Amended by final rulemaking at 19 A.A.R. 3860, effective January 4, 2014 (Supp. 13-4).

ARTICLE 2. QUARANTINE**R3-4-201. Definitions**

The following definitions apply to this Article:

“Associate Director” means the Associate Director of the Plant Services Division.

“Common carrier” means any person transporting a commodity or appliance for compensation or commercial purpose.

“Compliance agreement” means a written agreement or permit between a person and the Department for the purpose of allowing the movement or production of a regulated commodity or appliance from a quarantined area of this state and containing demonstrated safeguarding measures to ensure compliance with the purposes of A.R.S. Title 3, Chapter 2, Article 1.

“Consumer container” means a container that is produced or distributed for retail sale or for consumption by an individual.

“Cotton harvesting machine” means any machine used to pick or harvest raw cotton in a field.

“Designated treatment area” means an area temporarily approved by the Department for the holding and treatment of a commodity or appliance for a pest in cases where a quarantine holding area does not exist.

“Epiphytically” means the function of a plant growing on another plant or object but that does not require the other plant or object as a source of nutrients.

“Fumigate” means to apply a gaseous substance to a commodity or appliance in a closed area to eradicate a pest.

“Hull” means the dry outer covering of a seed or nut.

“Infected” means any plant or other material on or in which a disease is found.

“Limited permit” means a permit issued by the Department to a common carrier or responsible party to transport a commodity or appliance that would otherwise be restricted.

“Master permit” means a permit issued by the Department to another state department of agriculture that gives that other state authority to certify, in accordance with the terms of the permit, that a regulated commodity or appliance may enter Arizona without a quarantine compliance certificate.

“Origin inspection agreement” means a permit issued by the Department to a person that specifies terms to ship or transport a regulated commodity or appliance into Arizona, which importation would otherwise be prohibited by this Article, and that the origin state department of agriculture agrees with.

“Package” means (i) any box, bag, or envelope used for the shipment of a commodity or appliance through postal and parcel services or (ii) individual packets of seeds for planting.

“Pest free” means apparently free from all regulated plant pests, as determined by an inspection.

“Phytosanitary certificate” means a certificate issued by a regulatory official for the purpose of certifying a commodity or appliance as pest free.

“Private carrier” means any person transporting a commodity or appliance for a noncommercial purpose.

“Quarantine compliance certificate” means a certificate issued by a plant regulatory official of the originating state that establishes that a commodity or appliance has been treated or inspected to comply with Arizona quarantine rules and orders and includes a certificate of inspection.

“Receiver” means any person or place of business listed on a bill of lading, manifest, or freight bill as a consignee or destination for a commodity or appliance.

“Regulated plant pest” means all live life stages of an arthropod, disease, plant, nematode, or snail that is regulated or considered under quarantine by a state or federal law, rule or order enforced by the Department.

“Responsible party” means a common carrier, person, or place of business that is legally responsible for the possession of a commodity or appliance.

“Treatment Manual” means the USDA-APHIS-PPQ Treatment Manual, T301—Cotton and Cotton Products, revised March 2013. The Treatment Manual is incorporated by reference, does not include any later amendments or editions, and is available from the Department and online at http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment.pdf.

Historical Note

Former Rule, Quarantine Regulation 2; Amended effective July 1, 1975 (Supp. 75-1). Former Section R3-4-50 repealed, new Section R3-4-50 adopted effective October 23, 1978 (Supp. 78-5). Section R3-1-50 renumbered to R3-4-201 (Supp. 91-4). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 2521, effective July 15, 1999 (Supp. 99-3). Amended by final rulemaking at 19 A.A.R. 3860, effective January 4, 2014 (Supp. 13-4).

R3-4-202. Transportation and Packaging

- A.** Any commodity shipped or transported into the state shall be inspected to determine whether the commodity is free of all pests subject to federal and state laws and rules.
- B.** Each commodity shipped or transported into the state shall display the following information on a bill of lading, manifest, freight bill, or on the outside of the carton;
1. The name and address of the shipper and receiver;
 2. A certificate of inspection for nursery stock, if applicable;
 3. The botanical or common name of the commodity;
 4. The quantity of each type of commodity;
 5. The state or foreign country where each commodity originated;
 6. Any other certificate required by this Article.
- C.** Packaging.
1. Any commodity shipped or transported into the state shall be packaged or wrapped in a manner to allow inspection by an inspector.
 2. The following and other similar types of packages are prohibited:

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- a. Packages that cannot be opened without destroying either the package or its contents;
 - b. Packages that cannot, once opened, be resealed after inspection without the inspector supplying additional packing material to protect the contents;
 - c. Commodities that are packaged or sealed with wire or seals that cannot be opened and resealed without special tools or equipment;
 - d. Clear or colored waxes applied to a commodity that prevent inspection.
- D. Restrictions.**
1. Nursery stock shipments shall not enter Arizona between 8:00 a.m. Friday and 12:01 a.m. Monday, or during a legal holiday.
 2. Common and private carriers. A carrier shall declare all commodities at a port-of-entry.
 - a. All carriers shall hold a commodity until it is inspected by an inspector and a Certificate of Release, under A.R.S. § 3-209, is issued. The Director may authorize a carrier to deliver a commodity to a consignee before the inspection.
 - i. If the commodity requiring inspection cannot be adequately inspected, the inspector may place the commodity under a "Warning-Hold for Agricultural Inspection."
 - ii. The inspector may seal the truck to prevent the likelihood of spreading harmful pests.
 - b. When a carrier enters the state at a port-of-entry where agriculture inspections are performed, the driver shall:
 - i. Provide the inspector with the bill of lading, manifest, or a short-form manifest signed by the company's authorized agent responsible for supervising the loading of the contents in the shipment;
 - ii. Open the vehicle and expose the contents for inspection; and
 - iii. Assist the inspector in gaining access to the contents.
 - c. When a carrier enters the state at a port-of-entry where no agricultural inspections are performed, the carrier shall follow procedures specified in subsection (D)(2)(b), proceed to destination for inspection, and provide the following information on a Load Report form:
 - i. The name, address, and telephone number of the shipper;
 - ii. The name, address, and telephone number of the primary receiver;
 - iii. The name and address of the carrier;
 - iv. The tractor unit number and trailer license number; and
 - v. The name and address of additional receivers, if any.
 3. Bulk mail facility. All commodities entering a bulk mail facility shall be held for inspection. The commodity shall not be released until an inspector inspects the commodity and issues a Certificate of Release.
 4. Railroad. Any commodity shipped by railroad shall be inspected at destination. The responsible party shall notify the Director in advance of the shipment to schedule an inspection of the commodity.
 5. Out-of-state destination. If a commodity requiring inspection is shipped to a point outside the state, and is confirmed by a short-form manifest, freight bill, or bill of lading, the inspector shall give the driver a notice in writing, or by transit stamp, that the shipment is under quarantine while in the state, and it is unlawful to dispose of the shipment in any way unless the shipment is inspected and released by an inspector.
- E. Disposition of commodity.** When a carrier is in possession of, or responsible for, a commodity inspected by an inspector and found in violation of Arizona quarantine laws, and elects to ship the commodity out-of-state:
1. The inspector shall issue a "Warning-Hold for Agricultural Inspection" notice to the carrier. The carrier shall hold the notice until the commodity is removed from the state through a port-of-entry designated by the inspector and the removal is noted on the notice.
 2. The carrier shall surrender the "Warning-Hold for Agricultural Inspection" notice (driver's copy) at the port-of-entry specified on the notice.
- F. Violations.**
1. The inspector shall place any commodities not meeting the requirements of subsections (C)(1) and (C)(2) under quarantine and notify the shipper in writing of the following options:
 - a. Reship the commodity out-of-state;
 - b. Provide the necessary labor and material to open the package and reseal it after inspection; or
 - c. Under the supervision of an inspector, destroy the shipment.
 2. Any person who violates any of the following provisions shall submit the load for complete inspection at a port-of-entry, or where apprehended:
 - a. Fails to comply with requirements on the "Warning-Hold for Agricultural Inspection" notice;
 - b. Fails to comply with the inspector's instructions;
 - c. Breaks the seals of a sealed vehicle; or
 - d. Delivers a product under quarantine before it is released by an inspector, or authorized by the Director.

Historical Note

Former Rule, Quarantine Regulation 3. Section R3-1-51 renumbered to R3-4-202 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 2521, effective July 15, 1999 (Supp. 99-3). New Section R3-4-202 renumbered from R3-4-201 and amended by final rulemaking at 19 A.A.R. 3860, effective January 4, 2014 (Supp. 13-4).

R3-4-203. Repealed**Historical Note**

Former Rule, Quarantine Regulation 4. Repealed effective October 23, 1978 (Supp. 78-5). Section R3-1-52 renumbered to R3-4-203 (Supp. 91-4).

R3-4-204. Boll Weevil and Pink Bollworm Pests: Interior Quarantine

- A. Definitions.** The following terms apply to this Section:
1. "Crop remnant" means the stalks, leaves, bolls, lint, pods, and seeds of cotton;
 2. "Pests" means any of the following:
 - a. Pink bollworm, *Pectinophora gossypiella* (Saunders); or
 - b. Boll weevil complex, *Anthonomus grandis* (Boheman) complex.
- B. Regulated commodities and appliances.**
1. Cotton, all parts;

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2. Cotton gin trash;
 3. Used cotton harvesting machines; and
 4. Other materials, products, and equipment that are means of disseminating or proliferating the pests.
- C. Cotton gin trash. Any person operating an Arizona cotton gin shall daily destroy cotton gin trash by using a method prescribed in the Treatment Manual.
- D. Restrictions.
1. A person shall not ship or transport a regulated commodity or appliance from an area infested with pests except pursuant to a limited permit issued by or a compliance agreement with the Department.
 2. Any person intending to ship or transport a regulated commodity pursuant to a limited permit or compliance agreement shall provide the Department with the following information before the date of movement or shipment:
 - a. The quantity of the regulated commodity or appliance to be moved;
 - b. The location of the commodity or appliance;
 - c. The names and addresses of the consignee and consignor;
 - d. The method of shipment; and
 - e. The scheduled date of the shipment.
 3. The shipper shall attach all permits and compliance agreements to the manifest, waybill, or bill of lading which shall accompany the shipment.
 4. Permits and compliance agreements shall specify the manner of handling or treating a regulated commodity or appliance. Pink bollworm and boll weevil treatment shall be under official supervision and applied as prescribed in the Treatment Manual.
- E. Cultural practices.
1. Arizona's cultural zones are:
 - a. Zone "A" -- Yuma County west of a line extended directly north and directly south of Avenue 58E.
 - b. Zone "B" -- Cochise County, Graham County, and Greenlee County.
 - c. Zone "C" -- Mohave County and La Paz County, except for the following: T6N, R11W, 12W, 13W; T5N, R12W, 13W; T4N, R12W, 14W, 15W; T3N, R10W, 11W; and T2N, R11W.
 - d. Zone "D" -- Pima County; the following portions of Pinal County: T10S, R10E, sections 34-36; T10S, R11E, section 31; T7S, R16E; T6S, R16E; T5S, R15E; T5S, R16E and T4S, R14E; and the following portions of the Aguila area: T6N, R8W; T7N, R8W, 9W, 10W; T7N, R11W, other than sections 24, 25 and 36; and T8N, R9W, sections 31-36.
 - e. Zone "E" -- All portions of the state not included in zones "A", "B", "C", and "D."
 2. No stub, soca, or volunteer cotton shall be grown in or allowed to grow in the state. The landowner or grower shall be responsible for eliminating stub, soca, or volunteer cotton.
 3. Tillage deadline. Except as provided in subsection (E)(4), a grower shall ensure that a crop remnant of a host plant remaining in the field after harvest is shredded and the land tilled to destroy the host plant and its root system so no stalks remain attached to the soil before the following dates or before planting another crop, whichever occurs earlier: Zone "A", January 15; Zone "B", March 1; Zone "C", February 15; Zone "D", March 1; Zone "E", February 15.
 4. Rotational crop following cotton harvest.
 - a. If a grower elects to plant a small-grain crop following a cotton harvest, the grower may, after the host plant is shredded, irrigate and plant with wheat, barley, or oats (or other similar small-grain crops approved in writing by the Associate Director before planting) instead of tilling as prescribed in subsection (E)(3). The small-grain crop shall be planted before the tillage deadline for the zone.
 - b. The Associate Director shall approve small-grain crops other than wheat, barley, and oats, if the planting, growth, and harvest cycles of the small-grain crop prevents the maturation of stub, soca, or volunteer cotton. A grower shall submit a written request for approval of a small-grain crop, other than wheat, barley, or oats, at least 15 days before the tillage deadline for the zone. The written request shall include the scientific and common name of the proposed small-grain crop and the estimated date of harvest.
 - c. If a grower elects to plant a crop other than an approved small-grain crop following a cotton harvest, the requirements specified in subsection (E)(3) apply.
 5. Planting dates.
 - a. A grower who meets the tillage deadline specified in subsection (E)(3) for the preceding cotton crop year shall not plant cotton earlier than 15 days after the tillage deadline for the zone.
 - b. A grower who does not meet the tillage deadline specified in subsection (E)(3) for the preceding cotton crop year shall not plant cotton on a farm until 15 days after the grower ensures that all crop remnants of a host plant remaining in the fields after harvest are shredded and the land tilled to destroy the host plant and its root system so no stalks remain attached to the soil.
 6. Dry planting. Any grower who meets the tillage deadline for the zone may dry plant cotton five days after the tillage deadline for that zone, but shall not water until 15 days after the tillage deadline for that zone.
 7. An inspector shall give written notice to any owner or person in charge or control of the nuisance found in violation of subsection (E). The processes established in subsections (E)(3) and (E)(4) shall be repeated, as necessary, to destroy the pests.
- F. Advisory Committee. The Director, as necessary, shall appoint an advisory committee composed of the nominated representatives of the Arizona Cotton Growers Association and the Arizona Cotton Research and Protection Council and such other individuals as may be necessary to make recommendations to the Department on amendments to this Section.

Historical Note

Former Rule, Quarantine Regulation 5. Amended effective January 24, 1978 (Supp. 78-1). Former Section R3-4-53 repealed, new Section R3-4-53 adopted effective December 2, 1982. See also R3-4-53.01 through R3-4-53.07 (Supp. 82-6). Section R3-1-53 renumbered to R3-4-204 (Supp. 91-4). Section repealed, new Section adopted effective May 7, 1993 (Supp. 93-2). Amended effective September 22, 1994 (Supp. 94-3). Amended effective July 10, 1995 (Supp. 95-3). Amended effective November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 5 A.A.R. 2521, effective July 15, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 2082, effective May 15, 2000 (Supp. 00-2). Amended by

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final rulemaking at 19 A.A.R. 3860, effective January 4, 2014 (Supp. 13-4).

R3-4-205. Renumbered**Historical Note**

Adopted effective December 2, 1982. See also R3-4-53 and R3-4-53.02 through R3-4-53.07 (Supp. 82-6). Section R3-1-53.01 renumbered to R3-4-205 (Supp. 91-4). Repealed effective May 7, 1993 (Supp. 93-2). New Section adopted effective December 20, 1994 (Supp. 94-4). Section R3-4-205 renumbered to R3-4-501 and amended, effective April 9, 1998 (Supp. 98-2).

R3-4-206. Repealed**Historical Note**

Adopted effective December 2, 1982. See also R3-4-53, R3-4-53.01 and R3-4-53.03 through R3-4-53.07 (Supp. 82-6). Section R3-1-53.02 renumbered to R3-4-206 (Supp. 91-4). Repealed effective May 7, 1993 (Supp. 93-2).

R3-4-207. Repealed**Historical Note**

Adopted effective December 2, 1982. See also R3-4-53, R3-4-53.01, R3-4-53.02 and R3-4-53.04 through R3-4-53.07 (Supp. 82-6). Section R3-1-53.03 renumbered to R3-4-207 (Supp. 91-4). Repealed effective May 7, 1993 (Supp. 93-2).

R3-4-208. Repealed**Historical Note**

Adopted effective December 2, 1982. See also R3-4-53, R3-4-53.01 through R3-4-53.03 and R3-4-53.05 through R3-4-53.07 (Supp. 82-6). Section R3-1-53.04 renumbered to R3-4-208 (Supp. 91-4). Repealed effective May 7, 1993 (Supp. 93-2).

R3-4-209. Repealed**Historical Note**

Adopted effective December 2, 1982. See also R3-4-53, R3-4-53.01 through R3-4-53.04, R3-4-53.06, and R3-4-53.07 (Supp. 82-6). Amended effective October 21, 1983 (Supp. 83-5). Amended effective July 24, 1985 (Supp. 85-4). Amended effective May 5, 1986 (Supp. 86-3). Amended effective May 10, 1988 (Supp. 88-2). Amended subsection (B) effective December 27, 1988 (Supp. 88-4). Amended effective December 22, 1989 (Supp. 89-4). Section R3-1-53.06 renumbered to R3-4-209 (Supp. 91-4). Repealed effective May 7, 1993 (Supp. 93-2).

R3-4-210. Repealed**Historical Note**

Adopted effective December 2, 1982. See also R3-4-53, R3-4-53.01 through R3-4-53.05 and R3-4-53.07 (Supp. 82-6). Section R3-1-53.06 renumbered to R3-4-210 (Supp. 91-4). Repealed effective May 7, 1993 (Supp. 93-2).

R3-4-211. Repealed**Historical Note**

Adopted effective December 2, 1982. See also R3-4-53, R3-4-53.01 through R3-4-53.06 (Supp. 82-6). Section R3-1-53.07 renumbered to R3-4-211 (Supp. 91-4). Repealed effective May 7, 1993 (Supp. 93-2).

R3-4-212. Repealed**Historical Note**

Former Rule, Quarantine Regulation 6. Amended effective July 1, 1975 (Supp. 75-1). Amended effective April 26, 1976 (Supp. 76-2). Amended effective June 16, 1977 (Supp. 77-3). Repealed effective June 19, 1978 (Supp. 78-3). Adopted as an emergency effective October 21, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January 19, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Emergency expired. Former Section R3-4-54 adopted as an emergency now adopted without change effective May 15, 1984. See also R3-4-54.01 thru R3-4-54.05 (Supp. 84-3). Section R3-1-54 renumbered to R3-4-212 (Supp. 91-4). Repealed effective April 3, 1997 (Supp. 97-2).

R3-4-213. Repealed**Historical Note**

Adopted as an emergency effective October 21, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January 19, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Emergency expired. Former Section R3-4-54.01 adopted as an emergency now adopted and amended effective May 15, 1984. See also R3-4-54, R3-4-54.02 thru R3-4-54.05 (Supp. 84-3). Section R3-1-54.01 renumbered to R3-4-213 (Supp. 91-4). Repealed effective April 3, 1997 (Supp. 97-2).

R3-4-214. Repealed**Historical Note**

Adopted as an emergency effective October 21, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January 19, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Emergency expired. Former Section R3-4-54.02 adopted as an emergency now adopted and amended effective May 15, 1984. See also R3-4-54, R3-4-54.01, R3-4-54.03 thru R3-4-54.05 (Supp. 84-3). Section R3-1-54.02 renumbered to R3-4-214 (Supp. 91-4). Repealed effective April 3, 1997 (Supp. 97-2).

R3-4-215. Repealed**Historical Note**

Adopted as an emergency effective October 21, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January 19, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Emergency expired. Former Section R3-4-54.03 adopted as an emergency now adopted and amended effective May 15, 1984. See also R3-4-54, R3-4-54.01, R3-4-54.02, R3-4-54.04 and R3-4-54.05 (Supp. 84-3). Section R3-1-54.03 renumbered to R3-4-215 (Supp. 91-4). Repealed effective April 3, 1997 (Supp. 97-2).

R3-4-216. Repealed**Historical Note**

Adopted as an emergency effective October 21, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January 19, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Emergency expired. Former Section R3-4-54.04 adopted as an emergency now adopted and amended effective May 15, 1984. See also R3-4-54, R3-4-54.01 thru R3-4-54.03, and R3-4-54.05 (Supp. 84-3). Sec-

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tion R3-1-54.04 renumbered to R3-4-216 (Supp. 91-4).
Repealed effective April 3, 1997 (Supp. 97-2)

R3-4-217. Repealed**Historical Note**

Adopted effective May 15, 1984. See also R3-4-54, R3-4-54.01 thru R3-4-54.04 (Supp. 84-3). Section R3-1-54.05 renumbered to R3-4-217 (Supp. 91-4). Repealed effective April 3, 1997 (Supp. 97-2).

R3-4-218. Boll Weevil and Pink Bollworm Pests: Exterior Quarantine**A. Definitions**

1. "Cotton appliance" means a container used in handling cotton, including sacks, bags, tarps, boxes, crates, and machinery used in planting, harvesting and transporting cotton.
2. "Cottonseed" means a seed derived from cotton plants which is destined for propagation or other use.
3. "Fumigation certificate" means a quarantine compliance certificate that specifies the fumigation chemical used, the treatment schedule, and the commodity treated.
4. "Hibiscus" means all parts of *Hibiscus* spp.
5. "Pest" means any of the following:
 - a. Boll weevil, *Anthonomus grandis* (Boheman); or
 - b. Pink bollworm, *Pectinophora gossypiella* (Saunders).
6. "Spanish moss" means all parts of *Tillandsia usneoides*.

B. Area under quarantine.

1. Boll weevil. In the state of Texas, the following counties: Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Blanco, Bosque, Bowie, Brazoria, Brazos, Brooks, Burlison, Burnett, Caldwell, Calhoun, Cameron, Camp, Cass, Chambers, Cherokee, Collin, Colorado, Comal, Cooke, Coryell, Dallas, Delta, Denton, De Witt, Dimmit, Duval, Ellis, Falls, Fannin, Fayette, Fort Bend, Franklin, Freestone, Frio, Galveston, Gillespie, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Hamilton, Hardin, Harris, Harrison, Hays, Henderson, Hidalgo, Hill, Hood, Hopkins, Houston, Hunt, Jack, Jackson, Jasper, Jefferson, Jim Hogg, Jim Wells, Johnson, Karnes, Kaufman, Kendall, Kenedy, Kinney, Kleberg, Lamar, Lampasas, La Salle, Lavaca, Lee, Leon, Liberty, Limestone, Live Oak, Llano, Madison, Marion, Matagorda, Maverick, McLennan, McMullen, Medina, Milam, Mills, Montague, Montgomery, Morris, Nacogdoches, Navarro, Newton, Nueces, Orange, Panola, Parker, Polk, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, San Saba, Shelby, Smith, Somervell, Starr, Tarrant, Titus, Travis, Trinity, Tyler, Upshur, Uvalde, Van Zandt, Victoria, Walker, Waller, Washington, Webb, Wharton, Willacy, Williamson, Wilson, Wise, Wood, Zapata, and Zavala.
2. Pink bollworm. New Mexico, Texas, and the following counties of California: Fresno, Imperial, Inyo, Kern, Kings, Los Angeles, Madera, Merced, Orange, Riverside, San Bernardino, San Benito, San Diego, and Tulare.

C. Regulated commodities and appliances.

1. Gin trash,
2. Cotton lint,
3. Cottonseed,
4. Used cotton appliances that have any cotton plants attached or contained therein,
5. Cotton plants,
6. Spanish moss, and
7. Hibiscus plants.

D. Restrictions. A person shall not ship or transport into Arizona from an area under quarantine:

1. For the pink bollworm, any regulated commodity or appliance that is not accompanied by a permit or certificate required by 7 CFR 301.52 et seq., revised January 1, 2013. This incorporation by reference does not include any later amendments or editions and is available from the Department and online at <http://www.gpo.gov/fdsys/>.
2. For the boll weevil,
 - a. Gin trash, cotton lint, cottonseed, or used cotton appliances that have any cotton plants attached or contained therein unless the commodity or appliance is accompanied by an original fumigation certificate attesting the commodity or appliance has been fumigated as prescribed in the Treatment Manual.
 - b. Cotton plants or hibiscus plants unless the commodity is accompanied by an original quarantine compliance certificate attesting the commodity was treated with a chemical to kill the pest and was visually inspected and found free of all live life stages of the pest within five days of shipment.
 - c. Spanish moss, unless the commodity is accompanied by an original quarantine compliance certificate attesting the commodity was treated by one of the following methods:
 - i. Commercial drying; or
 - ii. Chemical treatment using a pesticide registered and labeled for use on the commodity to kill all live life stages of the pest.

Historical Note

Former Rule, Quarantine Regulation 7. Section R3-4-55 repealed, new Section adopted effective August 16, 1990 (Supp. 90-3). Section R3-1-55 renumbered to R3-4-218 (Supp. 91-4). Appendix to R3-4-218 removed; R3-4-218 amended by final rulemaking effective January 4, 2014 (Supp. 13-4).

R3-4-219. Citrus Fruit Surface Pest**A. Definitions.**

"Pest" means all life stages of the following:
Aonidiella aurantii, California red scale;
Aonidiella citrina, Yellow scale;
Asynonychus godmani, Fuller rose beetle;
Chrysomphalus aonidium, Florida red scale;
Cornuaspis beckii, Purple scale;
Lepidosaphes gloverii, Glover scale;
Maconellicoccus hirsutus, Pink hibiscus mealybug;
Parlatoria pergandii, Chaff scale;
Phyllocoptruta oleivora, Citrus rust mite; or
Pseudococcus comstocki, Comstock mealybug.

B. Area under quarantine. All states, territories, and districts of the United States, except the state of Arizona.**C. Regulated commodities and appliances.**

1. Commodities. The fresh fruit of all species, varieties, and hybrids of the genera *Citrus*, *Fortunella*, and *Poncirus*.
2. Appliances. An appliance used in a citrus grove, citrus nursery, or other area to pick, pack, or handle a regulated commodity listed in subsection (C)(1).

D. Restrictions.

1. A person who ships into Arizona a regulated commodity or appliance listed in subsection (C) shall ensure that the commodity or appliance is free of stems, leaves, and plant parts.
2. A person shall not ship into Arizona a regulated commodity or appliance from an area under quarantine unless each shipment is accompanied by an original certificate

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issued by a plant regulatory official of the state of origin attesting that the regulated commodity or appliance was treated by a method listed in subsection (F), under the official's supervision.

E. Exemption. The Director shall issue a permit to allow a regulated commodity from an area under quarantine to enter Arizona without treatment as prescribed in subsection (F) if the applicant complies with all conditions of the permit and the regulated commodity:

1. Originates from an area that a plant regulatory official of the state of origin certifies as pest-free; or
2. Is shipped to an Arizona juicing facility located outside of Yuma County; or
3. Is commercially packaged and is shipped to an Arizona business that will redistribute the regulated commodity out-of-state.

F. Treatment.

1. Hydrogen cyanide fumigation. The regulated commodity shall be treated for one hour at the following rate:

Pulp Temperature	Rate per 100 cu. ft.
60° F to 85° F	25 cc HCN gas

2. Methyl bromide fumigation (Q label). The regulated commodity shall be treated for two hours at one of the following rates:

Pulp Temperature	Rate per 1000 cu. ft.
60° F to 79° F	3 lbs.
80° F or higher	2 1/2 lbs.

3. Irradiation. The regulated commodity shall be treated at a rate approved by the Director.
4. Steam treatment. The regulated appliance shall be cleaned to remove all fruit, leaves, stems, and other debris and then steam-treated.
5. Other treatment. The regulated commodity or appliance shall be treated by any other method approved by the Director.

G. Disposition of regulated commodity or appliance not in compliance. A regulated commodity or appliance shipped into Arizona in violation of this Section shall be destroyed, treated, or transported out of state as prescribed at A.R.S. Title 3, Chapter 2, Article 1.

Historical Note

Former Rule, Quarantine Regulation 8. Repealed effective December 19, 1980 (Supp. 80-6). Adopted as an emergency effective April 11, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-2). Emergency adoption expired. Permanent rule adopted effective November 15, 1984 (Supp. 84-6). Former Section R3-4-56 repealed, former Sections R3-4-56.01 through R3-4-56.04 renumbered and amended as Section R3-4-56 effective June 20, 1986 (Supp. 86-3). Repealed June 29, 1990 (Supp. 90-2). New Section adopted effective April 11, 1991 (Supp. 91-2). Section R3-1-56 renumbered to R3-4-219 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 3380, effective October 2, 2004 (Supp. 04-3).

R3-4-220. Citrus Nursery Stock Pests

A. Definitions. "Pest" means any of the following viral diseases or arthropods:

1. Viral diseases:
Cachexia (CVd-II),
Citrus Exocortis Virus (CEVd),
Citrus Psorosis Virus (CPsV), or

- Citrus Tristeza Virus (CTV).
2. Arthropods. All life stages of:
Aceria sheldoni, Citrus bud mite;
Maconellicoccus hirsutus, Pink hibiscus mealybug;
Phyllocoptruta oleivora, Citrus rust mite; or
Pseudococcus comstocki, Comstock mealybug.

B. Area under quarantine. All states, territories, and districts of the United States, except the state of Arizona.

C. Regulated commodities and appliances.

1. Commodities. A plant or plant part, except seed or attached green fruit, of all species, varieties, or hybrids of the genera *Citrus*, *Eremocitrus*, *Fortunella*, *Poncirus*, and *Microcitrus*.
2. Appliances. An appliance used in a citrus grove, citrus nursery, or other area to handle citrus nursery stock listed in subsection (C)(1).

D. Restrictions.

1. A person may ship a regulated commodity into Arizona from an area under quarantine if the regulated commodity is accompanied by a certificate issued by a plant regulatory official from the origin state, attesting that the commodity:
 - a. Originates from an area not under quarantine for citrus tristeza virus, and
 - b. Originates from a source tree that is:
 - i. Tested for Cachexia, citrus exocortis virus, and citrus psorosis virus; or
 - ii. From budwood tested for Cachexia, citrus exocortis virus, and citrus psorosis virus; and
 - iii. Tested annually for citrus tristeza virus; and
 - c. Was treated within five days before shipment with a chemical to kill the arthropod pests listed in subsection (A)(2), and that the commodity is free of all live life stages of the arthropod pests listed in subsection (A)(2).
2. A person shall not ship a Meyer lemon plant or plant part, except fruit, into Arizona. An exception is allowed for the selection Improved Meyer lemon plant or plant part, which may be shipped into Arizona in compliance with this Section.
3. A person shipping a regulated commodity into Arizona shall attach a single tag or label to each plant or plant part, or to each individual container containing a plant or plant part, that is intended for resale by an Arizona receiver. The tag or label shall contain the following information separately provided for each scion variety grafted to a single rootstock:
 - a. Name and address of the nursery that propagated the plant,
 - b. Scion variety name,
 - c. Scion variety registration number, and
 - d. Rootstock variety name.
4. A person shipping a regulated commodity into Arizona shall ensure the commodity complies with the entry requirements prescribed in R3-4-226 and R3-4-238.
5. A person may ship a regulated appliance into Arizona if the appliance is accompanied by a certificate issued by a plant regulatory official from the origin state. The certificate shall state that the appliance was treated within five days before shipment with a chemical to kill the arthropod pests listed in subsection (A)(2), and that the appliance is free of all live life stages of the arthropod pests listed in subsection (A)(2).

E. Disposition of regulated commodity or appliance not in compliance. A regulated commodity or appliance shipped into Arizona in violation of this Section shall be destroyed, treated, or

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transported out-of-state as prescribed at A.R.S. Title 3, Chapter 2, Article 1.

Historical Note

Former Rule, Quarantine Regulation 9. Amended effective July 1, 1975 (Supp. 75-1). Former Section R3-4-57 amended and renumbered as R3-4-57 through R3-4-57.05 effective February 16, 1982 (Supp. 82-1). Section repealed, new Section adopted effective June 14, 1990 (Supp. 90-2). Section R3-1-57 renumbered to R3-4-220 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 3380, effective October 2, 2004 (Supp. 04-3). Amended by final rulemaking at 12 A.A.R. 4065, effective December 4, 2006 (Supp. 06-4).

R3-4-221. Repealed**Historical Note**

Former Section R3-4-57 amended and renumbered as R3-4-57 through R3-4-57.05 effective February 16, 1982 (Supp. 82-1). Repealed effective June 14, 1990 (Supp. 90-2). Section R3-1-57.01 renumbered to R3-4-221 (Supp. 91-4).

R3-4-222. Repealed**Historical Note**

Former Section R3-4-57 amended and renumbered as R3-4-57 through R3-4-57.05 effective February 16, 1982 (Supp. 82-1). Repealed effective June 14, 1990 (Supp. 90-2). Section R3-1-57.02 renumbered to R3-4-222 (Supp. 91-4).

R3-4-223. Repealed**Historical Note**

Former Section R3-4-57 amended and renumbered as R3-4-57 through R3-4-57.05 effective February 16, 1982 (Supp. 82-1). Repealed effective June 14, 1990 (Supp. 90-2). Section R3-1-57.03 renumbered to R3-4-223 (Supp. 91-4).

R3-4-224. Repealed**Historical Note**

Former Section R3-4-57 amended and renumbered as R3-4-57 through R3-4-57.05 effective February 16, 1982 (Supp. 82-1). Repealed effective June 14, 1990 (Supp. 90-2). Section R3-1-57.04 renumbered to R3-4-224 (Supp. 91-4).

R3-4-225. Repealed**Historical Note**

Former Section R3-4-57 amended and renumbered as R3-4-57 through R3-4-57.05 effective February 16, 1982 (Supp. 82-1). Repealed effective June 14, 1990 (Supp. 90-2). Section R3-1-57.05 renumbered to R3-4-225 (Supp. 91-4).

R3-4-226. Scale Insect Pests**A. Definitions.**

“Pest” means all life stages of the following:

Aonidiella aurantii, California red scale;
Aonidiella citrine, Yellow scale;
Chrysomphalus aonidum, Florida red scale; or
Pulvinaria psidi, Green shield scale.

B. Area under quarantine. The entire states of Alabama, Arkansas, California, Florida, Georgia, Hawaii, Louisiana, Mississippi, and Texas, and the Commonwealth of Puerto Rico.**C. Regulated commodities.** Plants and all plant parts, except seed, of the genera listed below:

Camellia,
Chrysalidocarpus,
Citrus,
Cycas,
Dracaena,
Eremocitrus,
Euonymus,
Ficus,
Fortunella,
Ilex,
Ligustrum,
Microcitrus,
Poncirus, and
Rosa

D. Restrictions. A person may ship a regulated commodity to Arizona from an area under quarantine if each shipment is accompanied by a certificate issued by a plant regulatory official of the origin state within five days before shipment attesting that one of the following is true:

1. A regulated commodity of the genera *Citrus*, *Eremocitrus*, *Fortunella*, *Microcitrus*, and *Poncirus* was treated with a chemical to kill the pests listed in subsection (A) and was visually inspected and found free of all live life stages of the pests listed in subsection (A);
2. A regulated commodity not listed in subsection (D)(1):
 - a. Was treated with a chemical to kill the pests listed in subsection (A) and was visually inspected and found free of all live life stages of the pests listed in subsection (A); or
 - b. Originated from a nursery with a pest management program recognized and monitored by the origin state to control the pests listed in subsection (A), and was visually inspected and found free of all live life stages of the pests listed in subsection (A).

E. Disposition of regulated commodity not in compliance. A regulated commodity shipped into Arizona in violation of this Section shall be destroyed, treated, or transported out-of-state as prescribed at A.R.S. Title 3, Chapter 2, Article 1.**Historical Note**

Former Rule, Quarantine Regulation 10; Amended effective August 31, 1981 (Supp. 81-4). Former Section R3-4-58 repealed, new Section R3-4-58 adopted effective July 13, 1989 (Supp. 89-3). Section R3-1-58 renumbered to R3-4-226 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 3380, effective October 2, 2004 (Supp. 04-3). Amended by final rulemaking at 12 A.A.R. 4065, effective December 4, 2006 (Supp. 06-4).

R3-4-227. Repealed**Historical Note**

Former Rule, Quarantine Regulation 11. Section R3-1-59 renumbered to R3-4-227 (Supp. 91-4). Repealed effective April 3, 1997 (Supp. 97-2).

R3-4-228. European Corn Borer**A. Definitions.** The following terms apply in this Section:

“Corn” means *Zea* spp.

“Fragment” means a portion of a regulated commodity that cannot pass through a 1/2” aperture or a completely whole, round, and uncrushed piece of cob, stalk, or stem of at least 1” in length and 3/16” in diameter.

“Pest” means all life stages of the European corn borer, *Ostrinia nubilalis*.

“Shelled grain” means the seed or kernel of corn or sorghum that has been separated from every other plant part.

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“Sorghum” means *Sorghum* spp.

- B. Area under quarantine.**
- The entire states of Alabama, Arkansas, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.
 - The District of Columbia.
 - In the state of Florida, the following counties: Calhoun, Escambia, Gadsden, Hamilton, Holmes, Jackson, Jefferson, Madison, Okaloosa, and Santa Rosa.
 - In the state of Louisiana, the following parishes: Bossier, Caddo, Concordia, East Carroll, Franklin, Madison, Morehouse, Natchitoches, Ouachita, Red River, Richland, Tensas, and West Carroll.
 - In the state of New Mexico, the following counties: Chaves, Curry, Quay, Roosevelt, San Juan, Santa Fe, Torrance, Union, and Valencia.
 - In the state of Texas, the following counties: Bailey, Carson, Castro, Dallam, Deaf Smith, Floyd, Gray, Hale, Hansford, Hartley, Hutchinson, Lamb, Lipscomb, Moore, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, and Swisher.
- C. Regulated commodities.** The plants corn and sorghum and every plant part, including seed, shelled grain, stalks, ears, cobs, fragments, and debris are regulated commodities under this Section.
- D. Restrictions.** A person shall not ship into Arizona a regulated commodity from an area under quarantine unless each shipment is accompanied by an original certificate, issued by a plant regulatory official of the state of origin, attesting that the regulated commodity was treated by a method listed in subsection (F), under the official’s supervision.
- E. Exemptions.**
- Treatment prescribed in subsection (F) is waived for all of the following:
 - Shelled grain, if the grain is accompanied by an original certificate issued by a plant regulatory official of the state of origin attesting that:
 - The shelled grain was passed through a 1/2” or smaller-size mesh screen at the place of origin, and
 - The shipment is free of plant fragments capable of harboring the larval life stage of the pest;
 - Commercially packaged shelled popcorn, planting seed, and grain for human consumption; or
 - A regulated commodity manufactured or processed by a method that eliminates the pest.
 - The Director shall issue a permit to allow a regulated commodity from an area under quarantine, other than one exempt under subsection (E)(1), to enter Arizona without the treatment prescribed in subsection (F) if the regulated commodity originates from an area certified as pest free by a plant regulatory official of the state of origin.
- F. Treatment.**
- Methyl bromide fumigation (Q label) applied at label rates.
 - Any other treatment approved by the Director.
- G. Disposition.** If a person ships a regulated commodity into Arizona in violation of this Section, the regulated commodity shall be destroyed, treated, or transported out-of-state as prescribed in A.R.S. Title 3, Chapter 2, Article 1.
- Historical Note**
- Former Rule, Quarantine Regulation 12. Amended effective July 1, 1975 (Supp. 75-1). Amended effective June 19, 1978 (Supp. 78-3). Amended subsection (C) effective January 21, 1981 (Supp. 81-1). Amended effective August 11, 1987 (Supp. 87-3). Section R3-1-60 renumbered to R3-4-228 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 3374, effective October 2, 2004 (Supp. 04-3).
- R3-4-229. Nut Tree Pests**
- A.** In addition to the definitions provided in A.R.S. § 3-201 and R3-4-102, the following terms apply to this Section:
- “Brooming” means a virus-like disease that drastically reduces nut production and sometimes causes death of the host tree.
 - “Pest” means any of the following:
 - Pecan leaf casebearer, *Acrobasis juglandis* (LeBaron);
 - Pecan nut casebearer, *Acrobasis nuxvorella* (Neunzig);
 - Pecan phylloxera, *Phylloxera devastatrix*;
 - The pathogen that causes brooming disease of walnut.
- B.** Area under quarantine: All states, districts, and territories of the United States except California.
- C.** Infested area.
- For *Acrobasis* spp.: All states and districts east of and including the states of Montana, Wyoming, Colorado, Oklahoma, and Texas; in New Mexico, the counties of Chaves, Lea, Roosevelt, Eddy, Dona Ana, Otero, and Quay.
 - For pecan phylloxera: Alabama, Arkansas, Louisiana, Mississippi, Oklahoma, and Texas.
 - For brooming disease of walnut: All states and districts east of and including Montana, Wyoming, Colorado, and New Mexico.
- D.** Commodities covered:
- All species and varieties of the following trees and all plant parts capable of propagation, except the nuts. Plant parts include buds, scions, and rootstocks:
 - Hickory and pecan (*Carya* spp.);
 - Walnut and butternut (*Juglans* spp.);
 - Pecan firewood;
 - Any used appliance, used box, or sack used during the growing, harvesting, handling, transporting, or storing nuts and hulls.
- E.** Restrictions:
- The commodities listed in subsection (D)(1) shall be admitted into Arizona:
 - From the infested area prescribed in subsections (C)(1) and (C)(2) if treated at origin and each lot or shipment is accompanied by a certificate issued by the origin state department of agriculture affirming the commodity has been treated in accordance with subsection (F);
 - From an area under quarantine outside the infested area, if each lot or shipment is accompanied by a certificate issued by the origin state department of agriculture affirming that the commodities originated in a county not known to be infested with the pests listed in subsections (A)(2)(a), (b), and (c).
 - The commodities listed in subsection (D)(1)(b) shall be:
 - Prohibited from entering Arizona from the infested area prescribed in subsection (C)(3);
 - Admitted into Arizona from an area under quarantine outside the infested area prescribed in subsection (D)(1)(b) shall be:

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tion (C)(3), if each lot or shipment is accompanied by a certificate issued by the origin state department of agriculture affirming brooming is unknown in the origin county.

3. The commodities listed in subsections (D)(2) and (D)(3) are prohibited from entering the state unless fumigated as prescribed in subsection (F)(1).

F. Treatments:

1. Methyl bromide fumigation at normal atmospheric pressure, with circulations maintained for 30 minutes, as follows:
 - a. 2 lbs. per 1,000 cu.ft. for four hours at 70° F or more,
 - b. 3 lbs. per 1,000 cu.ft. for four hours at 60-69° F.
2. A hot-water dip at 140° F or more for a minimum of 30 continuous seconds.
3. Appliances.
 - a. Steam-cleaned, inspected, and certified free from debris by the origin state, or
 - b. Cold treatment in a cold storage chamber at or below 0° F for at least seven consecutive days (168 hours).
4. Any other treatment approved by the Associate Director.

Historical Note

Former Rule, Quarantine Regulation 13. Amended subsections (C), (E) and (G) effective May 5, 1986 (Supp. 86-3). Section R3-1-61 renumbered to R3-4-229 (Supp. 91-4). Amended effective January 16, 1996 (Supp. 96-1). Amended by final rulemaking at 6 A.A.R. 41, effective December 8, 1999 (Supp. 99-4). Subsection citation in subsection (E)(1)(b) amended to correct manifest typographical error (Supp. 03-2).

R3-4-230. Repealed**Historical Note**

Former Rule, Quarantine Regulation 14. Section R3-1-62 renumbered to R3-4-230 (Supp. 91-4). Section repealed by final rulemaking at 10 A.A.R. 3380, effective October 2, 2004 (Supp. 04-3).

R3-4-231. Nut Pests

- A. Definition.** In addition to the definitions provided in A.R.S. § 3-201 and R3-4-102, the following term applies to this Section:

“Pest” means any of the following:

 1. Pecan weevil, *Curculio caryae* (Horn);
 2. Butternut curculio, *Conotrachelus juglandis* LeC;
 3. Black walnut curculio, *Conotrachelus retentus* Say;
 4. Hickory shuckworm, *Laspeyresia caryana* (Fitch).
- B. Area under quarantine:**
 1. Pecan weevil: All states and districts of the United States except California and New Mexico.
 2. Hickory shuckworm: The New Mexico counties of Lea, Eddy, and Dona Ana, and all other states and districts of the United States except California.
 3. Black walnut curculio and butternut curculio: All states and districts of the United States except California.
- C. Commodities covered:**
 1. Nuts of all species and varieties of hickory, pecan (*Carya spp.*), walnut and butternut (*Juglans spp.*), except extracted nut meats.
 2. Any used appliance, used box or sack used during growing, harvesting, handling, transporting, or storing nuts and hulls.
- D. Restrictions:**
 1. A commodity listed in subsection (C)(1), originating in or shipped from the area under quarantine, shall be admitted

into Arizona if the commodity has been cleaned of husks, hulls, debris, and sticktights and each lot or shipment is accompanied by a certificate issued by the origin state department of agriculture affirming the commodity has been treated in accordance with subsection (E).

2. A commodity listed in subsection (C)(2) shall be admitted into Arizona if the commodity has been fumigated as prescribed in subsections (E)(3) and (E)(4).

E. Treatment:

1. Cold treatment: The commodities shall be held in a cold storage chamber at or below 0° F for at least seven consecutive days (168 hours). The treatment shall not start until the entire content of the lot of nuts has reached 0° F
2. A hot-water bath treatment at 140° F for a minimum of five continuous minutes. Water temperature shall be maintained at or above 140° F during the entire treatment period.
3. Methyl bromide fumigation at normal atmospheric pressure, with circulations maintained for 30 continuous minutes, as follows:
 - a. 2 lbs. per 1,000 cu. ft. for four hours at least 70° F, or
 - b. 3 lbs. per 1,000 cu. ft. for four hours at 60-69° F.
4. Appliances.
 - a. Steam-cleaned, inspected, and certified free from debris by the origin state,
 - b. Cold treatment in a cold storage chamber at or below 0° F for at least seven consecutive days (168 hours).

Historical Note

Former Rule, Quarantine Regulation 15. Amended effective July 13, 1989 (Supp. 89-3). Section R3-1-63 renumbered to R3-4-231 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 41, effective December 8, 1999 (Supp. 99-4).

R3-4-232. Repealed**Historical Note**

Former Rule, Quarantine Regulation 16. Repealed effective February 16, 1979 (Supp. 79-1). Section R3-1-64 renumbered to R3-4-232 (Supp. 91-4).

R3-4-233. Lettuce Mosaic Virus

- A. Definitions.** In addition to the definitions provided in R3-4-101, the following terms apply to this Section:
 1. “Breeder seed” means unindexed lettuce seed that a lettuce breeder or researcher controls, and that is not available for commercial sale or propagation.
 2. “Breeder trial” means breeder seed grown to develop a new variety of lettuce.
 3. “Mosaic-indexed” means that a laboratory tested at least 30,000 lettuce seeds from a seed lot and found that all sampled seeds were determined to be free from lettuce mosaic virus.
 4. “Pest” means lettuce mosaic virus.
 5. “Unindexed lettuce seed” means lettuce seed that is not mosaic-indexed.
- B. Area Under Quarantine:** All states, districts, and territories of the United States.
- C. Regulated Commodities:** Plants and plant parts, including seeds, of all varieties of lettuce, *Lactuca sativa*.
- D. Restrictions.**
 1. A person shall not import into, transport within, plant, or sell in Arizona unindexed lettuce seed unless the unindexed lettuce seed is exempted under subsection (E) or the person obtains a permit as prescribed in subsection (G).

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2. Each container or subcontainer of mosaic-indexed seed shall bear a label with the statement "Zero infected seeds per 30,000 tested (0 in 30,000)" as well as the name of the certified or accredited laboratory that tested the seed under subsection (D)(5).
 3. A person shall not import into, transport within, plant, or sell in Arizona lettuce transplants unless the transplants are exempted under subsection (E), or unless an original certificate, issued by the origin state, accompanies the shipment. The certificate shall declare:
 - a. The name of the exporter,
 - b. The variety name and lot number of the seed from which the transplants were grown, and
 - c. Verification that the seeds from which the transplants were grown were mosaic-indexed.
 4. A grower shall disk or otherwise destroy all lettuce fields within 10 days after the last day of commercial harvest or abandonment, unless prevented by documented weather conditions or circumstances beyond the control of the grower.
 5. Laboratories that index lettuce seed that is shipped to Arizona shall be certified by the agricultural department of the laboratory's state of origin or by the Arizona Department of Agriculture, in accordance with A.R.S. § 3-145, or shall be accredited by the National Seed Health System. Laboratories shall provide a copy of their certificate or accreditation letter to the Arizona Department of Agriculture by January 1 of the year that shipping will take place.
- E. Exemptions.** The requirements of subsection (D) do not apply to:
1. Lettuce seed sold in retail packages of 1 oz. or less to the homeowner for noncommercial planting,
 2. Shipments of lettuce transplants consisting of five flats or less per receiver for noncommercial planting,
 3. Breeder trials for a plot of 1/20 of an acre or less, or
 4. Breeder trials for a plot of greater than 1/20 of an acre but no more than 1.25 acres provided the breeder or researcher:
 - a. Places a flag, marked with a trial identification number, at each corner of a breeder trial plot;
 - b. Provides the following written information to the Department within 10 business days of planting breeder seed:
 - i. GPS coordinates for each breeder trial plot using NAD 83 decimal degrees;
 - ii. A detailed map showing the location of each breeder trial plot;
 - iii. An identification number for each breeder trial plot; and
 - iv. The name, address, telephone number, and e-mail address for the breeder or researcher;
 - c. Monitors the lettuce for pest symptoms, and notifies the Department, by telephone, by the end of the first business day following the detection of pest symptoms;
 - d. Removes and destroys all plants exhibiting pest symptoms from the breeder trial plot and places them in a sealed container for disposal in a landfill;
 - e. Labels bills of lading or invoices accompanying breeder seed into Arizona with the statement "LETTUCE SEED FOR BREEDER TRIALS ONLY"; and
 - f. Destroys lettuce plants remaining in a breeder trial plot within 10 days after the completion of breeding trials unless prevented by documented weather conditions or circumstances beyond the control of the researcher or breeder.
- F.** A breeder or researcher may conduct multiple breeder trials in Arizona under the provisions of subsection (E)(3) and (4).
- G. Permits.**
1. A person may apply for a permit to import unindexed lettuce seed for temporary storage in Arizona if the person:
 - a. Maintains the identity of the seed while in Arizona;
 - b. Does not sell or distribute the seed for use in the state;
 - c. Does not transfer the seed to any other facility in the state; and
 - d. Reships the seed from the state within seven days or the period of time specified on the permit, whichever is longer.
 2. A person may apply for a permit to transport unindexed lettuce seed into Arizona to be mosaic-indexed.
- H. Disposition of Violation.**
1. Any infected shipment of lettuce seed or transplants arriving in or found within the state, in violation of this Section, shall be immediately destroyed. The owner or the owner's agent shall bear the cost of the destruction.
 2. Any shipment of unindexed lettuce seed or transplants arriving in or found within the state in violation of this Section shall be immediately sent out-of-state or destroyed at the option of the owner or the owner's agent. The owner or the owner's agent shall bear the cost of the destruction or of sending the lettuce seed or transplants out-of-state.
 3. Any Arizona lettuce fields in violation of this Section shall be abated as established in A.R.S. §§ 3-204 and 3-205. The owner or person in charge may be assessed a civil penalty established in A.R.S. § 3-215.01.
 4. Violation of any provision of a permit issued under subsection (G) may result in suspension or revocation of the permit.

Historical Note

Former Rule, Quarantine Regulation 17. Amended effective July 1, 1975 (Supp. 75-1). Section R3-1-65 renumbered to R3-4-233 (Supp. 91-4). Section repealed; new Section adopted effective December 2, 1998 (Supp. 98-4). Amended effective December 2, 1998 (Supp. 98-4). Amended by final rulemaking at 14 A.A.R. 4091, effective December 6, 2008 (Supp. 08-4).

R3-4-234. Nematode Pests**A. Definition.**

"Pest" means the reniform nematode, *Rotylenchulus reniformis*, and the burrowing nematode, *Radopholus similis* (Cobb).

B. Areas under quarantine.

1. Reniform nematode.
 - a. The entire states of Florida and Hawaii.
 - b. The Commonwealth of Puerto Rico.
 - c. In the state of Alabama, the counties of, Autauga, Baldwin, Barbour, Bibb, Blount, Bullock, Butler, Chambers, Cherokee, Chilton, Choctaw, Clarke, Clay, Cleburne, Coffee, Colbert, Conecuh, Coosa, Dale, Dallas, DeKalb, Elmore, Escambia, Etowah, Fayette, Franklin, Geneva, Houston, Jackson, Jefferson, Lamar, Lauderdale, Lawrence, Lee, Limestone, Lowndes, Macon, Madison, Marengo, Marion, Marshall, Montgomery, Morgan, Perry, Pickens, Pike, Randolph, Saint Clair, Shelby, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker, Washington, Wilcox, and Winston.

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- d. In the state of Arkansas, the counties of Ashley, Jefferson, Lonoke, and Monroe.
 - e. In the state of Georgia, the counties of, Baker, Banks, Barrow, Bartow, Ben Hill, Berrien, Bleckley, Brooks, Bulloch, Burke, Calhoun, Candler, Catoosa, Charlton, Clarke, Clay, Coffee, Colquitt, Cook, Crisp, Decatur, Dodge, Dooly, Dougherty, Early, Echols, Elbert, Emanuel, Franklin, Gordon, Grady, Hall, Hart, Houston, Jeff Davis, Jefferson, Jenkins, Johnson, Laurens, Lee, Macon, Marion, Miller, Mitchell, Montgomery, Morgan, Newton, Oconee, Peach, Pierce, Pulaski, Randolph, Richmond, Schley, Screven, Seminole, Stewart, Sumter, Tattnell, Taylor, Terrell, Thomas, Tift, Tombs, Turner, Twiggs, Walker, Walton, Warren, Washington, Wayne, Webster, Wheeler, Wilcox, and Worth.
 - f. In the state of Louisiana, the parishes of, Acadia, Ascension, Assumption, Avoyelles, Beauregard, Bossier, Caddo, Calcasieu, Caldwell, Catahoula, Concordia, East Baton Rouge, East Carroll, East Feliciana, Evangeline, Franklin, Grant, Iberia, Iberville, Jefferson, Lafayette, Lafourche, Madison, Morehouse, Natchitoches, Orleans, Ouachita, Plaquemines, Pointe Coupee, Rapides, Red River, Richland, Sabine, Saint Bernard, Saint Charles, Saint Helena, Saint John the Baptist, Saint Landry, Saint Tammany, Tangipahoa, Tensas, Terrebonne, West Baton Rouge, West Carroll, and Winn.
 - g. In the state of Mississippi, the counties of, Adams, Alcorn, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Coahoma, Copiah, Covington, DeSoto, Forrest, George, Greene, Grenada, Hancock, Harrison, Hinds, Holmes, Humphreys, Issaquena, Itawamba, Jackson, Jones, Lafayette, Lee, Leflore, Lowndes, Madison, Marion, Marshall, Monroe, Noxubee, Oktibbeha, Panola, Perry, Pontotoc, Prentiss, Quitman, Rankin, Scott, Sharkey, Sunflower, Tallahatchie, Tippah, Tunica, Union, Warren, Washington, Yalobusha, and Yazoo.
 - h. In the state of North Carolina, the counties of, Cumberland, Harnett, Hoke, Johnston, Richmond, Robeson, Sampson, and Scotland.
 - i. In the state of South Carolina, the counties of, Calhoun, Clarendon, Darlington, Dillon, Florence, Kershaw, Lee, Marlboro, Orangeburg, Sumter, and Williamsburg.
 - j. In the state of Texas, the counties of, Brazos, Burleson, Cameron, Fort Bend, Hidalgo, Lynn, Robertson, Starr, Terry, Wharton, and Willacy.
2. Burrowing nematode.
 - a. The entire states of Florida and Hawaii.
 - b. In the state of Texas, the counties of, Cameron and Hildago.
 - c. The Commonwealth of Puerto Rico.
- C. Regulated Commodities.**
1. Soil;
 2. All plants with roots, including bulbs, corms, tubers, rhizomes, and stolons; and
 3. All plant cuttings for propagation.
- D. Exceptions to regulated commodities.**
1. Industrial sand and clay;
 2. Orchids and plants produced epiphytically, if growing exclusively in or on soil-free material such as osmunda fiber, tree fern trunk, or bark;
 3. Aquatic plants, including species normally growing in, on, or under water;
 4. Dormant bulbs, corms, tubers, rhizomes, and stolons for propagation, if free from roots and soil; and
 5. All fleshy roots, corms, tubers, and rhizomes for edible or medicinal purposes, if free of soil.
- E. Quarantine Restrictions.**
1. The Associate Director shall deny entry of a regulated commodity from an area under quarantine, whether moved directly from the area or by diversion or re-shipment, unless the regulated commodity is accompanied by an original certificate from the state of origin. The certificate shall state that the regulated commodity contained in the shipment is pest-free by one of the following methods:
 - a. The origin state determined through an annual survey conducted within the 12-month period immediately before shipment, that the pests do not exist on the property or in the facility used to grow the regulated commodity.
 - b. The regulated commodity in the shipment was sampled two weeks before shipment, and found pest-free.
 - c. The regulated commodity was protected from infestation of the pests by implementing all of the following steps:
 - i. Propagated from clean seed or from cuttings taken 12 inches or higher above ground level,
 - ii. Planted in sterilized soil or other material prepared or treated to ensure freedom from the pests,
 - iii. Retained in a sterilized container or bed,
 - iv. Placed on a sterilized bench or sterilized support 18 inches or higher from the ground or floor level, and
 - v. Found pest-free using a sampling method approved by the Associate Director.
 2. All regulated commodities entering Arizona shall be unloaded at destination into a quarantine holding area and held undisturbed for at least five calendar days until the Department confirms the regulated commodities are pest-free.
 3. An Arizona receiver of a regulated commodity shall establish a quarantine holding area approved by the Department that satisfies the following conditions:
 - a. The floor of the holding area shall be composed of a permeable surface, such as sand or soil, and shall be free from debris, grass, and weeds;
 - b. An outdoor quarantine holding area shall be at least 15 ft. from all masonry walls, property boundaries, and non-quarantined plants;
 - c. The quarantine holding area shall be isolated from public access, and surrounded by a fence or other barrier; and
 - d. The integrity and security of the holding area shall be maintained at all times.
 4. A cutting or bareroot regulated commodity may be placed in a container during the quarantine holding period. If the Associate Director determines that the regulated commodity is infested with a pest, the regulated commodity, container, and soil shall be transported out-of-state or destroyed by a method approved by the Associate Director.
 5. Pesticides and other chemicals shall not be applied to a regulated commodity in a quarantine holding area except under the direction and supervision of a Department inspector.
- F. Disposition of violations.**

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If laboratory testing indicates a regulated commodity is infested with a pest, the regulated commodity shall be destroyed or transported out-of-state.

Historical Note

Former Rule, Quarantine Regulation 18. Amended effective April 26, 1976 (Supp. 76-2). Repealed effective December 19, 1980 (Supp. 80-6). Adopted effective August 1, 1985 (Supp. 85-2). Section R3-1-66 renumbered to R3-4-234 (Supp. 91-4). Section repealed; new Section made by final rulemaking at 7 A.A.R. 4434, effective September 24, 2001 (Supp. 01-3).

R3-4-235. Repealed**Historical Note**

Adopted effective August 1, 1985 (Supp. 85-2). Section R3-1-66.01 renumbered to R3-4-235 (Supp. 91-4). Section repealed by final rulemaking at 7 A.A.R. 4434, effective September 24, 2001 (Supp. 01-3).

R3-4-236. Repealed**Historical Note**

Adopted effective August 1, 1985 (Supp. 85-2). Section R3-1-66.02 renumbered to R3-4-236 (Supp. 91-4). Section repealed by final rulemaking at 7 A.A.R. 4434, effective September 24, 2001 (Supp. 01-3).

R3-4-237. Repealed**Historical Note**

Adopted effective August 1, 1985 (Supp. 85-2). Section R3-1-66.03 renumbered to R3-4-237 (Supp. 91-4). Section repealed by final rulemaking at 7 A.A.R. 4434, effective September 24, 2001 (Supp. 01-3).

R3-4-238. Whitefly Pests**A. Definition.**

"Pest" means:

1. Citrus whitefly, *Dialeurodes citri* (Ashm.);
2. Cloudy-winged whitefly, *Dialeurodes citrifolii* (Morgan);
3. Woolly whitefly, *Aleurothrixus floccosus* (Maskell).

B. Area under quarantine. Alabama, Arkansas, California, Florida, Georgia, Hawaii, Louisiana, Mississippi, North Carolina, South Carolina, Texas, and Virginia.**C. Commodities covered.** Plants and all plant parts, except fruit and seed, of the following genera and species:

Ailanthus,
Amploopsis,
Bignonia capreolata,
Choisya ternata,
Citrus,
Diospyros,
Eremocitrus,
Feijoa,
Ficus macrophyll,
Fortunella,
Gardenia,
Ilex,
Jasminum,
Lagerstroemia,
Ligustrum,
Maclura pomifera,
Melia,
Microcitrus,
Musa,
Osmanthus,
Plumaria,
Poncirus,

Prunus caroliniana,
Psidium,
Punica granatum,
Pyrus communis,
Sapindus mukorossi,
Smilax,
Syringa vulgaris, and
Viburnum

- D. Restrictions.** A person may ship a regulated commodity to Arizona from an area under quarantine if the shipment is accompanied by a certificate issued by a plant regulatory official of the origin state attesting that within five days before shipment:
1. A regulated commodity of the genera *Citrus*, *Eremocitrus*, *Fortunella*, *Microcitrus*, and *Poncirus* was treated with a chemical to kill the pests listed in subsection (A), and was visually inspected and found free of all live life stages of the pests listed in subsection (A).
 2. A regulated commodity not listed in subsection (D)(1):
 - a. Was treated with a chemical to kill the pests listed in subsection (A) and was visually inspected and found free of all live life stages of the pests listed in subsection (A), or
 - b. Originated from a nursery with a pest management program recognized and monitored by the origin state and to control the pests listed in subsection (A), and was visually inspected and found free of all live life stages of the pests listed in subsection (A), or
 - c. The regulated commodity is completely devoid of foliage and is exempt from treatment for the pests listed in subsection (A).
- E. Disposition of regulated commodity not in compliance.** A regulated commodity shipped into Arizona in violation of this Section shall be destroyed, treated, or transported out-of-state as prescribed at A.R.S. Title 3, Chapter 2, Article 1.

Historical Note

Former Rule, Quarantine Regulation 19. Amended effective April 26, 1976 (Supp. 76-2). Amended effective August 15, 1989 (Supp. 89-3). Section R3-1-67 renumbered to R3-4-238 (Supp. 91-4). Amended by final rulemaking at 5 A.A.R. 2521, effective July 15, 1999 (Supp. 99-3). Amended by final rulemaking at 12 A.A.R. 4065, effective December 4, 2006 (Supp. 06-4).

R3-4-239. Imported Fire Ants**A. Definitions.**

"Pest" means any species of imported fire ants, including *Solenopsis invicta* and *Solenopsis richteri*.

B. Area under quarantine. A state or portion of a state listed in 7 CFR 301.81-3, 68 FR 5794, February 5, 2003, and any area a state declares infested. This material is incorporated by reference, on file with the Department and the Office of the Secretary State, and does not include any later amendments or editions.**C. Regulated commodities.**

1. Soil, except potting soil shipped in an original container in which the potting soil is packaged after commercial preparation; and
2. All plants associated with soil, except:
 - a. Plants that are maintained indoors year-round, and are not for sale; and
 - b. Plants shipped bare-root and free of soil.

D. Restrictions.

1. A shipper of a regulated commodity shall unload a regulated commodity at destination into an approved quarantine holding area as prescribed in subsection (D)(2). The

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Department shall inspect and quarantine the regulated commodity as follows:

- a. Soil and plants associated with soil from an area under quarantine in subsection (B) shall be held at least three consecutive days, and
 - b. Soil and plants associated with soil from an area under quarantine for nematodes under R3-4-234(B) shall be held at least five consecutive days.
2. An Arizona receiver of a regulated commodity shall establish a Department-approved quarantine holding area that meets the following specifications:
 - a. The floor is of a permeable surface, such as sand or soil, and free from debris, grass, or weeds;
 - b. The area is isolated from public access, surrounded by a fence or other barrier;
 - c. The integrity and security of the area is maintained at all times; and
 - d. If outdoors, the area is at least 15 feet from any masonry wall, property boundary, or non-quarantine plant.
 3. A receiver shall apply a pesticide or other chemical to a regulated commodity located in a quarantine holding area only when directed and supervised by a Department inspector.
- E. Disposition of commodity not in compliance. A regulated commodity shipped into Arizona in violation of this Section shall be destroyed or transported out-of-state by the owner and at the owner's expense.

Historical Note

Former Rule, Quarantine Regulation 20. Amended effective July 1, 1975 (Supp. 75-1). Amended effective April 26, 1976 (Supp. 76-2). Correction amendment effective April 26, 1976 included deletion of Arkansas (see subsection (C)) (Supp. 77-1). Amended effective June 16, 1977 (Supp. 77-3). Repealed effective June 19, 1978 (Supp. 78-3). New Section adopted effective December 22, 1989 (Supp. 89-4). Section R3-1-68 renumbered to R3-4-239 (Supp. 91-4). Amended by final rulemaking at 5 A.A.R. 2521, effective July 15, 1999 (Supp. 99-3). Amended by final rulemaking at 9 A.A.R. 2095, effective August 2, 2003 (Supp. 03-2).

R3-4-240. Apple Maggot and Plum Curculio

- A. Definitions. The following term applies to this Section: "Pest" means:
1. Apple maggot, *Rhagoletis pomonella* (Walsh); or
 2. Plum curculio, *Conotrachelus nenuphar*.
- B. Area under quarantine. All states, territories, and districts of the United States.
- C. Regulated commodities. The fresh fruit of the following plants:
Chaenomeles spp. (Quince),
Crataegus spp. (Hawthorne),
Malus spp. (Apple),
Prunus spp. (Apricot, Cherry, Nectarine, Peach, Plum, and Prune), and
Pyrus communis spp. (Pear).
- D. Restrictions.
1. A person shall not ship into Arizona a regulated commodity that is produced in or shipped from an area under quarantine unless each lot or shipment is accompanied by a certificate issued by an official of the state of origin, attesting that the regulated commodity was:
 - a. Held in an approved controlled atmosphere storage facility for a minimum of 90 continuous days at a maximum temperature of 38° F, or

- b. Held in an approved cold storage facility for a minimum of 40 continuous days at a maximum temperature of 32° F.
2. The Director may issue a permit to allow a regulated commodity from an area under quarantine to enter Arizona without treatment as prescribed in subsection (D)(1) if the commodity originates from an area:
 - a. That is certified to be pest-free, or
 - b. That is infested, but where an on-going pest eradication program exists that is acceptable to the Director of the Arizona Department of Agriculture.
- E. Disposition of commodity not in compliance. A regulated commodity shipped into Arizona in violation of this Section shall be destroyed or transported out-of-state by the owner and at the owner's expense.

Historical Note

Former Rule, Quarantine Regulation 21. Amended effective December 5, 1974 (Supp. 75-1). Amended effective June 16, 1977 (Supp. 77-3). Section repealed, new Section adopted effective June 14, 1990 (Supp. 90-2). Section R3-1-69 renumbered to R3-4-240 (Supp. 91-4). Amended by final rulemaking at 9 A.A.R. 1046, effective May 5, 2003 (Supp. 03-1).

R3-4-241. Lethal Yellowing of Palms

- A. Definitions. The following term applies to this Section: "Pest" means:
1. A pathogen, a non-cultivable mollicute, causing lethal yellowing of palms; or
 2. *Myndus crudus*, a planthopper that vectors the pathogen.
- B. Area under quarantine.
1. In the state of Florida, the following counties: Broward, Collier, Hendry, Lee, Martin, Miami-Dade, Monroe, and Palm Beach.
 2. In the state of Texas, the following counties: Cameron, Hidalgo, and Willacy.
- C. Regulated commodities. All propagative parts of the following plants, except seed:
Aiphanes lindeniana,
Allagoptera arendria,
Andropogon virginicus (Broomsedge),
Arenga engleri,
Borassus flabellifer (Palmyra Palm),
Caryota mitis (Cluster Fishtail Palm),
Caryota rumphiana (Giant Fishtail Palm),
Chelyocarpus chuco,
Chrysalidocarpus cabadae, syn. *Dypsis cabadae* (Cabada Palm),
Cocos nucifera (Coconut Palm),
Corypha elata (Buri Palm),
Cynodon dactylon (Bermuda Grass),
Cyperus spp. (Sedges),
Dictyosperma album (Princess Palm),
Eremochloa ophiuroides (Centipede Grass),
Gaussia attenuata (Puerto Rican Palm),
Howea belmoreana (Belmore Sentry Palm),
Latania spp. (Latan Palm),
Livistona chinensis (Chinese Fan Palm),
Livistona rotundifolia (Javanese Fan Palm),
Mascarena verschaffeltii (Spindle Palm),
Nannorrhops ritchiana (Mazari Palm),
Neodypsis decaryi, syn. *Dypsis decaryi* (Triangle Palm),
Pandanus utilis (Screw Pine),
Panicum purpurascens (Para Grass),
Panicum bartowense,
Paspalum notatum (Bahia Grass),

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Phoenix canariensis (Canary Island Date Palm),
Phoenix dactylifera (Date Palm),
Phoenix reclinata (Sengal Date Palm),
Phoenix rupicola (Cliff Date Palm),
Phoenix sylvestris (Wild Date Palm),
Phoenix zeylanica (Ceylon Date Palm),
Polyandrococos caudescens,
Pritchardia spp.,
Ravenia hildebrandtii,
Stenotaphrum secundatum (St. Augustine Grass),
Syagrus schizophylla
Trachycarpus fortunei (Windmill Palm),
Veitchia spp., and
Zoysia spp. (Zoysia Grass).

- D. Restrictions. A person shall not ship into Arizona a regulated commodity that is produced in or shipped from an area under quarantine.
- E. Disposition of commodity not in compliance. A regulated commodity shipped into Arizona in violation of this Section shall be destroyed or transported out-of-state by the owner and at the owner's expense.

Historical Note

Former Rule, Quarantine Regulation 22. Repealed effective April 25, 1977 (Supp. 77-2). New Section adopted effective December 22, 1989 (Supp. 89-4). Section R3-1-70 renumbered to R3-4-241 (Supp. 91-4). Amended by final rulemaking at 9 A.A.R. 1046, effective May 5, 2003 (Supp. 03-1).

R3-4-242. Brown Citrus Aphid

- A. Area Under Quarantine: Hawaii and any county in Florida that, by notification from the Florida Department of Agriculture and Consumer Services, is infested with the brown citrus aphid.
- B. Commodities covered: All plants, except seed and fruit.
- C. Restrictions.
1. The species, subspecies, varieties, ornamental forms, and any hybrid having at least one ancestor of the following genera are prohibited from entering the state:
 - a. *Citrus*,
 - b. *Fortunella*, and
 - c. *Poncirus*,
 2. All other covered commodities, whether moved directly from the area under quarantine or by diversion or re-shipment from any other point, are prohibited from entering Arizona unless the following requirements are met:
 - a. Aquatic plants are accompanied by an original certificate affirming that the commodity was inspected and found free of the pest within five days before shipment.
 - b. Terrestrial plants are accompanied by an original certificate affirming that the commodity was treated, as prescribed in subsection (E), within five days before shipment.
 - c. The certificate shall indicate:
 - i. The common chemical name of the product's active ingredient,
 - ii. The rate at which the product was applied, and
 - iii. The treatment date.
- D. The Director may issue a permit admitting a covered commodity subject to specific limitations, conditions, and provisions that eliminate the risk of the pest.
- E. Treatment.
1. An application of a pesticide labeled for the treatment of aphids applied according to label instructions, or
 2. Any other treatment approved by the Director.

Historical Note

Former Rule, Quarantine Regulation 23. Amended effective July 1, 1975 (Supp. 75-1). Correction (Supp. 76-5). Repealed effective April 25, 1977 (Supp. 77-2). Section R3-1-71 renumbered to R3-4-242 (Supp. 91-4). New Section adopted by final rulemaking at 5 A.A.R. 2521, effective July 15, 1999 (Supp. 99-3).

R3-4-243. Repealed**Historical Note**

Former Rule, Quarantine Regulation 24. Repealed effective April 25, 1977 (Supp. 77-2). Section R3-1-72 renumbered to R3-4-243 (Supp. 91-4).

R3-4-244. Regulated and Restricted Noxious Weeds

- A. Definitions. In addition to the definitions provided in A.R.S. § 3-201, the following terms apply to this Section:
1. "Habitat" means any terrestrial or aquatic area within Arizona that is capable of sustaining plant growth.
 2. "Infested area" means each individual container in which a pest is found or the specific area that harbors a pest.
 3. "Regulated pest" means any of the following plant species, including viable plant parts (stolons, rhizomes, cuttings and seed, except agricultural, vegetable and ornamental seed for planting purposes), found within the state may be controlled to prevent further infestation or contamination:
 - Cenchrus echinatus* L. -- Southern sandbur,
 - Cenchrus incertus* M.A. Curtis -- Field sandbur,
 - Convolvulus arvensis* L. -- Field bindweed,
 - Eichhornia crassipes* (Mart.) Solms -- Floating water hyacinth,
 - Medicago polymorpha* L. -- Burelover,
 - Pennisetum ciliare* (L.) Link -- Buffelgrass,
 - Portulaca oleracea* L. -- Common purslane,
 - Tribulus terrestris* L. -- Puncturevine.
 4. "Restricted pest" means any of the following plant species, including viable plant parts (stolons, rhizomes, cuttings and seed, except agricultural, vegetable and ornamental seed for planting purposes), found within the state shall be quarantined to prevent further infestation or contamination:
 - Acroptilon repens* (L.) DC. -- Russian knapweed,
 - Aegilops cylindrica* Host. -- Jointed goatgrass,
 - Alhagi pseudalhagi* (Bieb.) Desv. -- Camelthorn,
 - Cardaria draba* (L.) Desv. -- Globed-podded hoary cress (Whitetop),
 - Centaurea diffusa* L. -- Diffuse knapweed,
 - Centaurea maculosa* L. -- Spotted knapweed,
 - Centaurea solstitialis* L. -- Yellow starthistle (St. Barnaby's thistle),
 - Cuscuta* spp. -- Dodder,
 - Eichhornia crassipes* (Mart.) Solms -- Floating water hyacinth,
 - Elytrigia repens* (L.) Nevski -- Quackgrass,
 - Euryops sunbarnosus* subsp. *vulgaris* -- Sweet resinbush,
 - Halogeton glomeratus* (M. Bieb.) C.A. Mey -- Halogeton,
 - Helianthus ciliaris* DC. -- Texas blueweed,
 - Ipomoea triloba* L. -- Three-lobed morning glory,
 - Linaria genistifolia* var. *dalmatica* -- Dalmation toadflax,
 - Onopordum acanthium* L. -- Scotch thistle.
- B. Area under quarantine: All infested areas within the state.
- C. The following commodities are hosts or carriers of the regulated or restricted pest:

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1. All plants other than those categorized as a regulated or restricted pest;
 2. Forage, straw, and feed grains;
 3. Live and dead flower arrangements;
 4. Ornamental displays;
 5. Aquariums; and
 6. Any appliance, construction or dredging equipment, boat, boat trailer or related equipment, or any other vehicle with soil attached or carrying plant debris.
- D.** The Department may quarantine any commodity, habitat, or area infested or contaminated with a regulated pest and notify the owner or carrier of the restrictions and treatments listed in subsections (F) and (G). If the regulated pest is not quarantined, the Department shall provide the grower with technical information on effective weed control activities through integrated pest management.
- E.** The Department shall quarantine any commodity, habitat, or area infested or contaminated with a restricted pest and shall notify the owner or carrier of the restrictions and treatments of the pest listed in subsections (F) and (G).
- F.** Restrictions.
1. No regulated or restricted pest or commodity infested or contaminated with a regulated or restricted pest shall be moved to a non-infested area unless the Director issues a permit for the transporting or propagating of the pest.
 2. An owner or the owner's representative shall notify the Department at least two working days in advance of moving contaminated equipment from an infested area.
 3. The Department may inspect all equipment within two working days after a request to inspect the equipment is made if the equipment:
 - a. Has been moved into or through a non-infested area;
 - b. Has not been treated; or
 - c. Has been used to harvest an infested crop within the past 12 months.
- G.** Treatments.
1. An owner or the owner's representative shall treat all soil and debris from equipment used in a quarantined area until it is free of the regulated or restricted pest before the equipment is moved. Removal or destruction of the restricted or regulated pest shall be accomplished through one of the following methods:
 - a. Autoclaving.
 - i. Dry heat. The commodity shall be heated for 15 minutes at 212° F.
 - ii. Steam heat. The commodity shall be heated for 15 minutes at 212° F;
 - b. Fumigating with ethylene oxide, chamber only: The commodity shall be fumigated with 1,500 mg/L for four hours in a chamber pre-heated to 115-125° F;
 - c. High-pressure water spray;
 - d. Crushing;
 - e. Incinerating; or
 - f. Burying in a sanitary landfill to a depth of six feet.
 2. An owner or the owner's representative shall treat an infested area or habitat, including the area within the crop, rangeland, roadside, or private property, with treatments based on an integrated pest management program appropriate to the commodity. The treatments shall take place under the direction of an inspector and shall include:
 - a. Reshipment from the state;
 - b. Manual removal;
 - c. Application of a herbicide;
 - d. Biological control including insects, fungi, nematodes, or microbes; or

- e. Any other treatment approved by the Director.

Historical Note

Former Rule, Quarantine Regulation 25. Repealed effective June 19, 1978 (Supp. 78-3). Section R3-1-73 renumbered to R3-4-244 (Supp. 91-4). New Section adopted effective July 10, 1995 (Supp. 95-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 2521, effective July 15, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 2082, effective May 15, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 5315, effective February 4, 2006 (Supp. 05-4).

R3-4-245. Prohibited Noxious Weeds

- A.** Definition. In addition to the definitions provided in A.R.S. § 3-201, the following apply to this Section:
1. "Habitat" means any terrestrial or aquatic area within Arizona that is capable of sustaining plant growth.
 2. "Infested area" means each individual container in which a pest is found, the specific area that harbors the pest, or any shipment that has not been released to the receiver and is infested with a pest.
 3. "Pest" means any of the following plant species, including viable plant parts (stolons, rhizomes, cuttings and seed, except agricultural, vegetable and ornamental seed for planting purposes), that are prohibited from entering the state:
 - Acroptilon repens* (L.) DC. -- Russian knapweed,
 - Aegilops cylindrica* Host. -- Jointed goatgrass,
 - Alhagi pseudalhagi* (Bieb.) Desv. -- Camelthorn,
 - Alternanthera philoxeroides* (Mart.) Griseb. -- Alligator weed,
 - Cardaria pubescens* (C.A. Mey) Jarmolenko -- Hairy whitetop,
 - Cardaria chalepensis* (L.) Hand-Muzz -- Lens podded hoary cress,
 - Cardaria draba* (L.) Desv. -- Globed-podded hoary cress (Whitetop),
 - Carduus acanthoides* L. -- Plumeless thistle,
 - Cenchrus echinatus* L. -- Southern sandbur,
 - Cenchrus incertus* M.A. Curtis -- Field sandbur,
 - Centaurea calcitrapa* L. -- Purple starthistle,
 - Centaurea iberica* Trev. ex Spreng. -- Iberian starthistle,
 - Centaurea squarrosa* Willd. -- Squarrose knapweed,
 - Centaurea sulphurea* L. -- Sicilian starthistle,
 - Centaurea solstitialis* L. -- Yellow starthistle (St. Barnaby's thistle),
 - Centaurea diffusa* L. -- Diffuse knapweed,
 - Centaurea maculosa* L. -- Spotted knapweed,
 - Chondrilla juncea* L. -- Rush skeletonweed,
 - Cirsium arvense* L. Scop. -- Canada thistle,
 - Convolvulus arvensis* L. -- Field bindweed,
 - Coronopus squamatus* (Forsk.) Ascherson -- Creeping wartcress (Coronopus),
 - Cucumis melo* L. var. Dudaim Naudin -- Dudaim melon (Queen Anne's melon),
 - Cuscuta* spp. -- Dodder,
 - Drymaria arenarioides* H.B.K. -- Alfombrilla (Lightningweed),
 - Eichhornia azurea* (SW) Kunth. -- Anchored water hyacinth,
 - Eichhornia crassipes* (Mart.) Solms -- Floating water hyacinth,
 - Elytrigia repens* (L.) Nevski -- Quackgrass,
 - Euphorbia esula* L. -- Leafy spurge,

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Halogeton glomeratus (M. Bieb.) C.A. Mey -- Halogeton,
Helianthus ciliaris DC. -- Texas blueweed,
Hydrilla verticillata Royale -- Hydrilla (Florida-elodea),
Ipomoea spp. -- Morning glory. All species except *Ipomoea carnea*, Mexican bush morning glory; *Ipomoea triloba*, three-lobed morning glory (which is considered a restricted pest); and *Ipomoea aborescens*, morning glory tree,
Ipomoea triloba L. -- Three-lobed morning glory,
Isatis tinctoria L. -- Dyers woad,
Linaria genistifolia var. *dalmatica* -- Dalmation toadflax,
Lythrum salicaria L. -- Purple loosestrife,
Medicago polymorpha L. -- Burclover,
Nassella trichotoma (Nees.) Hack. -- Serrated tussock,
Onopordum acanthium L. -- Scotch thistle,
Orobanche ramosa L. -- Branched broomrape,
Panicum repens L. -- Torpedo grass,
Peganum harmala L. -- African rue (Syrian rue),
Pennisetum ciliare (L.) Link -- Buffelgrass,
Portulaca oleracea L. -- Common purslane,
Rorippa austriaca (Crantz.) Bess. -- Austrian field-cress,
Salvinia molesta -- Giant Salvinia,
Senecio jacobaea L. -- Tansy ragwort,
Solanum carolinense L. -- Carolina horsenettle,
Sonchus arvensis L. -- Perennial sowthistle,
Solanum viarum Dunal -- Tropical Soda Apple,
Stipa brachychaeta Godr. -- Puna grass,
Striga spp. -- Witchweed,
Trapa natans L. -- Water-chestnut,
Tribulus terrestris L. -- Puncturevine.

- B.** Area under quarantine: All states, districts, and territories of the United States except Arizona.
- C.** The following commodities are hosts or carriers of the pest:
1. All plants and plant parts other than those categorized as a pest;
 2. Forage, straw, and feed grains;
 3. Live or dead flower arrangements;
 4. Ornamental displays;
 5. Aquariums; and
 6. Any appliance, construction or dredging equipment, boat, boat trailer or related equipment, or any other vehicle with soil attached or carrying plant debris.
- D.** The Department shall quarantine any commodity, habitat, or area infested or contaminated with a pest and shall notify the owner or carrier of the methods of removing or destroying the pest from the commodity, habitat, or area. The Department shall reject any shipment not released to the receiver and reship to the shipper.
- E.** Restrictions:
1. No pest or commodity infested or contaminated with a pest shall be admitted into the state unless the Director issues a permit for the transporting or propagating of the pest.
 2. The Department shall regulate the movement of the commodity out of a quarantined area within the state until the pest is eradicated. Any shipment or lot of a commodity infested or contaminated with a pest arriving in the state in violation of this quarantine shall, according to A.R.S. § 3-205(A), be immediately reshipped from the state, or treated or destroyed using one of the following methods:

- a. The commodity shall be fumigated with 1,500 mg/L of ethylene oxide for four hours in a chamber pre-heated to 115-125° F;
- b. Incinerating;
- c. Burying in a sanitary landfill to a depth of six feet;
- d. Application of a herbicide; or
- e. Any other treatment approved by the Director.

Historical Note

Former Rule, Quarantine Regulation 26. Amended effective June 19, 1978 (Supp. 78-3). Amended subsection (B) effective May 2, 1986 (Supp. 86-3). Section R3-1-74 renumbered to R3-4-245 (Supp. 91-4). Section repealed, new Section adopted effective July 10, 1995 (Supp. 95-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 6 A.A.R. 2082, effective May 15, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 5315, effective February 4, 2006 (Supp. 05-4).

R3-4-246. Caribbean Fruit Fly

- A.** Definitions. The following term applies to this Section: "Pest" means all life stages of the Caribbean fruit fly, *Anastrepha suspensa*.
- B.** Area under quarantine.
1. In the state of Florida, the following counties: Alachua, Brevard, Broward, Charlotte, Citrus, Collier, DeSoto, Duval, Glades, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Lake, Lee, Manatee, Martin, Miami-Dade, Monroe, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, St. Johns, St. Lucie, Sarasota, Seminole, Sumter, and Volusia.
 2. The Commonwealth of Puerto Rico.
- C.** Regulated commodities.
1. The fresh fruit of the following plants:
 - Actinidia chinensis* (Kiwi),
 - Annona glabra* (Pond Apple),
 - Annona* hybrid,
 - Annona squamosa* (Sugar Apple),
 - Atalantia citriodes*,
 - Averrhoa carambola* (Carambola),
 - Blighia sapida* (Akee),
 - Canella winteriana* (Wild Cinnamon),
 - Capsicum frutesceas* (Bell Pepper),
 - Carica papaya* (Papaya),
 - Carissa grandiflora* (Natal Plum),
 - Casimiroa edulis* (White Sapote),
 - Chrysobalanus icaco* (Cocoplum),
 - Citrus aurantiifolia* (Lime),
 - Citrus aurantium* (Sour Orange),
 - Citrus limonia* (Rangpur Lime),
 - Citrus nobilis* 'unshu' x *Fotunella* sp. (Jack Orangequat),
 - Citrus paradisi* (Grapefruit),
 - Citrus paradisi* x *C. reticulata* (Tangelo),
 - Citrus reticulata* (Tangerine),
 - Citrus sinensis* (Sweet Orange),
 - Citrus sinensis* x *C. reticulata* (Temple Orange),
 - Clausena lansium* (Wampi),
 - Dimocarpus longan* (Longan),
 - Diospyros blancoi* (Velvet Apple or Velvet Persimmon),
 - Diospyros khaki* (Japanese Persimmon),
 - Dovyalis caffra* (Kei Apple),
 - Dovyalis hebecarpa* (Ceylon Gooseberry),
 - Drypetes lateriflora* (Guiana Plum),
 - Eriobotrya japonica* (Loquat),
 - Eugenia aggregata* (Cherry of the Rio Grande),
 - Eugenia brasiliensis* (Grumichama),

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- Eugenia coronata*,
- Eugenia ligustrina*,
- Eugenia luschnathiana* (Pitomba),
- Eugenia uniflora* (Surinam Cherry),
- Ficus altissima*,
- Ficus carica* (Fig),
- Flacourtia indica* (Governor’s Plum),
- Fortunella* spp. (Kumquat),
- Garcinia livingstonei* (Imbe),
- Garcinia xanthochymus*,
- Litchi chinensis* (Lychee),
- Lycopersicon esculentum* (Tomato),
- Malpighia glabra* (Barbados Cherry),
- Malus sylvestris* (Apple),
- Mangifera indica* (Mango),
- Manilkara jaimiqui* spp. *Emarginata* (Wild Dilly),
- Manilkara roxburghiana*,
- Manilkara zapota* (Sapodilla),
- Momordica charantia* (Wild Balsam Apple),
- Muntingia calabura* (Calbur),
- Murraya paniculata* (Orange Jasmine),
- Myciaria cauliflora* (Jaboticaba),
- Myrcianthes fragrans*,
- Myricaria glomerata*,
- Persea americana* (Avocado),
- Pimenta dioica* (Allspice),
- Pouteria campechiana* (Egg Fruit),
- Prunus persica* (Nectarine),
- Prunus persica* (Peach),
- Pseudanmomis umbellulifera*,
- Psidium* spp. (Guava),
- Punica granatum* (Pomegranate),
- Pyrus cummunis* (Pear),
- Pyrus pyrifolia* (Japanese Pear),
- Pyrus pyrifolia* x *Pyrus communis* (Kieffer Pear),
- Rheedia aristata*,
- Rubus hybrid* (Blackberry),
- Severinia buxifolia* (Box Orange),
- Spondias cytherea* (Otaheite Apple),
- Synsepalum dulcificum* (Miracle Fruit),
- Syzygium cumini* (Jambolan Plum),
- Syzygium jambos* (Rose Apple),
- Syzygium samarangense* (Java Apple),
- Terminalia catappa* (Tropical Almond),
- Terminalia muelleri*,
- Trevisia palmata*,
- Triphasia trifolia* (Limeberry),
- X *Citrofortunella floridana* (Limequat), and
- X *Citrofortunella mitis* (Calamondin).

2. Soil or planting media within the drip area of plants producing, or that have produced, a regulated commodity.

D. Restrictions. A regulated commodity produced in or shipped from an area under quarantine is prohibited entry into Arizona unless each lot or shipment is accompanied by a certificate issued by an official of the state of origin, affirming compliance with one of the following:

1. Citrus fruit (*Citrus* spp. and *Fortunella* spp.) has been fumigated with methyl bromide (“Q” label only) for a minimum of two hours under the following conditions:

Pulp Temperature	Rate per 1000 cu. ft.
No less than 60° F to 79° F	3 pounds
80° F or above	2 1/2 pounds

- 2. Non-citrus fruit has been treated in compliance with a treatment plan approved by the Director.
- E. Disposition of commodity not in compliance. A regulated commodity shipped into Arizona in violation of this Section shall be destroyed or transported out-of-state by the owner and at the owner’s expense.

Historical Note

Adopted effective July 1, 1975 (Supp. 75-1). Correction (Supp. 76-1). Amended effective May 10, 1988 (Supp. 88-2). Section R3-1-75 renumbered to R3-4-246 (Supp. 91-4). Amended by final rulemaking at 9 A.A.R. 2098, effective August 2, 2003 (Supp. 03-2).

R3-4-247. Repealed

Historical Note

Amended effective April 26, 1976 (Supp. 76-2). Amended effective June 16, 1977 (Supp. 77-3). Repealed effective June 19, 1978 (Supp. 78-3). Section R3-1-76 renumbered to R3-4-247 (Supp. 91-4).

R3-4-248. Japanese beetle

- A. Definitions.
 - 1. “Host commodities” means the commodities listed in the JBHP, Appendix 5.
 - 2. “JBHP” means the U.S. Domestic Japanese Beetle Harmonization Plan, adopted by the National Plant Board on August 19, 1998, and revised September 5, 2000.
 - 3. “Pest” means the Japanese beetle, *Popillia japonica* (Newman).
- B. Area under quarantine: All areas listed in the JBHP, which is incorporated by reference, does not include any later amendments or editions, and is on file with the Department, the Office of the Secretary of State, and the National Plant Board at www.aphis.usda.gov/npb. The incorporated material includes the following changes:
 - 1. Appendix 1, delete the words “(except sod).”
 - 2. Appendix 5, definition of host commodities, delete the words “grass sod.”
- C. Host commodities covered. All commodities, except grass sod, listed in the JBHP.
- D. An out-of-state grower who imports a host commodity into Arizona shall comply with the JBHP, except as provided under subsection (E).
- E. Restrictions on importation.
 - 1. An out-of-state grower shall not import into Arizona a host commodity under subsection (C) from an area under quarantine unless the commodity is accompanied by an original certificate issued by an official of the origin state ensuring compliance with the requirements of the JBHP, Appendix 1.
 - 2. The Associate Director may admit grass sod from an out-of-state grower for shipment to Arizona if:
 - a. The out-of-state grower requests an exception agreement from the Department;
 - b. The out-of-state grower, the state plant regulatory official of the origin state, and the Associate Director sign an agreement that includes the following terms:
 - i. The out-of-state grower shall ship sod grown only in a Japanese beetle-free county;
 - ii. The origin state’s plant regulatory official shall place and monitor Japanese beetle traps on the grass sod farm during the agreement period. At least one trap shall be placed on each 10 acres of land. A buffer zone of a one-mile radius shall be established around the grass sod farm,

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and two traps per square mile shall be placed in the buffer zone. The Department shall revoke the agreement if the origin state documents that one or more Japanese beetles are detected in any trap;

- iii. The origin state's plant regulatory official or designee shall inspect sod before shipment to ensure it is free of the pest; and
 - iv. The out-of-state grower shall ship sod to Arizona only through the ports of entry on I-10 or I-40.
- c. Both the out-of-state grower and the origin state's plant regulatory official shall perform any other requirement established by the Associate Director to ensure the grass sod is free from all life stages of Japanese beetle.
3. Exemptions from importation ban:
- a. Privately-owned houseplants grown indoors; and
 - b. Commodities that are treated by the grower for Japanese beetle may be imported into Arizona if the Associate Director approves the treatment method before shipment.

Historical Note

Adopted effective June 16, 1977 (Supp. 77-3). Section R3-1-77 renumbered to R3-4-248 (Supp. 91-4). Amended by final rulemaking at 7 A.A.R. 5345, effective November 8, 2001 (Supp. 01-4).

ARTICLE 3. NURSERY CERTIFICATION PROGRAM**R3-4-301. Nursery Certification**

- A. Definitions. The following terms apply to this Section.

"Associate Director" means the Associate Director of the Arizona Department of Agriculture's Plant Services Division.

"Certificate" means a document issued by the Director, Associate Director or by a Department inspector stating that the nursery stock has been inspected and complies with the criteria set forth by an agricultural agency of any state, county, or commonwealth.

"Certificate holder" means a person who holds a certificate issued in accordance with this Section.

"Collected nursery stock" means nursery stock that has been dug or gathered from any site other than a nursery location.

"Commercially clean" means nursery stock offered for sale is in a healthy condition and, though common pests may be present, they exist at levels that pose little or no risk.

"Common pest" means a pest, weed, or disease that is not under a state or federal quarantine or eradication program and is of general distribution within the state.

"Director" means the Director of the Arizona Department of Agriculture.

"General nursery stock inspection certification" means an inspection carried out at the request of a person for the purpose of meeting the general nursery inspection requirements of another state.

"Nursery location" means real property with one physical address, upon which nursery stock is propagated, grown, sold, distributed, or offered for sale.

"Quarantine pest" means an economically important pest that does not occur in the state or that occurs in the state

but is not widely distributed or is being officially eradicated.

"Single shipment nursery stock inspection certification" means a visit to a single location by a Department inspector to certify one or more shipments of nursery stock for compliance with the quarantine requirements of the receiving state, county, or commonwealth.

- B. General nursery stock inspection certification. A person may apply for general nursery stock inspection certification by submitting to the Department the application described in subsection (E) for each nursery location. The applicant shall submit a \$50 inspection fee to the Department at the time of inspection for each nursery location. Each nursery location shall be inspected and certified separately. An application for initial certification may be submitted at any time. A certificate will be valid for one year, and may be renewed. A renewal application shall be submitted each year by February 15.
1. The Department shall issue a general nursery stock inspection certificate to the applicant if, following a Department inspection, the nursery stock is found free of quarantine pests, and commercially clean of common pests that are adversely affecting the nursery stock.
 - a. The Department shall only certify nursery stock that is found free of quarantine pests. The applicant shall not remove from the nursery any nursery stock that is found infested with a quarantine pest until a Department inspector determines that the pest has been eliminated.
 - b. The Department shall restrict the movement of any nursery stock found infested with a common pest that a Department inspector determines is adversely affecting the nursery stock. The applicant shall establish a treatment program to control the pest and shall not remove the infested nursery stock from the nursery until a Department inspector determines that the pest has been controlled.
 2. A certificate holder shall ensure that a nursery with a general nursery stock inspection certificate remains free of quarantine pests and commercially clean of common pests that are adversely affecting the nursery stock throughout the period that the certificate is valid.
 3. A certificate holder shall not distribute, transport, or sell nursery stock interstate if it is infested with a quarantine pest or a common pest that is adversely affecting the nursery stock.
 4. A certificate holder may reproduce a general nursery stock inspection certificate without the Department's permission for nursery use.
 5. A certificate holder shall ensure that the nursery's general nursery stock inspection certificate accompanies each shipment of nursery stock that is moved out of the state.
 6. A certificate holder shall maintain all invoices or other shipping documents for shipments received by and shipped from the nursery for up to one year. The certificate holder shall make the documents available to the Department upon request, as authorized by A.R.S. § 3-201.01(A)(6).
 7. The Department shall inspect a nursery with a general nursery stock inspection certificate at any time during the certificate period to verify compliance with this Section.
 8. A general nursery stock inspection certificate expires on December 31 of each year unless renewed, suspended, or revoked as provided in this Section.
 9. A person with a general nursery stock inspection certificate may also need to obtain a special nursery stock inspection certificate to meet a specific quarantine entry

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- requirement of another state, as prescribed in subsection (C).
- C. Special nursery stock inspection certification. A person may apply for special nursery stock inspection certification to meet specific quarantine entry requirements of another state that are not addressed by the general nursery stock inspection certificate described in subsection (B). The applicant shall submit to the Department the application described in subsection (E) and a \$50 inspection fee for each nursery location.
1. An applicant shall ensure that the applicant's nursery stock is free of quarantine pests as required by the receiving state and commercially clean of common pests that are adversely affecting the nursery stock. The Department shall not certify nursery stock that is infested with a quarantine pest until a Department inspector determines that the pest has been eliminated. The Department shall not certify nursery stock that is infested with a common pest that a Department inspector determines is adversely affecting the nursery stock.
 2. A certificate holder shall not reproduce or duplicate a special nursery stock inspection certificate without written permission from the Department.
 3. A special nursery stock inspection certificate is valid for one year from the issue date unless the receiving state requires a shorter certification period.
- D. Single shipment nursery stock inspection certification. A person may apply for a single shipment nursery stock inspection certification to meet the entry requirements of another state by submitting to the Department the application described in subsection (E) with a \$50 inspection fee.
1. An applicant for a single shipment nursery stock inspection certificate shall ensure that the nursery stock in each shipment is free from quarantine pests, as required by the receiving state, and commercially clean of common pests that are adversely affecting the nursery stock. The Department shall not certify nursery stock that is infested with a quarantine pest until a Department inspector determines that the pest has been eliminated. The Department shall not certify nursery stock that is infested with a common pest that a Department inspector determines is adversely affecting the nursery stock until the pest has been controlled.
 2. A single shipment nursery stock inspection certificate is valid for seven calendar days following the inspection date. A certificate holder may apply for a new certificate if the original certificate expires before the shipment leaves Arizona.
 3. A certificate holder shall not reproduce or duplicate a single shipment nursery stock inspection certificate.
 4. A person who has obtained a single shipment nursery stock inspection certificate for collected nursery stock shall retain a record, for at least one year from the shipment date, of the street address from which each plant in a shipment was collected. The person shall provide the collected nursery stock record to the Department upon request.
- E. Application. A person applying for a certificate under this Section shall provide the following information on a form obtained from the Department:
1. Applicant's name, nursery name, mailing address, telephone and fax numbers, and e-mail address, as applicable;
 2. Location at which inspection is to be made, by legal description or physical address;
 3. Number of acres, structures, or vehicles to be inspected, as applicable;
 4. For shipping, the state, county, or commonwealth of planned destination, the category of inspection, and the nursery stock to be certified;
 5. Applicant's Social Security number or tax identification number; and
 6. Applicant's signature and date of signature.
- F. Based upon the circumstances of each case, the Associate Director may:
1. Refuse to issue a certificate if, after inspection, the Associate Director determines that an applicant has not met a requirement for certification.
 2. Revoke a certificate for a violation of a condition of the certificate.
 3. Suspend, for a period of up to 90 days, a certificate for misuse or misrepresentation related to the certificate.
 4. Refuse to issue or suspend a certificate issued under this Section if the applicant or certificate holder refuses to provide the Department with documents that demonstrate the ownership, origin, or destination of nursery stock presented for certification.
- G. Notwithstanding subsections (B) through (D), during fiscal year 2019, an applicant for nursery stock inspection certification shall pay the following fee:
1. For general certification, \$250.
 2. For single shipment certification, \$50 for the first lot plus \$10 for each additional lot per Department site trip.

Historical Note

Adopted effective January 17, 1989 (Supp. 89-1). Section R3-4-301 renumbered from R3-1-301 (Supp. 91-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 1378, effective June 4, 2006 (Supp. 06-2). Amended by exempt rulemaking at 16 A.A.R. 1336, effective June 29, 2010 (Supp. 10-2). Amended by exempt rulemaking at 17 A.A.R. 1761, effective July 20, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 2063, effective August 2, 2012 (Supp. 12-3). Amended by exempt rulemaking at 19 A.A.R. 3143, effective September 14, 2013 (Supp. 13-3). Amended by exempt rulemaking at 20 A.A.R. 2454, effective July 24, 2014 (Supp. 14-3). Amended by exempt rulemaking at 21 A.A.R. 2410, effective July 3, 2015 (Supp. 15-3). Amended by final exempt rulemaking at 23 A.A.R. 1941, effective August 8, 2017 (Supp. 17-2). Amended by final exempt rulemaking at 24 A.A.R. 2223, effective August 3, 2018 (Supp. 18-2).

R3-4-302. Repealed**Historical Note**

Adopted effective January 17, 1989 (Supp. 89-1). Section R3-4-302 renumbered from R3-1-301 (Supp. 91-4). Section repealed by final rulemaking at 12 A.A.R. 1378, effective June 4, 2006 (Supp. 06-2).

R3-4-303. Repealed**Historical Note**

Adopted effective January 17, 1989 (Supp. 89-1). Section R3-4-303 renumbered from R3-1-303 (Supp. 91-4). Section repealed by final rulemaking at 12 A.A.R. 1378, effective June 4, 2006 (Supp. 06-2).

R3-4-304. Repealed**Historical Note**

Adopted effective January 17, 1989 (Supp. 89-1). Section R3-4-304 renumbered from R3-1-304 (Supp. 91-4). Section repealed by final rulemaking at 12 A.A.R. 1378, effective June 4, 2006 (Supp. 06-2).

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tion repealed by final rulemaking at 12 A.A.R. 1378, effective June 4, 2006 (Supp. 06-2).

R3-4-305. Repealed**Historical Note**

Adopted effective January 17, 1989 (Supp. 89-1). Section R3-4-305 renumbered from R3-1-305 (Supp. 91-4). Section repealed by final rulemaking at 12 A.A.R. 1378, effective June 4, 2006 (Supp. 06-2).

R3-4-306. Repealed**Historical Note**

Adopted effective January 17, 1989 (Supp. 89-1). Section R3-4-306 renumbered from R3-1-306 (Supp. 91-4). Section repealed by final rulemaking at 12 A.A.R. 1378, effective June 4, 2006 (Supp. 06-2).

R3-4-307. Repealed**Historical Note**

Adopted effective January 17, 1989 (Supp. 89-1). Section R3-4-307 renumbered from R3-1-307 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

ARTICLE 4. SEEDS**R3-4-401. Definitions**

In addition to the definitions provided in A.R.S. § 3-231, the following shall apply to this Article:

1. "Blend" means seed consisting of more than one variety of a kind, with each variety in excess of five percent by weight of the whole.
2. "Brand" means a word, name, symbol, number, or design used to identify seed of one person to distinguish it from seed of another person.
3. "Certifying agency" means:
 - a. An agency authorized under the laws of this state to officially certify seed and that has standards and procedures approved by the U.S. Secretary of Agriculture to assure the varietal purity and identity of the seed certified, or
 - b. An agency of a foreign country determined by the U.S. Secretary of Agriculture to adhere to procedures and standards for seed certification comparable to the procedures and standards adhered to generally by seed-certifying agencies under subsection (a) of this definition.
4. "Coated seed" means seed that has been covered with a substance that changes the size, shape, or weight of the original seed. Seed coated with ingredients such as rhizobia, dyes, and pesticides is not coated seed.
5. "Conditioning" or "conditioned" means drying, cleaning, scarifying, and other operations that could change the purity or germination of the seed and require the seed lot to be retested to determine the label information.
6. "Dormant" means viable seed, excluding hard seed, that fails to germinate when provided the specified germination conditions for that kind of seed.
7. "Federal Seed Act" means the federal law at 7 U.S.C. 1551-1611 and regulations promulgated under the Act: 20 CFR part 201.
8. "Flower seeds" means seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts, and commonly known and sold under the name of flower or wildflower seeds in this state.
9. "Germination" means the emergence and development from the seed embryo of those essential structures that,

- for the kind of seed in question, are indicative of the ability to produce a normal plant under favorable conditions.
10. "Hard seeds" means seeds that remain hard at the end of the prescribed germination test period because they have not absorbed water due to an impermeable seed coat.
11. "Inert matter" means all matter that is not seed, including broken seeds, sterile florets, chaff, fungus bodies, and stones.
12. "Mixture", "mix", or "mixed" means seed consisting of more than one kind, each in excess of five percent by weight of the whole.
13. "Mulch" means a protective covering of any suitable substance placed with seed that acts to retain sufficient moisture to support seed germination, sustain early seedling growth and aid in preventing soil moisture evaporation, control of weeds, and erosion prevention.
14. "Origin" means the state where the seed was grown, or if not grown in the United States, the country where the seed was grown.
15. "Other crop seed" means seeds of plants grown as crops other than the kind or variety included in the pure seed, as determined by methods defined in this Article.
16. "Pure live seed" means the product of the percent of germination plus hard or dormant seed multiplied by the percent of pure seed divided by 100. The result is expressed as a whole number.
17. "Pure seed" means a kind of seed excluding inert matter and all other seed not of the kind being considered.
18. "Replacement date sticker" means a sticker on a label that displays a new test date.
19. "Retail" means sales that are not intended for agricultural use and are prepared for use by a consumer in home gardens or household plantings only.
20. "Seed count" means the number of seeds per unit weight in a container.
21. "Seizure" means taking possession of seed pursuant to a court order.
22. "Wholesale" means sales of seeds that are intended for agricultural use normally in quantities for resale, as by an agricultural retail merchant and are not prepared for use in home gardening or household plantings.
23. "Working sample" means the number of seeds required under §§ 402 and 403 of the Federal Seed Act.

Historical Note

Former Rule, Arizona Seed Regulation 1. Amended effective August 31, 1981 (Supp. 81-4). Former Section R3-4-110 renumbered without change as Section R3-4-401 (Supp. 89-1). Section R3-4-401 renumbered from R3-1-401 (Supp. 91-4). Section repealed, new Section adopted effective July 10, 1995 (Supp. 95-3). Amended by final rulemaking at 13 A.A.R. 1464, effective June 2, 2007 (Supp. 07-2).

R3-4-402. Labeling**A. General requirements:**

1. Blank spaces or the words "free or none" mean "0" and "0.00%" for the purpose of applying the tolerances prescribed in this Article.
2. Labeling for purity and germination shall not show higher results than actually found by test.
3. The terms "foundation seed," "registered seed," and "certified seed" are authorized for use on seed certified by a seed certifying agency under the laws of Arizona as delineated in R3-4-405.

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4. Relabeling. Any person relabeling seed in its original container shall include the following information on a label or a replacement date sticker:
 - a. The calendar month and year the germination test was completed to determine the germination percentage and the sell-by date as required by subsection (C)(3)(i)(iv) or (C)(5)(c)(i),
 - b. The same lot designation as on the original labels, and
 - c. The identity of the person relabeling the seed if different from the original labeler.
 5. Labeling of seed distributed to wholesalers. After seed has been conditioned, a labeler shall ensure the seed is labeled as follows:
 - a. When supplied to a retailer or consumer, each bag or bulk lot must be completely labeled.
 - b. When supplied to a wholesaler, if each bag or other container is clearly identified by a lot number permanently displayed on the container or if the seed is in bulk, the labeling of seed may be by invoice.
 - c. When supplied to a wholesaler, if each bag or container is not identified by a lot number, it must carry complete labeling.
 6. Seeds for sprouting. All labels of seeds sold for sprouting for salad or culinary purposes shall indicate the following information:
 - a. Commonly accepted name of kind or kinds;
 - b. Lot number;
 - c. Percentage by weight of each pure seed component in excess of 5 percent of the whole, other crop seeds, inert matter, and weed seeds, if occurring;
 - d. Percentage of germination of each pure seed component;
 - e. Percentage of hard seed, if present; and
 - f. The calendar month and year the germination test was completed to determine the percentages in subsections (c), (d) and (e).
- B. Kind, variety, or type.**
1. All agricultural seeds sold in this state, except as stated in subsection (B)(2), shall be labeled to include the recognized variety name or type or the words "Variety not stated." A brand is not a kind and variety designation and shall not be used instead of a variety name.
 2. All cotton planting seed sold, offered for sale, exposed for sale, or transported for planting purposes in this state, shall have a label that includes both kind and variety.
- C. Agricultural, vegetable, or flower seeds that is sold, offered for sale, or exposed for sale within this state shall bear on each container a plainly written or printed label or tag in English. No modifications or disclaimers shall be made to the required label information in the labeling or on another label attached to the container. No misleading information shall appear on the label. The label shall include the following information:**
1. For agricultural, vegetable, and flower seeds that have been treated, the following is required and may appear on a separate label:
 - a. Language indicating that the seed has been treated;
 - b. The commonly-accepted chemical name of the applied substance or a description of the process used;
 - c. If a substance that is harmful to human or animals is present with the seed, a caution statement such as "Do not use for food, feed, or oil purposes." The caution for highly toxic substances shall be a poison statement and symbol; and
 - d. If the seed is treated with an inoculant, the date of expiration, which is the date beyond which the inoculant is not to be considered effective.
 2. For agricultural seeds, except for lawn and turf grass seed and mixtures of lawn and turf grass seed as provided in subsection (C)(3); for seed sold on a pure live seed basis as provided in subsection (C)(7); and for hybrids that contain less than 95 percent hybrid seed as provided in subsection (C)(8):
 - a. The name of the kind and variety for each agricultural seed component in excess of five percent of the whole and the percentage by weight of each. If the variety of the kinds generally labeled as a variety designated in this Article is not stated, the label shall show the name of the kind and the words, "variety not stated." Hybrid seed shall be labeled as hybrid;
 - b. Lot number or other lot identification;
 - c. Origin of alfalfa, red clover, and field corn (except hybrid corn) or if the origin is unknown, a statement that the origin is unknown;
 - d. Percentage by weight of all weed seeds;
 - e. The name and rate of occurrence per pound of each kind of restricted noxious weed seed present;
 - f. Percentage by weight of agricultural seeds other than those required to be named on the label. Agricultural seeds may be designated as "crop seeds;"
 - g. Percentage by weight of inert matter;
 - h. The sum total of weight identified in subsections (a), (d), (f), and (g) shall equal 100 percent;
 - i. For each named agricultural seed:
 - i. Percentage germination, excluding hard seed;
 - ii. Percentage of hard seeds, if present; and
 - iii. The calendar month and year the test was completed to determine the percentages. The statement "total germination and hard seed" may be included following the percentages required under subsections (i) and (ii).
 - j. Net weight of seed in the container or seed count per unit weight; and
 - k. Name and address of the labeler, or the person who sells, offers, or exposes the seed for sale within this state.
 3. For lawn and turf grass seed and lawn and turf grass seed mixtures:
 - a. For single kinds, the name of the kind or kind and variety and the percentage by weight.
 - b. For mixtures, the word "mix," "mixed", or "mixture" or "blend" shall be stated with the name of the mixture, along with the commonly accepted name of each kind or kind and variety of each agricultural seed component in excess of five percent of the whole and the percentages by weight.
 - c. The percentage by weight of each kind of pure seed shall be listed in order of its predominance and in columnar form. The heading "pure seed" and "germination" or "germ" shall be placed consistent with generally accepted industry practices.
 - d. Percentage by weight of agricultural seed other than those required to be named on the label which shall be designated as "crop seed."
 - e. The percentage by weight of inert matter for lawn and turf grass shall not exceed ten percent, except that 15 percent inert matter is permitted in Kentucky bluegrass labeled without a variety name. Foreign material that is not common to grass seed shall not be added, other than material used for coating, as in

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- subsection (C)(4), or combination products, as in subsection (C)(9).
- f. Percentage by weight of all weed seeds. Weed seed content shall not exceed one-half of one percent by weight.
 - g. The sum total for subsections (a), (b), (c), (d), (e) and (f) shall equal 100 percent.
 - h. Noxious weeds that are required by this Article to be labeled shall be listed under the heading "noxious weed seeds."
 - i. For each lawn and turf seed named under subsection (a) or (b):
 - i. Percentage of germination, excluding hard seed;
 - ii. Percentage of hard seed, if present;
 - iii. Calendar month and year the germination test was completed to determine percentages in subsections (i) and (ii); and
 - iv. For seed sold for retail non-farm usage the statement "sell by (month/year)" which shall be no more than 15 months from the date of the germination test excluding the month of the test.
 - j. Name and address of the labeler, or the person who sells, offers or exposes the seed for sale within this state.
4. For coated agricultural, vegetable, flower, or lawn and turf seeds that are sold by weight:
 - a. Percentage by weight of pure seeds with coating material removed;
 - b. Percentage by weight of coating material;
 - c. Percentage by weight of inert material not including coating material;
 - d. Percentage of germination determined on 400 pellets with or without seeds;
 - e. All other applicable requirements in subsections (C)(1), (2), and (3).
 5. For vegetable seeds in packets as prepared for use in home gardens or household plantings or vegetable seeds in pre-planted containers, mats, tapes, or other planting devices:
 - a. Name of kind and variety of seed;
 - b. Lot identification, such as by lot number or other means;
 - c. One of the following:
 - i. The calendar month and year the germination test was completed and the statement "Sell by (month/year)." The date indicated shall be no more than 12 months from the date of the test, excluding the month of the test;
 - ii. The calendar year for which the seed was packaged for sale as "packed for (year)" and the statement "sell by (year)"; or
 - iii. The percentage germination and the calendar month and year the test was completed to determine the percentage if the germination test was completed within 12 months, excluding the month of the test;
 - d. Name and address of the labeler, or the person who sells, offers, or exposes the seed for sale within this state;
 - e. For seeds that germinate less than the standard established under R3-4-404(A), (B) and (C)(i): percentage of germination, excluding hard seed; percentage of hard seed, if present; and the words "Below Standard" in not less than 8-point type;
 - f. For seeds placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quantity of seed without removing the seeds from the medium, mat, tape or device, a statement to indicate the minimum number of seeds in the container.
 6. For vegetable seeds in containers other than packets prepared for use in home gardens, household plantings, pre-planted containers, mats, tapes, or other planting devices:
 - a. The name of each kind and variety present in excess of five percent and the percentage by weight of each in order of its predominance;
 - b. Lot number or other lot identification;
 - c. For each named vegetable seed:
 - i. Percentage germination, excluding hard seed;
 - ii. Percentage of hard seed, if present; and
 - iii. The calendar month and year the test was completed to determine the percentages; The statement "Total germination and hard seed" may be included following the percentages required under subsections (C)(6)(c)(i) and (C)(6)(c)(ii);
 - d. Name and address of the labeler, or the person who sells, offers or exposes the seed for sale within this state; and
 - e. The labeling requirements for vegetable seeds in containers of more than one pound are met if the seed is weighed from a properly labeled container in the presence of the purchaser.
 7. For agricultural seeds sold on a pure live seed basis, each container shall bear a label containing the information required by subsection (C)(2), except:
 - a. The label need not show:
 - i. The percentage by weight of each agricultural seed component as required by subsection (C)(2)(a); or
 - ii. The percentage by weight of inert matter as required by subsection (C)(2)(g); and
 - b. For each named agricultural seed, the label must show instead of the information required by subsection (C)(2)(h):
 - i. The percentage of pure live seed; and
 - ii. The calendar month and year in which the test determining the percentage of live seed was completed.
 8. For agricultural and vegetable hybrid seeds that contain less than 95 percent hybrid seed:
 - a. Kind or variety shall be labeled as "hybrid,"
 - b. The percentage that is hybrid shall be labeled parenthetically in direct association following the named variety; for example – comet (85% hybrid), and
 - c. Varieties in which the pure seed contains less than 75 percent hybrid seed shall not be labeled hybrids.
 9. For combination mulch, seed, and fertilizer products:
 - a. The word "combination" followed by the words "mulch – seed – fertilizer", as appropriate, shall appear on the upper 30 percent of the principal display panel. The word "combination" shall be the largest and most conspicuous type on the container, equal to or larger than the product name. The words "mulch – seed – fertilizer", as appropriate, shall be no smaller than one-half the size of the word "combination" and in close proximity to the word "combination."
 - b. The products shall not contain less than 70 percent mulch.

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- c. Agricultural, flower, vegetable, lawn, and turf seeds placed in a germination medium, mat, tape, or other device or mixed with mulch shall be labeled as follows:
- i. Product name;
 - ii. Lot number;
 - iii. Percentage by weight of pure seed of each kind and variety named. The kind and variety named may be less than 5 percent of the whole;
 - iv. Percentage by weight of other crop seeds;
 - v. Percentage by weight of inert matter, which shall not be less than 70 percent;
 - vi. Percentage by weight of weed seeds;
 - vii. The total of subsections (iii), (iv), (v), and (vi) shall equal 100 percent;
 - viii. Name and number of noxious weed seeds per pound, if present;
 - ix. Hard seed percentage, if present, and percentage of germination of each kind or kind and variety named and the month and year the test was completed; and
 - x. Name and address of the labeler or the person who sells, offers or exposes the product for sale within this state.
- D. Labeling requirements: flowers.**
1. For flower seeds in packets prepared for use in home gardens or household plantings or flower seeds in pre-planted containers, mats, tapes, or other planting devices:
 - a. For all kinds of flower seeds:
 - i. The name of the kind and variety or a statement of type and performance characteristics as prescribed in subsection (D)(3); and
 - ii. Name and address of the labeler, or the person who sells, offers, or exposes the seed for sale within this state, and one of the following subsections (D)(1)(a)(iii) through (v);
 - iii. The calendar month and year the germination test was completed and the statement "Sell by (month/year)." The date indicated shall be no more than 12 months from the date of the test excluding the month of the test; or
 - iv. The calendar year for which the seed was packaged for sale as "packed for (year)" and the statement "sell by (year)"; or
 - v. The percentage germination and the calendar month and year the test was completed to determine the percentage if the germination test was completed within 12 months, excluding the month of the test.
 - b. For kinds of flower seeds for which standard testing procedures are prescribed by the Association of Official Seed Analysts and that germinate less than the germination standards prescribed under the provisions of R3-4-404(B):
 - i. Percentage of germination, excluding hard seeds;
 - ii. Percentage hard seed, if present; and
 - iii. The words "Below Standard" in not less than eight-point type.
 - c. For flower seeds placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quantity of seed without removing the seeds from the medium, mat, tape, or device, a statement to indicate the minimum number of seeds in the container.
 2. For flower seeds in containers other than packets and other than pre-planted containers, mats, tapes, or other planting devices and not prepared for use in home flower gardens or household plantings:
 - a. The name of the kind and variety or a statement of type and performance characteristics as prescribed in subsection (D)(3), and for wildflowers, the genus and species and subspecies, if appropriate;
 - b. The lot number or other lot identification;
 - c. For wildflower seed with a pure seed percentage of less than 90 percent:
 - i. The percentage, by weight, of each component listed in order of the component's predominance;
 - ii. The percentage by weight of weed seed, if present; and
 - iii. The percentage by weight of inert matter;
 - d. For kinds of seed for which standard testing procedures are prescribed by the Association of Official Seed Analysts:
 - i. Percentage of germination, excluding hard or dormant seed;
 - ii. Percentage of hard or dormant seed, if present; and
 - iii. The calendar month and year that the test was completed to determine the percentages in subsections (D)(2)(d)(i) and (ii);
 - e. For those kinds of flower seed for which standard testing procedures are not prescribed by the Association of Official Seed Analysts, the year of production or collection; and
 - f. Name and address of the labeler, or the person who sells, offers, or exposes the flower seed for sale within this state.
 3. Requirements to label flower seeds with kind and variety, or type and performance characteristics as prescribed in subsection (D)(1)(a)(i) and (D)(2)(a) shall be met as follows:
 - a. For seeds of plants grown primarily for their blooms:
 - i. If the seeds are of a single named variety, the kind and variety shall be stated, for example, "Marigold, Butterball";
 - ii. If the seeds are of a single type and color for which there is no specific variety name, the type of plant, if significant, and the type and color of bloom shall be indicated, for example, "Scabiosa, Tall, Large Flowered, Double, Pink";
 - iii. If the seeds consist of an assortment or mixture of colors or varieties of a single kind, the kind name, the type of plant, if significant, and the type or types of bloom shall be indicated. It shall be clearly indicated that the seed is mixed or assorted. An example of labeling such a mixture or assortment is "Marigold, Dwarf Double French, Mixed Colors";
 - iv. If the seeds consist of an assortment or mixture of kinds or kinds and varieties, it shall clearly indicate that the seed is assorted or mixed and the specific use of the assortment or mixture shall be indicated, for example, "Cut Flower Mixture", or "Rock Garden Mixture". Statements such as "General Purpose Mixture", "Wonder Mixture", or any other statement that fails to indicate the specific use of the seed

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shall not be considered as meeting the requirements of this subsection unless the specific use of the mixture is also stated. Containers with over three grams of seed shall list the kind or kind and variety names of each component present in excess of five percent of the whole in the order of their predominance, giving the percentage by weight of each. Components equal to or less than five percent shall be listed, but need not be listed in order of predominance. A single percentage by weight shall be given for these components that are less than five percent of the whole. If no component of a mixture exceeds five percent of the whole, the statement, "No component in excess of 5%" may be used. Containers with three grams of seed or less shall list the components without giving percentage by weight and need not be in order of predominance.

- b. For seeds of plants grown for ornamental purposes other than their blooms, the kind and variety shall be stated, or the kind shall be stated together with a descriptive statement concerning the ornamental part of the plant, for example, "Ornamental Gourds, Small Fruited, Mixed."
- E.** Label requirement for tree and shrub seeds. Tree or shrub seeds that is sold, offered for sale, or exposed for sale within this state shall bear on each container a plainly written or printed label or tag in English. No modifications or disclaimers shall be made to the required label information in the labeling or on another label attached to the container. Labeling of seed supplied under a contractual agreement meets this requirement if the shipment is accompanied by an invoice or by an analysis tag attached to the invoice if each bag or other container is clearly identified by a lot number permanently displayed on the container or if the seed is in bulk. Each bag or container not clearly identified by a lot number must carry complete labeling. The label shall include the following information:
1. For tree and shrub seeds that have been treated, the following may appear on a separate label:
 - a. Language indicating that the seed has been treated;
 - b. The commonly accepted chemical name of the applied substance or description of the process used;
 - c. If the substance is harmful to human or animals, a caution statement such as "do not use for food or feed or oil purposes". The caution for highly toxic substances shall be a poison statement and symbol; and
 - d. If the seed has been treated with an inoculant, the date of expiration, which is the date the inoculant is no longer considered effective;
 2. For all tree and shrub seeds subject to this Article:
 - a. Common name of the species of seed and if appropriate, the subspecies;
 - b. The scientific name of the genus and species and if appropriate, the subspecies;
 - c. Lot number or other lot identification;
 - d. Origin.
 - i. For seed collected from a predominantly indigenous stand, the area of collection given by latitude and longitude, a geographic description, or identification of a political subdivision, such as a state or county; or
 - ii. For seed collected from other than a predominantly indigenous stand, identification of the area of collection and the origin of the stand, or the statement "origin not indigenous";
- e. The elevation or the upper and lower limits of elevations within which the seed was collected;
- f. Purity as a percentage of pure seed by weight;
- g. For those species listed under R3-4-404(C), the following apply except as provided in subsection (E)(2)(h):
- i. Percentage germination excluding hard seed;
 - ii. Percentage of hard seed, if present;
 - iii. The calendar month and year the test was completed to determine the percentages in subsection (a) and (b);
- h. Instead of complying with subsections (E)(2)(g)(i), (ii), and (iii), the seed may be labeled, "Test is in process, results will be supplied upon request";
- i. For those species for which standard germination testing procedures have not been prescribed, the calendar year in which the seed was collected; and
- j. Name and address of the labeler, or the person who sells, offers, or exposes the seed for sale within this state.
- F.** Hermetically sealed seed shall meet the following requirements
1. The seed shall have been packaged within nine months of harvest;
 2. The container used shall not allow water vapor penetration through any wall, including the seals, greater than 0.05 grams of water per 24 hours per 100 square inches of surface at 100°F with a relative humidity on one side of 90 percent and on the other side 0 percent. Water vapor penetration (WVP) is measured in accordance with the U.S. Bureau of Standards as: gm H₂O/24 hr/100 sq in/100°F /90% RHV 0% RH;
 3. The seed in the container shall not exceed the percentage of moisture, on a wet weight basis, as listed below:
 - a. Agricultural Seeds,
 - i. Beet, Field: 7.5;
 - ii. Beet, Sugar: 7.5;
 - iii. Bluegrass, Kentucky: 6.0;
 - iv. Clover, Crimson: 8.0;
 - v. Fescue, Red: 8.0;
 - vi. Ryegrass, Annual: 8.0;
 - vii. Ryegrass, Perennial: 8.0;
 - viii. All Others: 6.0; and
 - ix. Mixture of Above: 8.0;
 - b. Vegetable Seeds,
 - i. Bean, Garden: 7.0;
 - ii. Bean, Lima: 7.0;
 - iii. Beet: 7.5;
 - iv. Broccoli: 5.0;
 - v. Brussels Sprouts: 5.0;
 - vi. Cabbage: 5.0;
 - vii. Carrot: 7.0;
 - viii. Cauliflower: 5.0;
 - ix. Celeriac: 7.0;
 - x. Celery: 7.0;
 - xi. Chard, Swiss: 7.5;
 - xii. Chinese Cabbage: 5.0;
 - xiii. Chives: 6.5;
 - xiv. Collards: 5.0;
 - xv. Corn, Sweet: 8.0;
 - xvi. Cucumber: 6.0;
 - xvii. Eggplant: 6.0;
 - xviii. Kale: 5.0;
 - xix. Kohlrabi: 5.0;

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- xx. Leek: 6.5;
 xxi. Lettuce: 5.5;
 xxii. Muskmelon: 6.0;
 xxiii. Mustard, India: 5.0;
 xxiv. Onion: 6.5;
 xxv. Onion, Welsh: 6.5;
 xxvi. Parsley: 6.5;
 xxvii. Parsnip: 6.0;
 xxviii. Pea: 7.0;
 xxix. Pepper: 4.5;
 xxx. Pumpkin: 6.0;
 xxxi. Radish: 5.0;
 xxxii. Rutabaga: 5.0;
 xxxiii. Spinach: 8.0;
 xxxiv. Squash: 6.0;
 xxxv. Tomato: 5.5;
 xxxvi. Turnip: 5.0;
 xxxvii. Watermelon: 6.5; and
 xxxviii. All others: 6.0.
4. The container shall be conspicuously labeled in not less than 8-point type to indicate:
- That the container is hermetically sealed,
 - That the seed has been preconditioned as to moisture content, and
 - The calendar month and year in which the germination test was completed; and
5. The germination percentage of the seed at the time of packaging shall have been equal to or higher than the standards specified elsewhere in subsection R3-4-404.

Historical Note

Adopted effective December 21, 1981 (Supp. 81-6). Former Section R3-4-111 renumbered without change as Section R3-4-402 (Supp. 89-1). Section R3-4-402 renumbered from R3-1-402 (Supp. 91-4). Amended effective July 10, 1995 (Supp. 95-3). Amended by final rulemaking at 13 A.A.R. 1464, effective June 2, 2007 (Supp. 07-2).

R3-4-403. Noxious Weed Seeds

- A. A person shall not allow the following prohibited noxious weed seeds in seed regulated under this Article:
- Acroptilon repens* (L.) DC. – Russian knapweed;
 - Aegilops cylindrica* Host. – Jointed goatgrass;
 - Alhagi maurorum* – Camelthorn;
 - Alternanthera philoxeroides* (Mart.) Griseb. – Alligator weed;
 - Cardaria pubescens* (C.A. Mey) Jarmolenko – Hairy whitetop;
 - Cardaria chalepensis* (L.) Hand-Maz – Lens podded hoary cress;
 - Cardaria draba* (L.) Desv. – Globed-podded hoary cress (Whitetop);
 - Carduus acanthoides* L. – Plumeless thistle;
 - Cenchrus echinatus* L. – Southern sandbur;
 - Cenchrus incertus* M.A. Curtis – Field sandbur;
 - Centaurea calcitrapa* L. – Purple starthistle;
 - Centaurea iberica* Trev. ex Spreng. – Iberian starthistle;
 - Centaurea squarrosa* Willd. – Squarrose knapweed;
 - Centaurea sulphurea* L. – Sicilian starthistle;
 - Centaurea solstitialis* L. – Yellow starthistle (St. Barnaby's thistle);
 - Centaurea diffusa* L. – Diffuse knapweed;
 - Centaurea maculosa* L. – Spotted knapweed;
 - Chondrilla juncea* L. – Rush skeletonweed;
 - Cirsium arvense* L. Scop. – Canada thistle;
 - Convolvulus arvensis* L. – Field bindweed;
 - Coronopus squamatus* (Forsk.) Ascherson – Creeping wartcress (Coronopus);
 - Cucumis melo* L. var. Dudaim Naudin – Dudaim melon (Queen Anne's melon);
 - Cuscuta* spp. – Dodder;
 - Cyperus rotundus* – Purple Nutgrass or Nutsedge;
 - Cyperus esculentus* – Yellow Nutgrass or Nutsedge;
 - Drymaria arenarioides* H.B.K. – Alfombrilla (Lightningweed);
 - Eichhornia azurea* (SW) Kunth. – Anchored Waterhyacinth;
 - Elymus repens* – Quackgrass;
 - Euphorbia esula* L. – Leafy spurge;
 - Halogeton glomeratus* (M. Bieb.) C.A. Mey – Halogeton;
 - Helianthus ciliaris* DC. – Texas Blueweed;
 - Hydrilla verticillata* (L.f.) Royle – Hydrilla (Florida-elo-dea);
 - Ipomoea* spp. – Morning glory. All species except *Ipomoea carnea*, Mexican bush morning glory; *Ipomoea triloba*, three-lobed morning glory (which is considered a restricted pest); *Ipomoea aborescens*, morning glory tree; *Ipomoea batatas* – sweetpotato; *Ipomoea quamoclit*, Cypress Vine; *Ipomoea noctiflora*, Moonflower – Morning Glories, Cardinal Climber, Hearts and Honey Vine;
 - Isatis tinctoria* L. – Dyers woad;
 - Linaria genistifolia* var. *dalmatica* – Dalmation toadflax;
 - Lythrum salicaria* L. – Purple loosestrife;
 - Medicago polymorpha* L. – Burclover;
 - Nassella trichotoma* (Nees.) Hack. – Serrated tussock;
 - Onopordum acanthium* L. – Scotch thistle;
 - Orobanche ramosa* L. – Branched broomrape;
 - Panicum repens* L. – Torpedo grass;
 - Peganum harmala* L. – African rue (Syrian rue);
 - Portulaca oleracea* L. – Common purslane;
 - Rorippa austriaca* (Crantz.) Bess. – Austrian fieldcress;
 - Salvinia molesta* – Giant Salvinia;
 - Senecio jacobaea* L. – Tansy ragwort;
 - Solanum carolinense* – Carolina horsenettle;
 - Solanum elaeagnifolium* – Silverleaf Nightshade;
 - Sonchus arvensis* L. – Perennial sowthistle;
 - Solanum viarum* Dunal – Tropical Soda Apple;
 - Sorghum species, perennial (*Sorghum halepense*, Johnson grass, *Sorghum almum*, and perennial sweet sudangrass);
 - Stipa brachychaeta* Godr. – Puna grass;
 - Striga* spp. – Witchweed;
 - Trapa natans* L. – Water-chestnut;
 - Tribulus terrestris* L. – Puncturevine.
- B. A person shall not allow more than the number shown of the following restricted noxious weed seeds in a working sample of seed regulated by this Article; or, any more than 50 of any combination of the following restricted noxious weed seeds per working sample.
- Avena fatua* – Wild oat: 5;
 - Brassica campestris* – Bird rape: 30;
 - Brassica juncea* – Indian mustard: 30;
 - Brassica niger* – Black mustard: 30;
 - Brassica rapa* – Field mustard: 30;
 - Cenchrus pauciflorus* – Sandbur: 10;
 - Eichhornia crassipes* (Mart.) Solms – Floating waterhyacinth: 10;
 - Euryops sunbcarnosus* subsp. *vulgaris* – Sweet resin-bush: 10;
 - Ipomoea triloba* L. – Three-lobed morning glory: 10;
 - Rumex crispus* – Curly dock: 30;
 - Salsola kali* var. *tenuifolia* – Russian thistle: 30;

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12. *Sinapis arvensis* – Charlock or Wild mustard: 30; and
13. *Sida hederacea* – Alkali mallow: 30.

Historical Note

Adopted effective December 21, 1981 (Supp. 81-6). Former Section R3-4-112 renumbered without change as Section R3-4-403 (Supp. 89-1). Section R3-4-403 renumbered from R3-1-403 (Supp. 91-4). Section R3-4-403 repealed, new Section R3-4-403 renumbered from R3-4-405 and amended effective July 10, 1995 (Supp. 95-3). Amended by final rulemaking at 13 A.A.R. 1464, effective June 2, 2007 (Supp. 07-2).

R3-4-404. Germination Standards

- A.** Vegetable seed shall have the following minimum percent germination or the minimum percent germination as found in the Federal Seed Act, 20 CFR 201.31 (as amended January 1, 2002), which is incorporated by reference, not including future editions or amendments. The material is on file with the Department and available for purchase from the U. S. Government Bookstore (<http://bookstore.gpo.gov/>) or at the U.S. Government Printing Office, 732 N. Capitol St., NW, Washington, DC 20401 or it can be found online at <http://ecfr.gpo-access.gov/cgi/t/text/text-idx?c=ecfr&sid=42bcf6d966081e2f2cf9d03315fb999f&rgn=div8&view=text&node=7:3.1.1.7.28.0.317.38&idno=7>.
1. Artichoke: 60;
 2. Asparagus: 70;
 3. Asparagusbean: 75;
 4. Bean, garden: 70;
 5. Bean, Lima: 70;
 6. Bean, runner: 75;
 7. Beet: 65;
 8. Broadbean: 75;
 9. Broccoli: 75;
 10. Brussels sprouts: 70;
 11. Burdock, great: 60;
 12. Cabbage: 75;
 13. Cabbage, tronchuda: 70;
 14. Cardoon: 60;
 15. Carrot: 55;
 16. Cauliflower: 75;
 17. Celeriac: 55;
 18. Celery: 55;
 19. Chard, Swiss: 65;
 20. Chicory: 65;
 21. Chinese cabbage: 75;
 22. Chives: 50;
 23. Citron: 65;
 24. Collards: 80;
 25. Corn, sweet: 75;
 26. Cornsalad: 70;
 27. Cowpea: 75;
 28. Cress, garden: 75;
 29. Cress, upland: 60;
 30. Cress, water: 40;
 31. Cucumber: 80;
 32. Dandelion: 60;
 33. Dill: 60;
 34. Eggplant: 60;
 35. Endive: 70;
 36. Kale: 75;
 37. Kale, Chinese: 75;
 38. Kale, Siberian: 75;
 39. Kohlrabi: 75;
 40. Leek: 60;
 41. Lettuce: 80;
 42. Melon: 75;
 43. Mustard, India: 75;
 44. Mustard, spinach: 75;
 45. Okra: 50;
 46. Onion: 70;
 47. Onion, Welsh: 70;
 48. Pak-choi: 75;
 49. Parsley: 60;
 50. Parsnip: 60;
 51. Pea: 80;
 52. Pepper: 55;
 53. Pumpkin: 75;
 54. Radish: 75;
 55. Rhubarb: 60;
 56. Rutabaga: 75;
 57. Sage: 60;
 58. Salsify: 75;
 59. Savory, summer: 55;
 60. Sorrel: 65;
 61. Soybean: 75;
 62. Spinach: 60;
 63. Spinach, New Zealand: 40;
 64. Squash: 75;
 65. Tomato: 75;
 66. Tomato, husk: 50;
 67. Turnip: 80;
 68. Watermelon: 70; and
 69. All Others: The germination standard for all other vegetable and herb seed for which a standard has not been established shall be 50 percent.
- B.** Flower seed shall meet the following minimum percent germination standards. For the kinds marked with an asterisk, the percentage listed is the sum total of the percentage germination and percentage of hard seed. A mixture of kinds does not meet the germination standard if the germination of any kind or combination of kinds constituting 25 percent or more of the mixture by number of seed is below the germination standard for the kind or kinds involved.
1. Archillea (The Pearl) – *Achillea ptarmica*: 50;
 2. African Daisy – *Dimorphotheca aurantiaca*: 55;
 3. African Violet – *Saintpaulia* spp: 30;
 4. Ageratum – *Ageratum mexicanum*: 60;
 5. Agrostemma (rose campion) – *Agrostemma coronaria*: 65;
 6. Alyssum – *Alyssum compactum*, *A. maritimum*, *A. procumbens*, *A. saxatile*: 60;
 7. Amaranthus – *Amaranthus* spp: 65;
 8. Anagalis (primpernel) – *Anagalis arvensis*, *Anagalis coerulea*, *Anagalis grandiflora*: 60;
 9. Anemone – *Anemone coronaria*, *A. pulsatilla*: 55;
 10. Angel's Trumpet – *Datura arborea*: 60;
 11. Arabis – *Arabis alpine*: 60;
 12. Arctotis (African lilac daisy) – *Arctotis grandis*: 45;
 13. Armeria – *Armeria formosa*: 55;
 14. Asparagus, fern – *Asparagus plumosus*: 50;
 15. Asparagus, sprenger, *Asparagus sprenger*: 55;
 16. Aster, China – *Callistephus chinensis*; except Pompon, Powderpuff, and Princess types: 55;
 17. Aster, China – *Callistephus chinensis*; Pompon, Powderpuff, and Princess types: 50;
 18. Aubretia – *Aubretia deltoids*: 45;
 19. Baby Smilax – *Aparagus asparagoides*: 25;
 20. Balsam – *Impatiens balsamina*: 70;
 21. Begonia – (*Begonia fibrous rooted*): 60;
 22. Begonia – (*Begonia tuberous rooted*): 50;
 23. Bells of Ireland – *Molucella laevis*: 60;

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24. Brachycome (swan river daisy) – *Brachycome iberidifolia*: 60;
25. Browallia – *Browallia elata* and *B. speciosa*: 65;
26. Bupthalamum (sunwheel) – *Bupthalamum salicifolium*: 60;
27. Calceolaria – *Calceolaria* spp: 60;
28. Calendula – *Calendula officinalis*: 65;
29. California Poppy – *Eschscholtzia californica*: 60;
30. Calliopsis – *Coreopsis bicolor*, *C. drummondii*, *C. elegans*: 65;
31. Campanula:
- Canterbury Bells – *Campanula medium*: 60;
 - Cup and Saucer Bellflower – *Campanula medium calycanthera*: 60;
 - Carpathian Bellflower – *Campanula carpatica*: 50;
 - Peach Bellflower – *Campanula persicifolia*: 50;
32. Candytuft, Annual – *Iberis amara*, *I. umbellata*: 65;
33. Candytuft, Perennial – *Iberis gibraltarica*, *I. semper-virens*: 55;
34. Castor Bean – *Ricinus communis*: 60;
35. Cathedral Bells – *Cobaea scandens*: 65;
36. *Celosia argentea*: 65;
37. Centaurea: Basket Flower – *Centaurea americana*, Cornflower – *C. cyanus*, Dusty Miller – *C. candidissima*, Royal Centaurea – *C. imperialis*, Sweet Sultan – *C. moschata*, Velvet Centaurea – *C. gymnocarpa*: 60;
38. Snow-in-Summer *Cerastium biebersteini* and *C. tomentosum*: 65;
39. Chinese Forget-me-not – *Cynoglossum amabile*: 55;
40. Chrysanthemum, Annual – *Chrysanthemum carinatum*, *C. coronarium*, *C. Cineraria* – *Senecio cruentus*: 60;
41. Clarkia – *Clarkia elegans*: 65;
42. Cleome – *Cleome gigantea*: 65;
43. Coleus – *Coleus blumei*: 65;
44. Columbine – *Aquilegia* spp.: 50;
45. Coral Bells – *Heuchera sanguinea*: 55;
46. Coreopsis, Perennial – *Coreopsis lanceolata*: 40;
47. Corn, ornamental – *Zea mays*: 75;
48. Cosmos: Sensation, Mammoth and Crested types – *Cosmos bipinnatus*; Klondyke type – *C. sulphureus*: 65;
49. Crossandra – (*Crossandra infundibuliformis*): 50;
50. Dahlia – *Dahlia* spp: 55;
51. Daylily – *Hemerocallis* spp: 45;
52. Delphinium, Perennial – *Belladonna* and *Bellamosum* types; Cardinal Larkspur – *Delphinium cardinale*; *Chinensis* types; Pacific Giant, Gold Medal and other hybrids of *D. elatum*: 55;
53. Dianthus:
- Carnation – *Dianthus caryophyllus*: 60;
 - China Pinks – *Dianthus chinensis*, *heddewigi*, *heddensis*: 70;
 - Grass Pinks – *Dianthus plumarius*: 60;
 - Maiden Pinks – *Dianthus deltoids*: 60;
 - Sweet William – *Dianthus barbatus*: 70;
 - Sweet Wivelsfield – *Dianthus allwoodii*: 60;
54. Didiscus – (blue lace flower) – *Didiscus coerulea*: 65;
55. Doronicum (leopard's bane) – *Doronicum caucasicum*: 60;
56. Dracaena – *Dracaena indivisa*: 55;
57. Dragon Tree – *Dracaena draco*: 40;
58. English Daisy – *Bellis perennis*: 55;
59. Flax – Golden flax (*Linum flavum*); Flowering flax *L. randiflorum*; Perennial flax, *L. perenne*: 60;
60. Flowering Maple – *Abutilon* spp: 35;
61. Foxglove – *Digitalis* spp: 60;
62. Gaillardia, Annual – *Gaillardia pulchella*; *G. picta*; Perennial – *G. grandiflora*: 45;
63. Gerbera (transvaal daisy) – *Gerbera jamesoni*: 60;
64. Geum – *Geum* spp: 55;
65. Gilia – *Gilia* spp: 65;
66. Glosiosa daisy (*rudbeckia*) – *Echinacea purpurea* and *Rudbeckia Hirta*: 60;
67. Gloxinia – (*Sinningia speciosa*): 40;
68. Godetia – *Godetia amoena*, *G. grandiflora*: 65;
69. Gourds: Yellow Flowered – *Cucurbita pepo*; White Flowered – *Lagenaria siceraria*; Dishcloth – *Luffa cilindrica*: 70;
70. Gypsophila: Annual Baby's Breath – *Gypsophila elegans*; Perennial Baby's Breath – *G. paniculata*, *G. pacifica* *G. repens*: 70;
71. Helenium – *Helenium autumnale*: 40;
72. Helichrysum – *Helichrysum monstrosum*: 60;
73. Heliopsis – *Heliopsis scabra*: 55;
74. Heliotrope – *Heliotropium* spp: 35;
75. Helipterum (Acroclinium) – *Helipterum roseum*: 60;
76. Hesperis (sweet rocket) – *Hesperis matronalis*: 65;
77. *Hollyhock – *Althea rosea*: 65;
78. Hunnemanian (mexican tulip poppy) – *Hunnemanianium fumariaefolia*: 60;
79. Hyacinth bean – *Dolichos lablab*: 70;
80. Impatiens – *Impatiens hostii*, *I. sultani*: 55;
81. **Ipomoea* – Cypress Vine – *Ipomoea quamoclit*; Moonflower – *I. noctiflora*; Morning Glories, Cardinal Climber, Hearts and Honey Vine – *Ipomoea* spp: 75;
82. Jerusalem cross (maltese cross) – *Lychnis chalcedonica*: 70;
83. Job's Tears – *Coix lacrymajobi*: 70;
84. Kochia – *Kochia childsii*: 55;
85. Larkspur, Annual – *Delphinium ajacis*: 60;
86. Lantana – *Lantana camara*, *L. hybrida*: 35;
87. Liliium (regal lily) – *Lilium regale*: 50;
88. Linaria – *Linaria* spp: 65, exception: *Linaria genistifolia* var. *dalmatica* – Dalmation toadflax which is a prohibited noxious weed;
89. Lobelia, Annual – *Lobelia erinus*: 65;
90. Lunaria, Annual – *Lunaria annua*: 65;
91. *Lupine – *Lupinus* spp: 65;
92. Marigold – *Tagetes* spp: 65;
93. Marvel of Peru – *Mirabilis jalapa*: 60;
94. Matricaria (feverfew) – *Matricaria* spp: 60;
95. Mignonette – *Reseda odorata*: 55;
96. Myosotis – *Myosotis alpestris*, *M. oblongata*, *M. palustris*: 50;
97. Nasturtium – *Tropaeolum* spp: 60;
98. Nemesis – *Nemesis* spp: 65;
99. Nemophila – *Nemophila insignis*: 70;
100. Nemophila, spotted – *Nemophila maculate*: 60;
101. Nicotiana – *Nicotiana affinis*, *N. sanderae*, *N. sylvestris*: 65;
102. Nierembergia – *Nierembergia* spp: 55;
103. Nigella – *Nigella damascena*: 55;
104. Pansy – *Viola tricolor*: 60;
105. Penstemon – *Penstemon barbatus*, *P. grandiflorus*, *P. laevigatus*, *P. pubescens*: 60;
106. Petunia – *Petunia* spp: 45;
107. Phacelia – *Phacelia campanularia*, *P. minor*, *P. tanacetifolia*: 65;
108. Phlox, Annual – *Phlox drummondii* all types and varieties: 55;
109. Physalis – *Physalis* spp: 60;
110. Platycodon (balloon flower) – *Platycodon grandiflorum*: 60;
111. Plumbago, cape – *Plumbago capensis*: 50;

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112. Ponytail – *Beaucarnea recurvata*: 40;
113. Poppy: Shirley Poppy – *Papaver rhoeas*; Iceland Poppy – *P. nudicaule*; Oriental Poppy – *P. orientale*; Tulip Poppy – *P. glaucum*: 60;
114. Portulacae – *Portulaca grandiflora*: 55;
115. Primula (primrose) – *Primula* spp: 50;
116. Pyrethrum (painted daisy) – *Pyrethrum coccineum*: 60;
117. Salpiglossis – *Salpiglossis gloxinaeflora*, *S. sinuata*: 60;
118. Salvia – Scarlet Sage – *Salvia splendens*; Mealycup Sage (Blue bedder) – *Salvia farinacea*: 50;
119. Saponaria – *Saponaria ocyroides*, *S. vaccaria*: 60;
120. Scabiosa, Annual – *Scabiosa atropurpurea*: 50;
121. Scabiosa, Perennial – *Scabiosa caucasica*: 40;
122. Schizanthus – *Schizanthus* spp: 60;
123. *Sensitive plant (mimosa) – *Mimosa pudica*: 65;
124. Shasta Daisy – *Chrysanthemum maximum* C. *leucanthemum*: 65;
125. Silk Oak – *Grevillea robusta*: 25;
126. Snapdragon – *Antirrhinum* spp: 55;
127. Solanum – *Solanum* spp: 60, exceptions; *Solanum carolinense* – Carolina horsenettle and *Solanum elaeagnifolium* – Silverleaf Nightshade which are prohibited noxious weeds;
128. Statice – *Statice sinuata*, *S. suworonii* (flower heads): 50;
129. Stocks: Common – *Mathiola incana*; Evening Scented – *Mathiola bicornis*: 65;
130. Sunflower – *Helianthus* spp: 70, exception; *Helianthus ciliaris* DC. – Texas blueweed which is a prohibited noxious weed;
131. Sunrose – *Helianthemum* spp: 30;
132. *Sweet Pea, Annual and Perennial other than dwarf bush – *Lathyrus odoratus*, *L. latifolius*: 75;
133. *Sweet Pea, Dwarf Bush – *Lathyrus odoratus*: 65;
134. Tahoka Daisy – *Machaeanthera tanacetifolia*: 60;
135. Thunbergia – *Thunbergia alata*: 60;
136. Torch Flower – *Tithonia speciosa*: 70;
137. Torenia (Wishbone Flower) – *Torenia fournieri*: 70;
138. *Tritoma kniphofia* Spp: 65;
139. Verbena, Annual – *Verbena hybrida*: 35;
140. Vinca – *Vinca rosea*: 60;
141. Viola – *Viola cornuta*: 55;
142. Virginian Stocks – *Malcolmia maritima*: 65;
143. Wallflower – *Cheiranthus allioni*: 65;
144. Yucca (Adam’s Needle) – *Yucca filamentosa*: 50;
145. Zinnia (Except Linearis and Creeping) – *Zinnia angustifolia*, *Z. elegans*, *Z. grandiflora*, *Z. gracillima*, *Z. haegeana*, *Z. multiflora*, *Z. pumila*: 65;
146. Zinnia, Linearis and Creeping – *Zinnia linearis*, *Sanvitalia procumbens*: 50;
147. All Other Kinds: 50.
- C. The germination labeling provisions of R3-4-402(E) apply to the following tree and shrub species:
1. *Abies amabilis* (Dougl.) Forbes – Pacific Silver Fir;
 2. *Abies balsamea* (L.) Mill. – Balsam Fir;
 3. *Abies concolor* (Gord. Glend.) Lindl. – White Fir;
 4. *Abies fraseri* (Pursh.) Poir – Fraser Fir;
 5. *Abies grandis* (Dougl.) Lindl. – Grand Fir;
 6. *Abies homolepis* Sieb Zucc. – Nikko Fir;
 7. *Abies lasiocarpa* (Hook) Nutt. – Subalpine Fir;
 8. *Abies magnifica* A. Murr. – California Red Fir;
 9. *Abies magnifica* var. *shastensis* Lemm. – Shasta Red Fir;
 10. *Abies procera* Rehd. – Nobel Fir;
 11. *Abies veitchii* (Lindl.) – Veitch Fir;
 12. *Acer ginnala* Maxim. – Amur Maple;
 13. *Acer macrophyllum* Pursh. – Bigleaf Maple;
 14. *Acer negundo* L. – Boxelder;
 15. *Acer pensylvanicum* L. – Striped Maple;
 16. *Acer platanoides* L. – Norway Maple;
 17. *Acer pseudoplatanus* L. – Sycamore Maple;
 18. *Acer rubrum* L. – Red Maple;
 19. *Acer saccharinum* L. – Silver Maple;
 20. *Acer saccharum* Marsh. – Sugar Maple;
 21. *Acer spicatum* Lam. – Mountain Maple;
 22. *Aesculus pavia* L. – Red Buckeye;
 23. *Ailanthus altissima* (Mill.) Swingle – Tree of Heaven, *Ailanthus*;
 24. *Berberis thunbergii* DC. – Japanese Barberry;
 25. *Berberis vulgaris* L. European Barberry;
 26. *Betula lenta* L. – Sweet Birch;
 27. *Betula alleghaniensis* Britton – Yellow Birch;
 28. *Betula nigra* L. – River Birch;
 29. *Betula papyrifera* Marsh. – Paper Birch;
 30. *Betula pendula* Roth. – European White Birch;
 31. *Betula populifolia* Marsh. – Gray Birch;
 32. *Carya illinoensis* (Wang.) K. Koch – Pecan;
 33. *Carya ovata* (Mill) K. Koch – Shagbark Hickory;
 34. *Casuarina* spp. – Beefwood;
 35. *Catalpa bignonioides* Walt. – Southern Catalpa;
 36. *Catalpa speciosa* Warder. – Northern Catalpa;
 37. *Cedrus atlantica* Manetti – Atlas Cedar;
 38. *Cedrus deodara* (Roxb.) Loud. – Deodar Cedar;
 39. *Cedrus libani* (Loud.) – Cedar of Lebanon;
 40. *Clastrus scandens* L. – American Bittersweet;
 41. *Celastrus orbiculata* Thunb. – Oriental Bittersweet;
 42. *Chamaecyparis lawsoniana* (A. Murr.) Parl – Port Oxford Cedar;
 43. *Chamaecyparis nootkatensis* (D. Don.) Spach. – Alaska Cedar;
 44. *Cornus florida* L. – Flowering Dogwood;
 45. *Cornus stolonifera* Michx. – Red-osier Dogwood;
 46. *Crataegus mollis* – Downy Hawthorn;
 47. *Cupressus arizonica* Greene – Arizona Cypress;
 48. *Eucalyptus deglupta*;
 49. *Eucalyptus gradis*;
 50. *Fraxinus americana* L. – White Ash;
 51. *Fraxinus excelsior* L. – European Ash;
 52. *Fraxinus latifolia* Benth. – Oregon Ash;
 53. *Fraxinus nigra* Marsh. – Black Ash;
 54. *Fraxinus pensylvanica* Marsh. – Green Ash;
 55. *Fraxinus pensylvanica* var. *lanceolata* (Borkh.) Sarg. – Green Ash;
 56. *Gleditsia triacanthos* L. – Honey Locust;
 57. *Grevillea robusta* – Silk-oak;
 58. *Larix decidua* Mill. – European Larch;
 59. *Larix eurolepis* Henry – Dunkfeld Larch;
 60. *Larix leptolepis* (Sieb. Zucc.) Gord. – Japanese Larch;
 61. *Larix occidentalis* Nutt. – Western Larch;
 62. *Larix sibirica* Ledeb. – Siberian Larch;
 63. *Libocedrus decurrens* – Incense-Cedar;
 64. *Liquidambar styraciflua* L. – Sweetgum;
 65. *Liriodendron tulipifera* L. – Yellow-Poplar;
 66. *Magnolia grandiflora* – Southern Magnolia;
 67. *Malus* spp. – Apple;
 68. *Malus* spp. – Crabapple;
 69. *Nyssa aquatica* L. – Water Tupelo;
 70. *Nyssa sylvatica* var. *sylvatica* – Black Tupelo;
 71. *Picea abies* (L.) Karst. – Norway Spruce;
 72. *Picea engelmanni* Parry – Engelmann Spruce;
 73. *Picea glauca* (Moench.) Voss – White Spruce;
 74. *Picea glauca* var. *albertiana* (S. Brown) Sarg. – Western White Spruce, Alberta White Spruce;
 75. *Picea glehnii* (Fr. Schmidt) Mast. – Sakhalin Spruce;

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76. *Picea jezoensis* (Sieb. Zucc.) Carr – Yeddo Spruce;
 77. *Picea koyamai* Shiras. – Koyama Spruce;
 78. *Picea mariana* (Mill.) B.S.P. – Black Spruce;
 79. *Picea omorika* (Pancic.) Purkyne – Serbian Spruce;
 80. *Picea orientalis* (L.) Link. – Oriental Spruce;
 81. *Picea polita* (Sieb. Zucc.) Carr – Tigertail Spruce;
 82. *Picea pungens* Engelm. – Blue Spruce, Colorado Spruce;
 83. *Picea pungens* var. *glauca* Reg. – Colorado Blue Spruce;
 84. *Picea rubens* Sarg. – Red Spruce;
 85. *Picea sitchensis* (Bong.) Carr – Sitka Spruce;
 86. *Pinus albicaulis* Engelm. – Whitebark Pine;
 87. *Pinus aristata* Engelm. – Bristlecone Pine;
 88. *Pinus banksiana* Lamb. – Jack Pine;
 89. *Pinus canariensis* C. Smith – Canary Pine;
 90. *Pinus caribaea* – Caribbean Pine;
 91. *Pinus cembroides* Zucc. – Mexican Pinyon Pine;
 92. *Pinus clausa* – Sand Pine;
 93. *Pinus conorta* Dougl. – Lodgepole Pine;
 94. *Pinus contorta* var. *latifolia* Engelm. – Lodgepole Pine;
 95. *Pinus coulteri* D. Don. – Coulter Pine, Bigcone Pine;
 96. *Pinus densiflora* Sieb. Zucc. – Japanese Red Pine;
 97. *Pinus echinata* Mill. – Shortleaf Pine;
 98. *Pinus elliottii* Engelm. – Slash Pine;
 99. *Pinus flexilis* James – Limber Pine;
 100. *Pinus glabra* Walt. – Spruce Pine;
 101. *Pinus griffithii* McClelland – Himalayan Pine;
 102. *Pinus halepensis* Mill. – Aleppo Pine;
 103. *Pinus jeffreyi* Grev. Balf. – Jeffrey Pine;
 104. *Pinus khasya* Royle – Khasia Pine;
 105. *Pinus lambertiana* Dougl. – Sugar Pine;
 106. *Pinus heldreichii* var. *leucodermis* (Ant.) Markgraf ex Fitschen – Balkan Pine, Bosnian Pine;
 107. *Pinus markusii* DeVriese – Markus Pine;
 108. *Pinus monticola* Dougl. – Western White Pine;
 109. *Pinus mugo* Turra. – Mountain Pine;
 110. *Pinus mugo* var. *mughus* (Scop.) Zenari – Mugo Swiss Mountain Pine;
 111. *Pinus muricata* D. Don. – Bishop pine;
 112. *Pinus nigra* Arnold – Austrian Pine;
 113. *Pinus nigra* poiretiana (Ant.) Aschers Graebn. – Corsican Pine;
 114. *Pinus palustris* Mill. – Longleaf Pine;
 115. *Pinus parviflora* Sieb. Zucc. – Japanese White Pine;
 116. *Pinus patula* Schl. Cham. – Jelecote Pine;
 117. *Pinus pinaster* Sol. – Cluster Pine;
 118. *Pinus pinea* L. – Italian Stone Pine;
 119. *Pinus ponderosa* Laws. – Ponderosa Pine, Western Yellow Pine;
 120. *Pinus radiata* D. Don. – Monterey Pine;
 121. *Pinus resinosa* Ait. – Red Pine, Norway Pine;
 122. *Pinus rigida* Mill. – Pitch Pine;
 123. *Pinus serotina* Michx. – Pond Pine;
 124. *Pinus strobus* L. – Eastern White Pine;
 125. *Pinus sylvestris* L. – Scots Pine;
 126. *Pinus taeda* L. – Loblolly Pine;
 127. *Pinus taiwanensis* Hayata – Formosa Pine;
 128. *Pinus thunbergii* Parl. – Japanese Black Pine;
 129. *Pinus virginiana* Mill. – Virginia Pine, Scrub Pine;
 130. *Platanus occidentalis* L. – American Sycamore;
 131. *Populus* spp. – Poplars;
 132. *Prunus armeriaca* L. – Apricot;
 133. *Prunus avium* L. – Cherry;
 134. *Prunus domestica* L. – Plum, Prune;
 135. *Prunus persica* Batsch. – Peach;
 136. *Pseudotsuga menziesii* var. *glauca* (Beissn.) Franco – Blue Douglas Fir;
 137. *Pseudotsuga menziesii* var. *caesia* (Beissn.) Franco – Gray Douglas Fir;
 138. *Pseudotsuga menziesii* var. *viridis* – Green Douglas Fir;
 139. *Pyrus communis* L. – Pear;
 140. *Quercus* spp. – (Red or Black Oak group);
 141. *Quercus alba* L. – White Oak;
 142. *Quercus muehlenbergii* Engelm. – Chinkapin Oak;
 143. *Quercus virginiana* Mill. – Live Oak;
 144. *Rhododendron* spp. – Rhododendron;
 145. *Robinia pseudoacacia* L. – Black Locust;
 146. *Rosa multiflora* Thunb. – Japanese Rose;
 147. *Sequoia gigantea* (Lindl.) Decne. – Giant Sequoia;
 148. *Sequoia sempervirens* (D. Don.) Engl. – Redwood;
 149. *Syringa vulgaris* L. – Common Lilac;
 150. *Thuja occidentalis* L. – Northern White Cedar, Eastern Arborvitae;
 151. *Thuja orientalis* L. – Oriental Arborvitae, Chinese Arborvitae;
 152. *Thuja plicata* Donn. – Western Red Cedar – Giant Arborvitae;
 153. *Tsuga canadensis* (L.) Carr. – Eastern Hemlock, Canada Hemlock;
 154. *Tsuga heterophylla* (Raf.) Sarg. – Western Hemlock, Pacific Hemlock;
 155. *Ulmus americana* L. – American Elm;
 156. *Ulmus parvifolia* Jacq. – Chinese Elm;
 157. *Ulmus pumila* L. – Siberian Elm; and
 158. *Vitis vulpina* L. – Riverbank Grape.
- D.** A person shall not indicate a quality of seed higher than the actual quality as found through germination test.
- E.** The labeler or the person who sells, offers, or exposes for sale within this state seeds in hermetically-sealed containers more than 36 months after the last day of the month in which the seeds were tested prior to packaging, shall retest the seeds within nine months, excluding of the calendar month in which the retest was completed, immediately prior to sale, exposure for sale, or offering for sale or transportation.

Historical Note

Adopted effective December 21, 1981 (Supp. 81-6). Former Section R3-4-113 renumbered without change as Section R3-4-404 (Supp. 89-1). Section R3-4-404 renumbered from R3-1-404 (Supp. 91-4). Section repealed, new Section R3-4-404 renumbered from R3-4-406 and amended effective July 10, 1995 (Supp. 95-3). Amended by final rulemaking at 13 A.A.R. 1464, effective June 2, 2007 (Supp. 07-2).

R3-4-405. Seed-certifying Agencies

- A.** Any agency seeking to obtain designation as a seed-certifying agency in Arizona shall meet the following requirements.
1. The agency shall be qualified by USDA to certify agricultural or vegetable planting seed as to variety, strain, and genetic purity.
 2. The agency shall have a written seed certification protocol which includes standards, rules, and procedures for the certification of planting seed.
 3. The agency shall have procedures for accepting crops and varieties into a certification program.
 4. The agency shall be a member in good standing of a USDA-recognized association of official seed-certifying agencies such as the Association of Official Seed Certifying Agencies.
- B.** The Director or the Director's designee shall meet each calendar year with the director of the seed-certifying agency to review the agency's standards, rules, and procedures.

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- C. The Director may, after consulting with the Director of the Arizona Agricultural Experiment Station, revoke the agency's designation as the state seed-certifying agency after written 30 days' notice if the organization:

1. Fails to maintain qualifications, protocols, procedures, and membership as set forth in subsection (A); or
2. Fails to follow federal and state standards, rules, and procedures.

Historical Note

Adopted effective December 21, 1981 (Supp. 81-6). Former Section R3-4-114 renumbered without change as Section R3-4-405 (Supp. 89-1). Section R3-4-405 renumbered from R3-1-405 (Supp. 91-4). Section R3-4-405 renumbered to R3-4-403, new Section R3-4-405 renumbered from R3-4-407 and amended effective July 10, 1995 (Supp. 95-3).

R3-4-406. Sampling and Analyzing Seed

- A. A person shall follow the methods of taking, handling, analyzing, and testing samples of seed and the tolerances and methods of determination as prescribed in the Federal Seed Act Regulations, 7 CFR 201.39 through 201.65, amended January 1, 2002, and in the Rules for Testing Seeds, 2006, published by the Association of Official Seed Analysts. This material is incorporated by reference and is on file with the Department. The materials incorporated by reference do not include any later amendments or editions. The Rules for Testing Seeds are also available through the web site: <http://www.aosaseed.com>. The CFR may be ordered from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA, 15250-7954 and the Rules for Testing Seeds may be ordered from the AOSA Management Office, Mail Boxes Etc. #285, 601 S. Washington, Stillwater, OK 74074-4539. If there is a conflict between the two documents, the requirements in CFR will prevail.
- B. A labeler offering a seed for sale shall pay the cost of original germination and purity tests on each lot of seed offered for sale, and a dealer or labeler shall pay the cost of any subsequent germination test required by A.R.S. § 3-237. The Department shall pay the cost of testing seed samples drawn by a seed inspector from lots bearing valid labels. The dealer or labeler shall reimburse the Department for the cost of the test if the dealer or labeler chooses to use the Department's germination and purity results in subsequent re-labeling.

Historical Note

Adopted effective December 21, 1981 (Supp. 81-6). Former Section R3-4-115 renumbered without change as Section R3-4-406 (Supp. 89-1). Section R3-4-406 renumbered from R3-1-406 (Supp. 91-4). Section R3-4-406 renumbered to R3-4-404, new Section R3-4-406 renumbered from R3-4-408 and amended effective July 10, 1995 (Supp. 95-3). Amended by final rulemaking at 9 A.A.R. 1286, effective May 31, 2003 (Supp. 03-2). Amended by final rulemaking at 13 A.A.R. 1464, effective June 2, 2007 (Supp. 07-2).

R3-4-407. Phytosanitary Field Inspection; Fee

- A. Applicants seeking phytosanitary certification for interstate and international exportation of agriculture, vegetable, and ornamental planting seed shall submit a \$20.00 inspection fee and provide the following information on a form furnished by the Department:
1. The company name and address of the applicant;
 2. The kind, variety, and lot number of the seed;
 3. The number of acres on which the seed will be grown;
 4. The name of the grower;
 5. The county and field location;

6. The date of the application;
7. The countries of export;
8. The seed treatment, if applicable;
9. The amount of treatment, if applicable;
10. The approximate planting date;
11. The approximate harvest date; and
12. The export requirements.

- B. The Department may contract with the state-certifying agency for field inspection at 20¢ per acre for any first or single required inspection and 10¢ per acre for each subsequent required inspection which shall be performed in conjunction with the seed certification program.
- C. Field inspections conducted by the Department shall be based upon the following fee schedule and shall not exceed the maximum fee prescribed by A.R.S. § 3-233(A)(7):
1. Cotton: 80¢ per acre;
 2. Small grain: 20¢ per acre for the first inspection and 80¢ for the second inspection;
 3. Vegetable and all other crops: 20¢ for the first inspection and 80¢ for the second inspection.
- D. If both the field inspection fee and the application fee exceeds the maximum fee per acre prescribed by A.R.S. § 3-233(A)(7), the application fee shall be voided and the maximum cost per acre shall be assessed.

Historical Note

Adopted effective December 21, 1981 (Supp. 81-6). Former Section R3-4-116 renumbered without change as Section R3-4-407 (Supp. 89-1). Section R3-4-407 renumbered from R3-1-407 (Supp. 91-4). Section R3-4-407 renumbered to R3-4-405, new Section adopted effective July 10, 1995 (Supp. 95-3).

R3-4-408. Licenses: Seed Dealer and Seed Labeler; Fees

- A. An applicant for a seed dealer or seed labeler license shall provide the following to the Department:
1. The year for which the applicant wishes to be licensed;
 2. The applicant's name, company name, telephone number, fax number and e-mail address, as applicable;
 3. Verification of previous seed dealer or labeler license, if applicable;
 4. The mailing and physical address of each business location being licensed;
 5. Company Tax ID number or if not a legally-recognized business entity, the applicant's Social Security number;
 6. The date of the application; and
 7. The signature of the applicant.
- B. Seed dealer and seed labeler licenses are not transferable, expire on June 30, and are valid for no more than one year, or period thereof, unless otherwise revoked, suspended, denied or otherwise acted upon by the Department as provided in A.R.S. § 3-233(A)(6).
- C. An applicant shall submit a completed application to the Department accompanied by the following fee, which is non-refundable unless A.R.S. § 41-1077 applies.
1. Seed dealers, \$50.00 per location; and
 2. Seed labelers, \$100.00.
- D. During fiscal year 2011 and fiscal year 2012, notwithstanding subsection (C), there is no fee to obtain a seed dealer or seed labeler license.

Historical Note

Adopted effective December 21, 1981 (Supp. 81-6). Former Section R3-4-117 renumbered without change as Section R3-4-408 (Supp. 89-1). Section R3-4-408 renumbered from R3-1-408 (Supp. 91-4). Section R3-4-408 renumbered to R3-4-406, new Section adopted effective July 10, 1995 (Supp. 95-3). Amended by final rulemak-

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ing at 13 A.A.R. 1464, effective June 2, 2007 (Supp. 07-2). Amended by exempt rulemaking at 16 A.A.R. 2029, effective September 21, 2010 (Supp. 10-3). Amended by exempt rulemaking at 17 A.A.R. 1763, effective July 20, 2011 (Supp. 11-3).

R3-4-409. Violations and Penalties

A. The Department may assess the following penalties against a dealer or labeler for each customer affected by a violation listed below: \$50 for the first offense, \$150 for the second offense, and \$300 for each subsequent offense within a three-year period:

1. Failure to complete the germination requirements on agricultural, vegetable, or flower seed intended for wholesale or commercial use within nine months prior to sale, exposing for sale, or offering for sale within the state, excluding the month in which the test was completed. This penalty does not apply to a violation under subsections (A)(2), or (3);
2. Failure to complete the germination requirements for agricultural, ornamental, or vegetable seed intended for retail purchase within the 15 months prior to the sale, exposing for sale, or offering for sale within the state, excluding the month in which the test was completed; and
3. Failure to obtain any license required by this Article;

B. The Department may assess the following penalties against any person committing the following acts: up to \$500 for the first offense, up to \$1250 for the second offense, and up to \$2500 for each subsequent offense within a three-year period.

1. To label, advertise, or represent seed subject to this Article to be certified seed or any class of certified seed unless:
 - a. It has been determined by a certifying agency that the seed conforms to standards of purity and identification as to kind, species and subspecies, if appropriate, or variety; and
 - b. The seed bears an official label issued for the seed by a certifying agency certifying that the seed is of a specified class and a specified kind, species and subspecies, if appropriate, and variety;
2. To disseminate in any manner or by any means, any false or misleading advertisements concerning seeds subject to this Article;
3. To hinder or obstruct in any way, any authorized agent of the Department in the performance of the person's duties under this Article;
4. To fail to comply with a cease and desist order or to move or otherwise handle or dispose of any lot of seed held under a cease and desist order or tags attached to the order, except with express permission of the enforcing officer, and for a purpose specified by the officer;
5. To label or sell seed that has been treated without proper labeling;
6. To provide false information to any authorized person in the performance of the person's duties under this Article; or
7. To label or sell seed that has false or misleading labeling, including:
 - a. Labeling or selling seed with a label containing the word "trace" or the phrase "contains 01%" as a substitute for any statement that is required by this Article;
 - b. Altering or falsifying any seed label, seed test, laboratory report, record, or other document to create a misleading impression as to kind, variety, history, quality or origin of seed;

- c. Labeling as hermetically sealed containers of agricultural or vegetable seeds that have not had completed the germination requirements with 36 months prior to sale, excluding the month in which the test was completed;
- d. Failure to label in accordance with the provisions of this Article;
- e. If applicable, failing to label as containing prohibited noxious weed seeds, subject to recognized tolerances;
- f. If applicable, failing to label as containing restricted noxious weed seeds in excess of the number prescribed in R3-4-403 on the label attached to the container of the seed or associated with seed;
- g. If applicable, failing to label as containing more than two and one-half percent by weight of all weed seeds;
- h. Detaching, altering, defacing, or destroying any label provided for in this Article, or altering or substituting seed in a manner that may defeat the purpose of this Article;
- i. Using relabeling stickers without having both the calendar month and year the germination test was completed, the sell by date if appropriate, and the lot number that matches the existing, original lot number; and
- j. Selling, exposing for sale, or offering for sale within the state vegetable seed intended for retail purchase that has labeling containing germination information that has not been completed within the 12 months prior to selling, exposing for sale, or offering for sale.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 1464, effective June 2, 2007 (Supp. 07-2).

ARTICLE 5. COLORED COTTON**R3-4-501. Colored Cotton Production and Processing**

- A.** Definitions. In addition to the definitions provided in A.R.S. § 3-101 and R3-4-102, the following terms apply to this Section:
1. "Certified" means having been inspected with a written certificate of inspection issued by an inspector of the Department.
 2. "Colored cotton" means any variety of cotton plants of the Genus *Gossypium* that produces fiber that is naturally any color other than white.
 3. "Cottonseed" means processed seed cotton used for propagation, animal feed, crushed or composted fertilizer, or oil.
 4. "Composting" means a process that creates conditions that facilitate the controlled decomposition of organic matter into a more stable and easily handled soil amendment or fertilizer, usually by piling, aerating and moistening; or the product of such a process.
 5. "Delinting" means the process of using acid, flame, or mechanical means to remove fiber that remains on cottonseed after ginning.
 6. "Planting seed" means seed of a known variety produced for planting subsequent generations.
 7. "Seed cotton" means raw cotton containing seed and lint that has been harvested from a field, but has not been ginned.
 8. "White cotton" means any variety of the Genus *Gossypium* that produces white fiber as established in 28 U.S.C. 401 through 451, the Official Cotton Standards of the United States for the Color Grade of American Upland

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Cotton, revised July 1, 1993; and Cotton Classification Results, revised July 1994. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Office of the Secretary of State.

B. Production requirements.

1. A producer who intends to grow colored cotton shall register in writing with the Department. The registration form shall be received at least 30 days before the cotton planting date for the applicable cultural cotton zone established in R3-4-204. Any colored cotton not registered with the Department shall be abated as established in A.R.S. §§ 3-204 and 3-205, and the producer may be assessed a civil penalty as established in A.R.S. § 205.02. The registration shall include:
 - a. The name, address, telephone number, and signature of the producer;
 - b. The name, address, telephone number, and signature of the property owner;
 - c. The name, address, and telephone number of the organization or company contracting for the production of colored cotton or to whom the colored cotton will be sold, if known;
 - d. The total number of acres to be planted;
 - e. The geographical location of the proposed fields by county, section, township and range; and
 - f. The name of the property owners, if known, adjacent to the field where colored cotton will be grown.
2. Separation of white and colored cotton.
 - a. A colored cotton producer shall ensure that all colored cotton is planted no less than 500 feet from any white cotton field.
 - b. All producers of white cotton saved for planting seed shall comply with the Field Standards in the Arizona Crop Improvement Association's Cotton Seed Certification Standards, revised July 1995. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Office of the Secretary of State.
3. A producer shall not plant white cotton on land on which colored cotton has been grown until one or more irrigated non-cotton crops have been produced on that land. If the non-cotton crop is not grown during a traditional cotton growing season, as established by R3-4-204(E), the field shall be irrigated before planting a white cotton crop.
4. The Department shall notify all cotton producers of the colored cotton plant-back restrictions and of the availability of location and acreage records of colored cotton crops.
5. The Department shall notify the Arizona Crop Improvement Association of the colored cotton geographical locations at least 25 days before the cotton planting date for each cultural cotton zone established in R3-4-204.

C. Cotton appliances.

1. No cotton producer, contractor, or ginner shall use a cotton appliance or gin to produce, transport, or handle white cotton after the gin or appliance has been used in the production, transportation, or handling of colored cotton until the Department inspects the cotton appliance or gin and finds it free of colored cottonseed, seed cotton, fiber, and gin trash. A cotton producer, contractor, or ginner shall notify the Department at least 48 hours, excluding Sundays and legal holidays, before an inspection is needed.

2. Colored seed cotton, cottonseed, fiber, and gin trash cleaned from cotton equipment, shall be composted or disposed of by the producer or ginner:
 - a. On land where gin trash has previously been disposed and the land is managed as specified in subsection (B)(3); or
 - b. In a landfill approved by the Department.
3. The Department shall legibly mark cotton appliances designated for exclusive use on colored cotton crops.

D. Transportation. Except in gin yards, colored cottonseed or colored seed cotton transported over public roads shall be totally enclosed or covered.**E. Gin requirements.**

1. A gin owner or manager planning to process colored cotton shall notify the Department, in writing, no less than 30 days before processing the colored cotton.
2. The Department shall notify the Arizona Crop Improvement Association of a gin owner's or manager's intention to process colored cotton within 10 days from the receipt of the notification from the gin.
3. A gin owner or manager processing colored cotton shall not process white cotton until the gin has been cleaned, and inspected by the Department. The gin shall be free of cottonseed, seed cotton, and loose lint as established in subsection (C)(1).
4. If a gin processes colored seed cotton and white seed cotton during the same season, and the white cottonseed is not retained by the plant breeder for research purposes, the producer shall market the white cottonseed as:
 - a. Animal feed,
 - b. Crushed or composted fertilizer, or
 - c. Oil.
5. The ginner shall legibly mark colored seed cotton kept in the gin yard or gin buildings and shall:
 - a. Isolate the seed cotton at least 500 feet from white seed cotton, or
 - b. Enclose it with two foot high chicken wire or chain link fencing.
6. Gin trash not disposed as established in subsection (C)(2) shall be shipped out-of-state, subject to the requirements of the receiving state and 7 CFR 301.52 et seq., amended August 30, 1994. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Office of the Secretary of State.
7. The ginner shall bale or bag colored cotton fiber and mark the bale or bag as colored cotton.

F. Seed Requirements.

1. A producer or contracting organization, set forth in subsection (B)(1), saving colored cottonseed for propagative purposes shall legibly label the colored planting seed container and notify the Department of:
 - a. The quantity,
 - b. The variety or color,
 - c. The location where the colored planting seed is held or stored, and
 - d. Whether any seed will be shipped out-of-state.
2. If the cotton seed is being delinted in Arizona, the delinting facility shall follow the requirements in Harvesting, Handling and Tagging that are included in the Cotton Seed Certification Standards and have been incorporated by reference in subsection (B)(2)(b).
3. The producer shall render non-viable non-delinted (fuzzy) colored cottonseed not used for propagative purposes by crushing or composting. Whole or cracked colored cottonseed shall not be used as animal feed in

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Arizona but may be shipped out-of-state, subject to the requirements of the receiving state and 7 CFR 301.52 et seq.

4. Cotton producers shall not transport unbagged white cotton planting seed using vehicles or other equipment previously used to transport whole or cracked colored cottonseed until the Department has certified that these vehicles and equipment are free of colored cottonseed.
- G. Advisory committee. The Director shall appoint an advisory committee, under A.R.S. § 3-106, to review colored cotton statutes and rules, inspection procedures, and certification methods. The committee shall be appointed for two-year staggered terms and a member may be reappointed for one additional term. The committee shall consist of one representative from each of the following categories:
1. The Cotton Research and Protection Council,
 2. The Arizona Crop Improvement Association,
 3. The Arizona Department of Agriculture,
 4. The Arizona Cotton Growers Association,
 5. A colored cotton producer,
 6. A ginner ginning colored cotton, and
 7. A contractor for the production of colored cotton.

Historical Note

Former Rule, Apiary Regulation 1. Amended effective June 19, 1978 (Supp. 78-3). Former Section R3-4-120 renumbered without change as Section R3-4-501 (Supp. 89-1). Former Section repealed, new Section adopted effective December 22, 1989 (Supp. 89-4). Section R3-4-501 renumbered from R3-1-501 (Supp. 91-4). Former Section R3-4-501 repealed, new Section R3-4-501 adopted effective October 15, 1993 (Supp. 93-4). R3-4-501 repealed by summary action with an interim effective date of February 10, 1995; filed in the Office of the Secretary of State January 20, 1995. Adopted summary rules filed in the Office of the Secretary of State May 17, 1995; interim effective date of February 10, 1995 now the permanent effective date (Supp. 96-3). New Section R3-4-501 renumbered from R3-4-205 and amended April 9, 1998 (Supp. 98-2).

R3-4-502. Repealed**Historical Note**

Adopted effective December 22, 1989 (Supp. 89-4) Section R3-4-502 renumbered from R3-1-502 (Supp. 91-4). Former Section R3-4-502 repealed, new Section R3-4-502 adopted effective October 15, 1993 (Supp. 93-4). R3-4-502 repealed by summary action with an interim effective date of February 10, 1995; filed in the Office of the Secretary of State January 20, 1995. Adopted summary rules filed in the Office of the Secretary of State May 17, 1995; interim effective date of February 10, 1995, now the permanent effective date (Supp. 96-3).

R3-4-503. Repealed**Historical Note**

Adopted as an emergency effective December 31, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Adopted as a permanent rule effective April 4, 1985 (Supp. 85-2). Former Sections R3-4-121.01, R3-4-121.02, R3-4-121.03, and R3-4-121.04 added to Section R3-4-121 and amended effective October 8, 1987 (Supp. 87-4). Former Section R3-4-121 renumbered without change as Section R3-4-502 (Supp. 89-1). Former Section R3-4-502 renumbered without change as Section R3-4-503 (Supp. 89-4). Repealed effective August 16, 1990 (Supp. 90-3). Section R3-4-503 renumbered from

R3-1-503 (Supp. 91-4). New Section R3-4-503 adopted effective October 15, 1993 (Supp. 93-4). R3-4-503 repealed by summary action with an interim effective date of February 10, 1995; filed in the Office of the Secretary of State January 20, 1995. Adopted summary rules filed in the Office of the Secretary of State May 17, 1995; interim effective date of February 10, 1995, now the permanent effective date (Supp. 96-3).

R3-4-504. Repealed**Historical Note**

Adopted as an emergency effective September 27, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-5). Emergency expired. Former Sections R3-4-122.01 through R3-4-122.03, emergency expired. New Section R3-4-122 adopted effective March 6, 1987 (Supp. 87-1). Former Section R3-4-122 renumbered without change as Section R3-4-503 (Supp. 89-1). Former Section R3-4-503 renumbered without change as Section R3-4-504 (Supp. 89-4). Section R3-4-504 renumbered from R3-1-504 (Supp. 91-4). Former Section R3-4-504 repealed, new Section R3-4-504 adopted effective October 15, 1993 (Supp. 93-4). R3-4-504 repealed by summary action with an interim effective date of February 10, 1995; filed in the Office of the Secretary of State January 20, 1995. Adopted summary rules filed in the Office of the Secretary of State May 17, 1995; interim effective date of February 10, 1995, now the permanent effective date (Supp. 96-3).

R3-4-505. Repealed**Historical Note**

Adopted effective October 15, 1993 (Supp. 93-4). R3-4-505 repealed by summary action with an interim effective date of February 10, 1995; filed in the Office of the Secretary of State January 20, 1995. Adopted summary rules filed in the Office of the Secretary of State May 17, 1995; interim effective date of February 10, 1995, now the permanent effective date (Supp. 96-3).

R3-4-506. Repealed**Historical Note**

Adopted effective October 15, 1993 (Supp. 93-4). R3-4-506 repealed by summary action with an interim effective date of February 10, 1995; filed in the Office of the Secretary of State January 20, 1995. Adopted summary rules filed in the Office of the Secretary of State May 17, 1995; interim effective date of February 10, 1995, now the permanent effective date (Supp. 96-3).

ARTICLE 6. RECODIFIED

Article 6, consisting of Sections R3-4-601 through R3-4-611 and Appendix A, recodified to 3 A.A.C. 3, Article 11 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1).

R3-4-601. Recodified**Historical Note**

Former Rule, Native Plant Regulation 1. Amended effective June 19, 1978 (Supp. 78-3). Amended by adding subsection (E) effective January 21, 1981 (Supp. 81-1). Former Section R3-4-130 amended and renumbered as R3-4-130 through R3-4-140 effective April 30, 1982 (Supp. 82-2). Former Section R3-4-130 renumbered without change as Section R3-4-601 (Supp. 89-1). Amended effective December 28, 1990 (Supp. 90-4). Section R3-4-601 renumbered from R3-1-601 (Supp. 91-

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Historical Note

Adopted effective December 28, 1990 (Supp. 90-4). Section R3-4-622 renumbered from R3-1-622 (Supp. 91-4). Section repealed effective July 6, 1993 (Supp. 93-3).

R3-4-623. Repealed**Historical Note**

Adopted effective December 28, 1990 (Supp. 90-4). Section R3-4-623 renumbered from R3-1-623 (Supp. 91-4). Section repealed effective July 6, 1993 (Supp. 93-3).

R3-4-624. Repealed**Historical Note**

Adopted effective December 28, 1990 (Supp. 90-4). Section R3-4-624 renumbered from R3-1-624 (Supp. 91-4). Section repealed effective July 6, 1993 (Supp. 93-3).

R3-4-625. Repealed**Historical Note**

Adopted effective December 28, 1990 (Supp. 90-4). Section R3-4-625 renumbered from R3-1-625 (Supp. 91-4). Section repealed effective July 6, 1993 (Supp. 93-3).

R3-4-626. Repealed**Historical Note**

Adopted effective December 28, 1990 (Supp. 90-4). Section R3-4-626 renumbered from R3-1-626 (Supp. 91-4). Section repealed effective July 6, 1993 (Supp. 93-3).

R3-4-627. Repealed**Historical Note**

Adopted effective December 28, 1990 (Supp. 90-4). Section R3-4-627 renumbered from R3-1-627 (Supp. 91-4). Section repealed effective July 6, 1993 (Supp. 93-3).

R3-4-628. Repealed**Historical Note**

Adopted effective December 28, 1990 (Supp. 90-4). Section R3-4-628 renumbered from R3-1-628 (Supp. 91-4). Section repealed effective July 6, 1993 (Supp. 93-3).

R3-4-629. Repealed**Historical Note**

Adopted effective December 28, 1990 (Supp. 90-4). Section R3-4-629 renumbered from R3-1-629 (Supp. 91-4). Section repealed effective July 6, 1993 (Supp. 93-3).

R3-4-630. Repealed**Historical Note**

Adopted effective December 28, 1990 (Supp. 90-4). Section R3-4-630 renumbered from R3-1-630 (Supp. 91-4). Section repealed effective July 6, 1993 (Supp. 93-3).

R3-4-631. Repealed**Historical Note**

Adopted effective December 28, 1990 (Supp. 90-4). Section R3-4-631 renumbered from R3-1-631 (Supp. 91-4). Section repealed effective July 6, 1993 (Supp. 93-3).

R3-4-632. Repealed**Historical Note**

Adopted effective December 28, 1990 (Supp. 90-4). Section R3-4-632 renumbered from R3-1-632 (Supp. 91-4). Section repealed effective July 6, 1993 (Supp. 93-3).

R3-4-633. Repealed**Historical Note**

Adopted effective December 28, 1990 (Supp. 90-4). Section R3-4-633 renumbered from R3-1-633 (Supp. 91-4). Section repealed effective July 6, 1993 (Supp. 93-3).

Appendix A. Recodified**Historical Note**

Adopted effective December 28, 1990 (Supp. 90-4). Section R3-4-633, Appendix A renumbered from R3-1-633, Appendix A (Supp. 91-4). Appendix A repealed, New Appendix A adopted effective July 6, 1993 (Supp. 93-3). Amended effective December 20, 1994 (Supp. 94-4). Amended effective September 11, 1997 (Supp. 97-3). Appendix recodified to 3 A.A.C. 3, Article 11 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1).

ARTICLE 7. FRUIT AND VEGETABLE STANDARDIZATION**R3-4-701. Expired****Historical Note**

Section R3-4-701 renumbered from R3-7-101 (Supp. 91-4). Section repealed, new Section adopted effective January 6, 1994 (Supp. 94-1). Amended by final rulemaking at 9 A.A.R. 4628, effective December 6, 2003 (Supp. 03-4). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-702. Expired**Historical Note**

Former Rule 100. Section R3-4-702 renumbered from R3-7-102 (Supp. 91-4). Section repealed, new Section adopted effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-703. Expired**Historical Note**

Former Rule 101. Section R3-4-703 renumbered from R3-7-103 (Supp. 91-4). Section repealed, new Section adopted effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-703. Expired**Historical Note**

Former Rule 102; Amended paragraph (7) effective June 11, 1986 (Supp. 86-3). Section R3-4-704 renumbered from R3-7-104 (Supp. 91-4). Section repealed, new Section adopted effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-705. Expired**Historical Note**

Former Rule 103. Section R3-4-705 renumbered from R3-7-105 (Supp. 91-4). Former Section R3-4-705 renumbered to R3-4-736, new Section R3-4-705 adopted effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-706. Expired**Historical Note**

Former Rule 104. Section R3-4-706 renumbered from R3-7-106 (Supp. 91-4). Former Section R3-4-706 renumbered to R3-4-737, new Section R3-4-706 adopted effective

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tive January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-707. Expired**Historical Note**

Former Rule 105; Amended effective March 5, 1982 (Supp. 82-2). Section R3-4-707 renumbered from R3-7-107 (Supp. 91-4). Former Section R3-4-707 repealed, new Section R3-4-707 adopted effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-708. Expired**Historical Note**

Former Section R3-4-708 renumbered to R3-4-740, new Section R3-4-708 adopted effective January 6, 1994 (Supp. 94-1). Amended by final rulemaking at 5 A.A.R. 569, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 8 A.A.R. 4454, effective October 2, 2002 (Supp. 02-4). Amended by final rulemaking at 10 A.A.R. 677, effective February 3, 2004 (Supp. 04-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-709. Expired**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-710. Expired**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-711. Expired**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-712. Expired**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-713. Expired**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-714. Expired**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-715. Expired**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-716. Expired**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1). Amended by final rulemaking at 6 A.A.R. 4582, effective November 13, 2000 (Supp. 00-4). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-717. Expired**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1). Amended by final rulemaking at 5 A.A.R. 569, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 10 A.A.R. 677, effective February 3, 2004 (Supp. 04-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-718. Expired**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1). Amended by final rulemaking at 10 A.A.R. 677, effective February 3, 2004 (Supp. 04-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-719. Expired**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1). Amended by final rulemaking at 10 A.A.R. 677, effective February 3, 2004 (Supp. 04-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-720. Expired**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-721. Expired**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-722. Expired**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-723. Expired**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-724. Expired

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Historical Note

Adopted effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-725. Expired**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-726. Expired**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-727. Expired**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-728. Expired**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-729. Expired**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-730. Expired**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-731. Expired**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-732. Expired**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-733. Expired**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-734. Expired**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-735. Expired**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-736. Expired**Historical Note**

Section R3-4-736 renumbered from R3-7-705 and amended effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-737. Expired**Historical Note**

Section R3-4-737 renumbered from R3-7-706 and amended effective January 6, 1994 (Supp. 94-1). Amended by final rulemaking at 5 A.A.R. 569, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 143, effective December 8, 1999 (Supp. 99-4). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-738. Expired**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-739. Expired**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-740. Expired**Historical Note**

Section R3-4-740 renumbered from R3-4-708 and amended effective January 6, 1994 (Supp. 94-1). Amended by final rulemaking at 8 A.A.R. 4454, effective October 2, 2002 (Supp. 02-4). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-741. Expired**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-742. Expired**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-743. Recordkeeping and Reporting Requirements for Fruit and Vegetable Shippers

- A.** Every shipper shall keep a correct record of each shipment of each assessed commodity shipped, showing:
1. The name and address of each producer;
 2. The shipment totals, by producer.
- B.** The shipper shall retain the original or a copy of records covering each shipment or transaction with respect to each assessed commodity shipped for a period of two years from the date thereof, which shall at all times be open to the confidential inspection of the supervisor or the authorized representative.

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The burden of proof shall be upon the shipper to prove the correctness of the shipper's accounting of any transaction which may be questioned.

Historical Note

Adopted effective January 6, 1994 (Supp. 94-1).

ARTICLE 8. CITRUS FRUIT STANDARDIZATION**R3-4-801. Expired****Historical Note**

Section R3-4-801 renumbered from R3-7-201 (Supp. 91-4). Section repealed, new Section adopted effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-802. Expired**Historical Note**

Former Rule 1. Section R3-4-802 renumbered from R3-7-202 (Supp. 91-4). Section R3-4-802 repealed, new Section R3-4-802 renumbered from R3-4-806 and heading amended effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-803. Expired**Historical Note**

Former Rule 2. Amended effective January 10, 1977 (Supp. 77-1). Amended effective November 3, 1983 (Supp. 83-6). Section R3-4-803 renumbered from R3-7-203 (Supp. 91-4). Former Section R3-4-803 renumbered to R3-4-809, new Section R3-4-803 adopted effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-804. Expired**Historical Note**

Former Rule 3. Section R3-4-804 renumbered from R3-7-204 (Supp. 91-4). Former Section R3-4-804 renumbered to R3-4-807, new Section R3-4-804 adopted effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-805. Expired**Historical Note**

Former Rule 4. Section R3-4-805 renumbered from R3-7-205 (Supp. 91-4). Section repealed, new Section adopted effective January 6, 1994 (Supp. 94-1). Amended by final rulemaking at 7 A.A.R. 5342, effective November 8, 2001 (Supp. 01-4). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-806. Expired**Historical Note**

Former Rule 5. Section R3-4-806 renumbered from R3-7-206 (Supp. 91-4). Former Section R3-4-806 renumbered to R3-4-802, new Section R3-4-806 adopted effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-806. Expired**Historical Note**

Former Rule 6. Section R3-4-807 renumbered from R3-7-207 (Supp. 91-4). Section repealed, new Section R3-4-807 renumbered from R3-4-804 and amended effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-808. Expired**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-809. Expired**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1). Amended by final rulemaking at 8 A.A.R. 3633, effective August 7, 2002 (Supp. 02-3). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-810. Expired**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1). Amended by final rulemaking at 8 A.A.R. 3633, effective August 7, 2002 (Supp. 02-3). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-811. Expired**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1). Amended by final rulemaking at 6 A.A.R. 143, effective December 8, 1999 (Supp. 99-4). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-812. Expired**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-813. Expired**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-814. Expired**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1). Amended by final rulemaking at 8 A.A.R. 3633, effective August 7, 2002 (Supp. 02-3). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-815. Expired**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2935, effective July 29, 2014 (Supp. 14-4).

R3-4-816. Recordkeeping and Reporting Requirements for Citrus Fruit Shippers

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- A. Every shipper shall keep a correct record of each shipment of each assessed citrus commodity shipped, showing:
1. The name and address of the producer;
 2. The shipment totals, by producer.
- B. The shipper shall retain the original or a copy of records covering each shipment or transaction with respect to each assessed citrus commodity shipped for a period of two years from the date thereof, which shall at all times be open to the confidential inspection of the supervisor or the authorized representative. The burden of proof shall be upon the shipper to prove the correctness of the shipper's accounting of any transaction which may be questioned.

Historical Note

Adopted effective January 6, 1994 (Supp. 94-1).

ARTICLE 9. BIOTECHNOLOGY**R3-4-901. Genetically Engineered Organisms and Products**

- A. Definitions. In addition to the definitions provided in A.R.S. § 3-101, the following shall apply:
1. "Associate Director" means the Associate Director of the Plant Services Division of the Arizona Department of Agriculture.
 2. "Genetically engineered" means the genetic modification of organisms by recombinant DNA techniques, including genetic combinations resulting in novel organisms or genetic combinations that would not naturally occur.
 3. "Organisms" means any active, infective, or dormant stage or life form of any entity characterized as living, including vertebrate and invertebrate animals, plants, bacteria, fungi, mycoplasmas, mycoplasma-like organisms, as well as entities such as viroid, viruses, or any entity characterized as living related to the foregoing.
 4. "Permit" means an application which has been approved by USDA and the Department.
 5. "Permit application" means an application filed with USDA, which may be supplemented with requirements from the Department, for the introduction of genetically engineered organisms and products, as provided by 7 CFR 340, revised June 16, 1987, pages 22908 through 22915. The material incorporated herein by reference is on file with the Office of the Secretary of State and does not include any later amendments or editions of the incorporated matter.
 6. "Product" means plant reproductive parts including pollen, seeds, and fruit, spores, or eggs.
 7. "USDA" means the United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine (USDA, APHIS, PPQ).
- B. Permit applications. A genetically engineered organism or product shall not be introduced into Arizona, sold, offered for sale, or distributed for release into Arizona's environment unless a permit issued pursuant to the application has been issued by USDA, or the Department has been notified by the USDA that the genetically engineered organisms or product is eligible under the notification procedure, as prescribed by 7 CFR 340.3, revised April 1993, or it has been determined by

the USDA to be of nonregulated status, as prescribed by 7 CFR 340.6, revised April 1993. The material incorporated herein by reference is on file with the Office of the Secretary of State and does not include any later amendments or editions of the incorporated matter.

1. Applicants for the release or use of genetically engineered organisms or products shall follow all permit application procedures required by USDA.
2. In addition to USDA's requirements, permit applications shall demonstrate to the Department that:
 - a. Genetically engineered organisms or products shall be handled in such a manner so that no genetically engineered organism or product accidentally escapes into Arizona's environment.
 - b. All permit applicants shall comply with Arizona quarantine rules regulating the plants, pests, or organisms being introduced into Arizona.
3. The Department may, if it deems necessary to protect agriculture, public health, or the environment from potential adverse effects from the introduction of a specific genetically engineered organism or product:
 - a. Place restrictions on the number and location of organisms or products released, method of release, training of persons involved with the release of organisms or products, disposal of organisms or products, and other conditions of use;
 - b. Require measures to limit dispersal of released organisms or spread of inserted genes or gene products;
 - c. Require monitoring of the abundance and dispersal of the released organism or inserted genes or gene products;
 - d. Request the USDA to deny, suspend, modify, or revoke the permit for failure to comply with this rule.
 - e. Request the USDA to suspend the permit if it is determined that an adverse effect is occurring or is likely to occur because of a release authorized by such permit.
4. To the extent possible, the Department shall accept for review and base its decision on the data submitted with the federal application. However, the Department may request additional information from the applicant to assess the risks to animals and plants, including risks of vector transmissions of genetically engineered organisms or products.
5. The Associate Director shall review the application recommendations with the Director who shall, within the time period prescribed on each USDA application, approve, conditionally approve, or deny the permit.
6. The Director shall return the completed application with the resolution to USDA for final action.

Historical Note

Adopted effective November 22, 1993 (Supp. 93-4).

3-101. Definitions

In this title, unless the context otherwise requires:

1. "Department" means the Arizona department of agriculture.
2. "Director" means the director of the department.

3-106. Advisory committees

A. The director or, by delegation, the associate director of a division may appoint ad hoc advisory committees to consider, assist and make recommendations to the associate director or division council on any issue under the division's jurisdiction. The director or, by delegation, the deputy director may appoint ad hoc advisory committees to consider, assist and make recommendations to the deputy director on any issue relating to the state agricultural laboratory, the office of agricultural safety or the office of inspections.

B. Any agriculture related organization may request the formation of and representation on an advisory committee, and an associate director may request the formation of and nominate advisory committee members to the director, but the actual appointments to the advisory committee are at the discretion and pleasure of the director. Members of advisory committees shall serve without compensation but are eligible for reimbursement for travel and other expenses as provided by law. Advisory committees are public bodies for purposes of title 38, chapter 3, article 3.1.

C. The director shall assign the subjects, conditions, terms of appointments and deadlines for advisory committees to complete their work and may provide for the termination or indefinite continuation of any advisory committee. The associate director, or deputy director, as appropriate, shall make a written response to the advisory committee within fifteen days to each formal recommendation made by the advisory committee.

3-107. Organizational and administrative powers and duties of the director

A. The director shall:

1. Formulate the program and policies of the department and adopt administrative rules to effect its program and policies.
2. Ensure coordination and cooperation in the department in order to achieve a unified policy of administering and executing its responsibilities.
3. Subject to section 35-149, accept, expend and account for gifts, grants, devises and other contributions of money or property from any public or private source, including the federal government. All contributions shall be included in the annual report under paragraph 6 of this subsection. Monies received under this paragraph shall be deposited, pursuant to sections 35-146 and 35-147, in special funds for the purpose specified, which are exempt from the provisions of section 35-190 relating to lapsing of appropriations.
4. Contract and enter into interagency and intergovernmental agreements pursuant to title 11, chapter 7, article 3 with any private party or public agency.
5. Administer oaths to witnesses and issue and direct the service of subpoenas requiring witnesses to attend and testify at or requiring the production of evidence in hearings, investigations and other proceedings.
6. Not later than September 30 each year, issue a report to the governor and the legislature of the department's activities during the preceding fiscal year. The report may recommend statutory changes to improve the department's ability to achieve the purposes and policies established by law. The director shall provide a copy of the report to the Arizona state library, archives and public records.
7. Establish, equip and maintain a central office in Phoenix and field offices as the director deems necessary.
8. Sign all vouchers to expend money under this title, which shall be paid as other claims against this state out of the appropriations to the department.
9. Coordinate agricultural education efforts to foster an understanding of Arizona agriculture and to promote a more efficient cooperation and understanding among agricultural educators, producers, dealers, buyers, mass media and the consuming public to stimulate the production, consumption and marketing of Arizona agricultural products.
10. Employ staff subject to title 41, chapter 4, article 4 and terminate employment for cause as provided by title 41, chapter 4, article 5.
11. Conduct hearings on appeals by producers regarding the assessed actual costs of the plow up and the penalty of one hundred fifty per cent for unpaid costs pursuant to section 3-204.01. The director may adopt rules to implement this paragraph.
12. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

B. The director may:

1. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.

2. Construct and operate border inspection stations or other necessary facilities in this state and cooperate by joint agreement with an adjoining state in constructing and operating border inspection stations or other facilities within the boundaries of this state or of the adjoining state.
3. Cooperate with agencies of the United States and other states and other agencies of this state and enter into agreements in developing and administering state and federal agricultural programs regarding the use of department officers, inspectors or other resources in this state, in other states or in other countries.
4. Cooperate with the office of tourism in distributing Arizona tourist information.
5. Enter into compliance agreements with any person, state or regulatory agency. For the purposes of this paragraph, "compliance agreement" means any written agreement or permit between a person and the department for the purpose of enforcing the department's requirements.
6. Abate, suppress, control, regulate, seize, quarantine or destroy any agricultural product or foodstuff that is adulterated or contaminated as the result of an accident at a commercial nuclear generating station as defined in section 26-301, paragraph 1. A person owning an agricultural product or foodstuff that has been subject to this paragraph may request a hearing pursuant to title 41, chapter 6, article 10.
7. Engage in joint venture activities with businesses and commodity groups that are specifically designed to further the mission of the department, that comply with the constitution and laws of the United States and that do not compete with private enterprise.
8. Sell, exchange or otherwise dispose of personal property labeled with the "Arizona grown" trademark. Revenues received pursuant to this paragraph shall be credited to the commodity promotion fund established by section 3-109.02.

3-145. Mandatory and voluntary certification; sampling procedures; application; expiration; renewal

A. A person who establishes, conducts or maintains a laboratory that provides agricultural laboratory services to agencies or departments of this state or its political subdivisions shall apply for a certificate from the state agricultural laboratory as proof that the laboratory so certified is in compliance with rules adopted by the director for the certification of such laboratories. Any other person providing agricultural laboratory services may apply for such a certificate.

B. A person providing guaranteed laboratory analysis information to distributors of commercial feed and whole seeds for consumption by livestock shall be certified under this section.

C. An individual who collects samples for the state agricultural laboratory or for any certified agricultural laboratory shall follow the sampling procedures established by the director.

D. A certified laboratory shall report test results only to the party who provided the original sample and, on request, to the state agricultural laboratory or as required by section 3-2611.01.

E. A person who desires a certificate pursuant to this section shall file with the state agricultural laboratory an application for a certificate accompanied by the application fee.

F. The application shall be on a form prescribed by the assistant director and furnished by the state agricultural laboratory and shall contain:

1. The name and location of the laboratory.
2. The name of the person owning the laboratory and the name of the person supervising the laboratory.
3. A description of the programs, services and functions provided by the laboratory.
4. Such other information as the assistant director deems necessary to carry out the purposes of this section.

G. The assistant director shall issue a certificate to an applicant if the assistant director is satisfied that the applicant has complied with the rules prescribing standards for certified laboratories.

H. A certificate expires one year after the date of issuance and shall be renewed upon payment of the renewal application fee as prescribed in section 3-146 and continued compliance with this article and the applicable rules.

3-201. Definitions

In this article, unless the context otherwise requires:

1. "Associate director" means the associate director of the division.
2. "Diseases" includes any fungus, bacterium, virus or other organism of any kind and any unknown cause that is or may be found to be injurious, or likely to be or to become injurious to any domesticated or cultivated plant, or to the product of any such plant.
3. "Division" means the plant services division of the Arizona department of agriculture.
4. "Noxious weed" means any species of plant that is, or is liable to be, detrimental or destructive and difficult to control or eradicate and shall include any species that the director, after investigation and hearing, shall determine to be a noxious weed.
5. "Nursery" means real property or other premises on or in which nursery stock is propagated, grown or cultivated or from which source nursery stock is offered for distribution or sale.
6. "Nursery stock" includes all trees, shrubs, vines, cacti, agaves, succulents, herbaceous plants whether annuals, biennials or perennials, bulbs, corms, rhizomes, roots, decorative plant material, flowers, fruit pits or seeds, cuttings, buds, grafts, scions and other plants intended for sale, gift or propagation, either cultivated or collected in the wild, except seeds as regulated by article 2 of this chapter, fruit and vegetables regulated by chapter 3, articles 2 and 4 of this title and cotton plants.
7. "Pests" includes all noxious weeds, insects, diseases, mites, spiders, nematodes and other animal or plant organisms found injurious, or likely to be or to become injurious, to any domesticated, cultivated, native or wild plant, or to the product of any such plant.
8. "Plant" or "crop" includes every kind of vegetation, wild or domesticated, and any part thereof, as well as seed, fruit or other natural product of such vegetation.
9. "Shipment" includes anything that is brought into the state or that is transported within the state and that may be the host or may contain or carry or may be susceptible of containing, carrying or having present on, in or about it any plant pest or plant disease.

3-201.01. Associate director; powers and duties

A. The associate director may, as authorized by the director:

1. Quarantine, treat, eradicate, destroy or reject out of state pests and all plants that are infested or infected with pests or that are the host or carrier or the means of propagating or disseminating a pest.
2. Enforce all rules and orders necessary to carry out the purposes of this article:
 - (a) To prevent introduction of a pest into the state.
 - (b) To prevent propagation or dissemination of a pest from one locality to another in this state.
 - (c) To control, eradicate or suppress a pest or prevent introduction into this state of a pest from out of state.
 - (d) To fix the terms and conditions on which plants or any other article or thing of any nature whatever likely to be infested or infected with or be the carrier of, or the means of propagating or disseminating, a pest that may be shipped or brought into this state, or moved from one locality or place to another in this state.
 - (e) To prohibit plants or things likely to be infected with, be the carrier of or be the means of spreading, propagating or disseminating a pest from being shipped or brought into this state or moved from one locality to another in this state.
3. Cooperate with the United States secretary of agriculture and the secretary's representatives in interstate matters pertaining to the objects of this article.
4. Proceed according to law to abate any public nuisance prohibited by this article.
5. Establish fees pursuant to section 3-217 and adopt rules necessary to effect and administer an Arizona nursery certification program, for any person who requests to participate, to certify that a participating nursery meets the criteria established by the associate director or the entry criteria established by another state, commonwealth or country.
6. Require records to determine the origin and quarantine certification status of nursery stock sold, offered for sale or transported by any person into or within this state.

B. The associate director shall:

1. Keep the director informed concerning dangers to the agricultural and horticultural interests of this state from pests.
2. Faithfully enforce and execute all rules and orders of the department pertaining to the division, using all necessary and proper means including court action.
3. Prepare, publish electronically, post and make available at least once each year bulletins containing such information as the associate director deems proper and the current rules and orders of the department.
4. Enter in or on any premises or other place, train, vehicle or other means of transportation in or entering this state that is suspected of containing, harboring or having present one or more pests.
5. Make inspections to determine if a pest is present.
6. Open, without unnecessary injury to property, any box, container or package at any time during business or operating hours, and, after notifying the owner or person in charge, if the owner or person in charge is found in the county, open any car, enclosure or building that the associate director suspects contains, harbors or has present a pest, and examine and inspect the contents as may be necessary to determine if a pest is present.

7. If in performing other duties the associate director determines that plant materials inspected and being delivered or transported or shipped by mail or courier are dead, dying or otherwise inferior in quality, mark the plant or package, or both, advising the recipient and sender that, in the judgment of the associate director, the plant materials were found to be dead, dying or of inferior quality. This paragraph does not authorize the associate director to perform inspections solely for the purposes set forth in this paragraph.

3-204. Summary abatement of imminently dangerous nuisance; procedure; expense; lien; public sale; reimbursement costs and penalties to state for certain abatements; civil penalty.

A. If, in the opinion of the director, the danger to the agricultural and horticultural industry of the state is imminent if the nuisance caused by a plant or thing is not speedily abated or suppressed, and if the director finds it is practical to summarily abate the nuisance, either by the destruction of the plant or thing or by the treatment thereof so as to destroy or eradicate the crop pest or disease without actually destroying the plant or thing, the director shall in writing direct the owner or person in charge of the nuisance, if the owner or person is found in the county, forthwith and at the owner's or person's expense to abate and suppress the nuisance in the manner provided in the written direction. If the owner or person in charge fails or neglects to comply with the direction for a period of five days after the date on which the direction was delivered to or served on the owner or person, the director shall summarily abate the nuisance in the manner specified in the written direction.

B. If the owner or person in charge or control of the nuisance is a nonresident of the state or cannot, after reasonable diligence by the director, be found within the county where the nuisance exists, the director shall publish the notice and the direction one time in a newspaper published in the county, and shall post a copy at, on or in the immediate vicinity of the nuisance, and after seven days from the first publication and posting, the director shall abate the nuisance in the manner specified in the direction.

C. If the nuisance is abated by the director, the expense shall be borne by the state, but, when the abatement does not involve the destruction of the plant or thing and it has some value after the crop pest or disease has been eradicated, the state shall have a first claim and lien thereon for the payment of expenses incurred in the abatement of the nuisance.

D. The director shall notify the owner or person in charge or control of the nuisance of the amount of the expenses, and that unless the amount is paid within ten days after the date of service of the notice on the owner or person in charge, the plant or thing will be sold at public sale, and the proceeds, or so much thereof as may be necessary, applied to the payment of the expenses. The notice shall be personally served or posted as required in this section for notices to abate.

E. If the owner or person in charge of the plant or thing fails to pay the expenses within the time specified in the notice, the director shall give public notice of the time and place of sale with a description of the plant or thing to be sold, and the amount of expenses against it, which shall include costs of publication, posting and service of notice. The notice of sale shall be published and posted as provided in this section for the publication and posting of direction to suppress the nuisance.

F. The owner or person in charge of a plant or thing constituting the nuisance may waive in writing the service of all directions and notices in connection with the abatement or sale thereof.

G. If the director is required to abate the nuisance of stub, soca or volunteer cotton following the refusal by the owner or person in charge or control of the nuisance to do so, the owner or person in charge or control of the nuisance shall reimburse the department for the actual costs of the state's abatement of the nuisance. An injunction shall not be granted to stay this state from abating the nuisance. The director may request the cotton research and protection council to provide monies pursuant to section 3-1085, subsection B to help defray the department's cost of abatement until the owner or person in charge reimburses the department for those costs. If the actual costs of abatement are not paid within ten days after the owner or person in charge receives notice of the amount of the costs, the director may impose a civil penalty of fifty per cent of the costs of abatement. At the director's request, the attorney general shall file an action in superior court to recover civil penalties assessed pursuant to this subsection. All civil penalties collected under this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the dangerous plants, pests and diseases trust fund established by section 3-214.01.

3-205. Abatement of nuisance not imminently dangerous; procedure; lien; foreclosure; release of lien; reimbursement costs and penalties to state for certain abatements; civil penalty.

- A. If the director believes the danger to the agricultural and horticultural industry is not imminent, or if impractical for any reason to summarily abate the nuisance, as described in sections 3-203, 3-204, 3-206 and 3-207, the director shall not require summary destruction or eradication, but shall set forth the measures required to be taken by the owner or person in charge to control, suppress or eradicate the danger, and shall require the person, at the person's expense, to take and comply with the measures specified in the direction and subsequent directions.
- B. The directions shall be made, given and served as prescribed for summary abatement, and if they are not complied with, the director may proceed as provided by the directions, and the expense shall be charged against the state.
- C. If the plant or thing constituting the nuisance consists only of personalty and is not attached to land or contained in a building, enclosure, vehicle or place belonging to the person, the state shall have the same lien and it is enforceable in the same manner as provided for summary abatement of the nuisance under section 3-204.
- D. If the plant or thing is attached to land or contained in a building, enclosure or vehicle that is the property of the person, the lien shall also attach to the land, building, enclosure or vehicle, and the director shall prepare and file in the office of the county recorder where the property is situated a notice of the lien, setting forth the amount and the name of the owner or person in charge, and stating that the amount of the lien shall be paid within thirty days from filing the notice, or otherwise the property will be subjected to payment thereof.
- E. The lien shall be prior to all other liens against the property except liens for state and county taxes. If the amount of the lien is not paid within the thirty days, the county attorney, on written request of the director, shall foreclose the lien against the property impressed therewith as other liens are foreclosed.
- F. On satisfaction of the lien, the director shall issue a release of the lien to the person against whom the lien was claimed. Such release shall be a document in a form as specified in section 11-480.
- G. If the director is required to abate the nuisance of stub, soca or volunteer cotton following the refusal by the owner or person in charge or control of the nuisance to do so, the owner or person in charge or control of the nuisance shall reimburse the department for the actual costs of the state's abatement of the nuisance. An injunction shall not be granted to stay this state from abating the nuisance. The director may request the cotton research and protection council to provide monies pursuant to section 3-1085, subsection B to help defray the department's cost of abatement until the owner or person in charge reimburses the department for those costs. If the actual costs of abatement are not paid within ten days after the owner or person in charge receives notice of the amount of the costs, the director may impose a civil penalty of one hundred fifty per cent of the costs of abatement. At the director's request, the attorney general shall file an action in superior court to recover civil penalties assessed pursuant to this subsection. All civil penalties collected under this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the dangerous plants, pests and diseases trust fund established by section 3-214.01.

3-205.02. Regulating production of colored cotton; civil penalties

A. The director may adopt rules to regulate the production of colored cotton. The rules shall include registering producers, production requirements, field separation, cotton appliances used to produce, transport and handle colored cotton and ginning and seed requirements.

B. The director may impose the following sanctions for violating colored cotton rules:

1. A civil penalty assessed against a grower of not more than seven hundred fifty dollars per acre for each planted acre of colored cotton unless the grower voluntarily abates the colored cotton crop before the first bloom.
2. A civil penalty assessed against the owner or operator of a cotton gin of not more than one hundred dollars per bale of colored cotton for violating ginning rules.
3. A civil penalty assessed against the owner or operator of a cotton appliance of not more than five hundred dollars per violation for violating the cotton appliance rules.
4. Suspension or revocation of a grower's colored cotton registration.

C. All civil penalties assessed pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

3-208. Hearing on plant menace; evidence; quarantine zones; violation

A. Any interested party may be heard at the hearing, either in person or by attorney. The department shall preserve a written record of all evidence introduced at the hearing.

B. If the director finds that a menace exists, he may make and enforce rules and orders and establish quarantine zones or districts to eradicate, suppress or control the menace.

C. When the director finds the danger which caused the establishment of a prohibited zone is no longer present, he shall revoke the order establishing the zone, and may by order change or modify the order establishing a zone or applicable rules without notice or hearing, but no additional territory shall by subsequent order be added to or included within the boundaries of the zone except by notice and hearing as required for establishing the zone.

D. After the date on which the director enters the order establishing a zone, it shall be unlawful to plant, grow or cultivate, or have in, or to transport from or into the district any plant of the kind specified in the order except in accordance with the order or subsequent orders.

3-209. Quarantines; notice to common carriers; duty to hold for inspection; certificate of release; inspection

A. When the director believes the importation from designated countries, states or localities of specified varieties of plants, fruits, vegetables, seeds, soil or agricultural or horticultural products is dangerous to this state or to the agricultural or horticultural industry of this state because of the likelihood of infestation with crop pests or diseases, the director may declare a quarantine against all varieties from those places. Common carriers shall be immediately notified of the declaration of quarantine and are prohibited from transporting quarantined products or pests and diseases associated with the quarantined products from the designated places into the state.

B. Any person who brings or causes to be brought into the state plants, fruits, vegetables or agricultural or horticultural products is subject to either of the following procedures:

1. The inspector may issue a certificate of release to the person at a properly signed border inspection station.
2. The inspector may instruct the person, at a properly signed border inspection station, to hold the shipment at the place where it is to be received, without unnecessarily moving or placing it where it may be harmful, for immediate inspection of the inspector, and shall not deliver the shipment to the person entitled to it until furnished with a certificate of release by the inspector.

C. If a person does not obtain a certificate of release as prescribed by subsection B, the person shall, immediately after arrival in this state, notify the inspector of the place where the shipment will be received, and hold it, without unnecessarily moving or placing it where it may be harmful for immediate inspection of the inspector, and shall not deliver the shipment to the person entitled to it until furnished with a certificate of release by the inspector.

D. The director, the associate director or the inspector may enter into any place where the products are received, as described in subsection C, for the purpose of making the investigation or examination.

3-215.01. Violation; civil penalty

A. A person who knowingly transports or causes the transportation of a crop pest or crop disease into this state is subject to a civil penalty as prescribed by subsection B of this section. A person who receives a certificate of release under section 3-209 is exempt from this section.

B. The director may bring an action under this section in superior court in the county in which a violation is alleged to have occurred. On finding a knowing violation, the court may assess the civil penalty in an amount it considers appropriate, but not exceeding five thousand dollars for each violation. In determining the amount of the penalty, the court shall consider at least the following items:

1. Any prior violations of the same nature within the preceding twenty-four months.
2. The actual consequences and danger of the crop pest or crop disease to the state or to the agricultural or horticultural industry in this state.
3. The commodity or other thing that carries the crop pest or crop disease into this state.
4. The class of crop pest or crop disease introduced.
5. Whether the defendant possesses a certificate of release.
6. Any abatement action taken by the defendant.
7. The extent of the infestation.

C. All civil penalties assessed pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

3-217. Nursery or nursery stock certification; fee; denial, revocation or suspension; hearing

A. The associate director shall:

1. Establish a nursery certification program.
2. By rule, set and collect a variable fee for each nursery or nursery stock certification inspection based on a schedule of costs for services as may be appropriate to recover the actual direct costs incurred by the division, but not more than fifty dollars for each inspection.

B. If the state agricultural laboratory performs tests under a nursery certification program, the laboratory may collect fees prescribed by rule for the tests established as follows:

1. The associate director shall establish by rule the extent and type of testing required for the Arizona certified nursery program including only tests that the department would not otherwise have performed to determine if the nursery or nursery stock is infested or infected with a crop pest or disease.
2. The extent and type of testing required for the export criteria program shall be established according to the requirements of another state, country or commonwealth.

C. The associate director may issue, refuse to issue, revoke or suspend a nursery certificate under the nursery certification program.

D. A person who is aggrieved by any action under the nursery certification program may request a hearing pursuant to title 41, chapter 6, article 10.

3-231. Definitions

In this article, unless the context otherwise requires:

1. "Advertisement" means all representations, other than those on the label, made in any manner relating to seed within the scope of this article.
2. "Agricultural seed" means the seeds of grass, forage, cereal, and fiber crops and any other kinds of seeds commonly recognized within this state as agricultural seeds, lawn seeds and mixtures of such seeds, and may include noxious-weed seeds when the department determines that such seed is being used as agricultural seed.
3. "Cease and desist order" means an administrative order provided by law restraining the sale, use, disposition and movement of a definite amount of seed.
4. "Certified seed" or "registered seed" means seed that has been produced and labeled in accordance with the procedures and in compliance with the rules and regulations of an officially recognized seed-certifying agency.
5. "Custom application" means an application of pesticide to a seed by a pesticide applicator who does not hold title to the seed.
6. "Dealer" means any person who sells seed.
7. "Division" means the environmental services division of the Arizona department of agriculture.
8. "Established plant, warehouse, or place of business" means any permanent office headquarters maintained by an importer, broker, seller or authorized manufacturer's agent, or any permanent warehouse, building or structure in or from which a permanent business is operated, at which stocks of agricultural seed, vegetable seed or ornamental plant seed regulated by this article are sold, distributed, processed, mixed, stored or kept.
9. "Hybrid" means the first generation seed of a crossbreed produced by controlling pollination and by combining two or more inbred lines, or one inbred or a single crossbreed with an open pollinated variety, or two varieties or species, except open pollinated varieties of corn (*zea mays*). The second generation, or subsequent generations from such crosses, shall not be regarded as crosses. Hybrid designations shall be treated as variety names. Any kinds or varieties that have pure seed which is less than ninety-five per cent but more than seventy-five per cent hybrid seed as a result of incompletely controlled pollination in a cross shall be labeled to show the percentage of pure seed that is hybrid seed, or shall be labeled with a statement such as "contains from seventy-five per cent to ninety-five per cent hybrid seed". No one kind of seed shall be labeled as hybrid if the pure seed contains less than seventy-five per cent hybrid seed.
10. "Inoculant" means a commercial preparation containing nitrogen-fixing bacteria that is applied to seed.
11. "Kind" means one or more related species or subspecies which singly or collectively are known by one common name, such as corn, oats, alfalfa and timothy.
12. "Label" means any label or other written, printed or graphic representations, in any form whatsoever, accompanying or pertaining to any seed whether in bulk or in containers and includes representations or invoices.
13. "Labeler" means any person whose name and address appear on the label pertaining to or attached to a lot or container of agricultural, vegetable or ornamental plant seed sold, offered for sale, exposed for sale or transported for sowing purposes.
14. "License" means an Arizona state seed license that is obtained from the department.

15. "Lot" means a definite quantity of seed identified by a lot number or other mark, every portion or bag of which is uniform within recognized tolerances for the factors which appear in the labeling.
16. "Noxious-weed seeds" means "prohibited noxious-weed seeds" and "restricted noxious-weed seeds" as defined as follows and as listed in the rules adopted under this article.
- (a) "Prohibited noxious-weed seeds" are the seeds of perennial or annual weeds which, when established, are highly destructive and difficult to control by ordinary good cultural practice and the seed of which is prohibited by this article subject to recognized tolerances.
- (b) "Restricted noxious-weed seeds" are all noxious-weed seed not classified as prohibited noxious-weed seed.
17. "Ornamental plant seed" means the seed of any plant used for decorative or ornamental purposes and includes flower seed.
18. "Person" means any individual, partnership, corporation, company, society or association.
19. "Pure seed", "germination" and other seed labeling and testing terms in common usage shall be defined as in the federal seed act (53 Stat. 1275; 7 United States Code sections 1551 through 1611) and the rules and regulations promulgated under that act.
20. "Record" means all information relating to the shipment or shipments involved and includes a file sample of each lot of seed.
21. "Sell" means offer for sale, expose for sale, possess for sale, exchange, barter or trade.
22. "Treated" means that the seed has received an application of a substance or process that is designed to reduce, control or repel certain disease organisms, insects or other pests attacking such seeds or seedlings growing from the seeds.
23. "Type" means either a group of varieties so similar that the individual varieties cannot be clearly differentiated except under special conditions or, when used with a variety name, seed of the variety named which may be mixed with seed of other varieties of the same kind and of similar character. If type is designated, the designation may be associated with the name of the kind but in all cases shall be clearly associated with the word "type". If the type designation does not include a variety name, it shall include a name that describes a group of varieties of similar character, and the pure seed shall be at least ninety per cent of one or more varieties all of which conform to the type designation.
24. "Variety" means a subdivision of a kind characterized by growth, yield, plant, fruit, seed or other characteristics by which it can be differentiated from other plants of the same kind.
25. "Vegetable seeds" means seeds of those crops which are grown in gardens and on truck farms and are generally known and sold under the name of vegetable seeds in this state.
26. "Weed seeds" means the seeds of all plants generally recognized as weeds within this state and includes noxious-weed seeds.

3-233. Powers and duties; fees; penalty

A. For the purpose of carrying out this article, the director may:

1. In order to have access to seeds and the records pertaining to seeds subject to this article and the rules adopted under this article, enter upon:

(a) Any established plant, warehouse or place of business during customary business hours.

(b) Any truck or other conveyance operated on land, on water or in the air on probable cause or reasonable suspicion to believe that a violation of this article has occurred.

2. Issue and enforce a written cease and desist order to the owner or custodian of any lot of agricultural, vegetable or ornamental plant seed that the director finds is in violation of this article, as provided in section 3-238, and any lot or lots of seed sold, or transported for sale, that do not meet all requirements of the plant variety protection act (P.L. 91-577; 84 Stat. 1542; 7 United States Code sections 2321 through 2582).

3. Provide through the state agricultural laboratory for seed testing facilities, employ qualified persons and incur expenses necessary to comply with this article.

4. Through the state agricultural laboratory:

(a) Provide for making purity, germination, noxious weed, tetrazolium and pathology tests of seeds for farmers and dealers on request pursuant to rules prescribed by the director governing such testing.

(b) Collect charges for the tests as prescribed by the director.

5. Cooperate with the United States department of agriculture and other agencies in seed law enforcement.

6. Revoke, suspend, restrict, deny or choose not to renew a license issued under this article or fix periods and terms of probation for a license holder after a hearing at which the license holder is found by a preponderance of the evidence to have violated this article or any of the rules adopted under this article.

7. Establish by rule fees that are sufficient to cover the costs of interstate and international exportation inspection activities under section 3-232, subsection A, paragraph 1, but annually not more than one dollar fifty cents per acre. Monies received under this paragraph shall be deposited in the seed law trust fund pursuant to section 3-234.

B. For the purposes of this article, the director, after an opportunity for a hearing, shall establish and collect the following fees:

1. For a seed dealer's license, not more than fifty dollars per year.

2. For a labeler's license, not more than five hundred dollars per year.

C. The director shall assess a license holder who does not submit the annual license renewal fees to the department by July 1 a penalty of ten per cent of the amount of the license fee per month for not more than three months. Penalties collected under this subsection shall be deposited in the seed law trust fund pursuant to section 3-234.

3-235. Seed dealer and labeler licenses; fee; exception

A. An Arizona seed dealer or an out-of-state seed dealer who sells, distributes, processes or mixes for the use of others any agricultural, vegetable or ornamental plant seed, except vegetable and ornamental plant seed in packages of less than one pound, shall obtain a license from the division, authorizing the dealer to sell, distribute, process or mix such seed. A dealer is not entitled to have a license unless the dealer has an established plant, warehouse or place of business. A separate seed dealer license is required for each place of business in this state from which seed regulated by this article is sold.

B. A seed labeler who labels any agricultural, vegetable or ornamental plant seed for sale, distribution or processing shall obtain a seed labeler license from the division for each place of business at which seed regulated by this article is labeled.

C. An application for a license shall be accompanied by the fee prescribed by section 3-233. A license shall be renewed annually not later than July 1, and the application for renewal shall be accompanied by the fee prescribed by section 3-233.

D. This section does not apply to a farmer growing seed crops for sale to a seed dealer or labeler. The portion of crops received by an individual who harvests the producer's crop and receives part of the crop as payment for services rendered in the harvesting shall be exempt from this section.

3-237. Label requirements; rules

The director shall adopt rules to specify labeling requirements for each container of agricultural, vegetable and ornamental plant seed sold, offered for sale, exposed for sale or transported in this state for sowing purposes. The labeling requirements shall include:

1. Germination.
2. Purity.
3. Noxious weed content.
4. Precautionary statements the director considers to be necessary.
5. Labeler or packager information.
6. Seed origin.
7. Other issues the director considers to be necessary.

3-441. Definitions

In this article, unless the context otherwise requires:

1. "Associate director" means the associate director of the citrus, fruit and vegetable division of the department.
2. "Bulk lot" means citrus fruit that is not contained in a box, carton, crate or lug but may be contained in a bin or a similar container and is set apart from citrus fruit that is packaged in containers authorized pursuant to this article or rules adopted pursuant to this article.
3. "By-products" means any product from citrus fruit that is commercially processed or manufactured for resale.
4. "Citrus" or "citrus fruit" means the fruit of any orange, lemon, lime, grapefruit, tangerine, kumquat or other citrus tree that produces edible citrus fruit suitable for human consumption.
5. "Commission merchant" means a person that receives on consignment or solicits from the producer any citrus fruit for sale on commission on behalf of the producer or accepts any citrus fruit in trust from the producer for the purpose of resale. Commission merchant does not include a shipper.
6. "Containers" or "packages" means any container used for packing, shipping or selling citrus fruit.
7. "Dealer" means a person that sells, markets or distributes citrus fruit that the person purchased from a producer or markets as an agent, broker or commission merchant, except at retail. Dealer does not include a shipper.
8. "Lot" means a unit of identical or similar items that are grouped or consolidated in one or more containers for packaging or transporting or a cluster of identical or similar items that are included in the same shipping order, bill of lading or other itemized transport order.
9. "Packer" means a person, other than a producer, shipper or dealer, that is engaged in the business of packing any citrus fruit.
10. "Person" includes an individual, firm, association, partnership, trust or corporation.
11. "Producer" means a person that is engaged in this state in the business of producing or causing citrus fruit to be produced for market in commercial quantities.
12. "Shipper" means a person that ships, transports, sells or markets citrus fruit under the person's registered trademark or label or a person that first markets the citrus fruit on behalf of the producer. Shipper does not include a commission merchant.

3-445. Rulemaking; definition

A. Pursuant to section 3-527.02, the associate director may recommend to the director for adoption rules that are not in conflict with this article as the associate director deems necessary to carry out this article.

B. On recommendation of the associate director, the director shall prescribe:

1. Standards and grades for citrus fruit produced in this state and a standard for citrus fruit without specific standards pursuant to section 3-446. In establishing the specific standards, the associate director shall consider factors that apply to the product, including maturity, color, shape, size, firmness, freedom from decay, diseases, mechanical and plant pest injury and any other factors that indicate quality and condition.

2. The size, dimensions, labeling and markings of containers that are to be used to pack citrus fruit and the packing arrangements of the commodity in the container.

3. A permit system for experimental containers, experimental products and experimental packs, including an application, permit number, quantity allowed by the permit, duration of the permit and recordkeeping and renewal provisions.

4. Sampling rules for lots and containers of citrus fruit to reasonably produce a fair representation of the entire lot or container sampled.

5. The time period allowed to recondition citrus fruit pursuant to section 3-444.

6. Appropriate reporting and recordkeeping requirements for shippers, including:

(a) Reporting totals for each citrus variety shipped.

(b) A requirement for records to be retained for the preceding two years on the amount of each citrus variety sold by the shipper for each producer for purposes of reporting under article 1 of this chapter.

(c) A requirement for records to be retained for the preceding year on the percentage ownership interest of each producer for each citrus variety sold by the shipper.

7. Appropriate reporting and recordkeeping requirements for commission merchants.

C. For the purposes of this section, "year" has the same meaning prescribed in section 3-450.

3-449. Annual licensing; fees; application; penalty.

A. A person may not transact business as a citrus fruit dealer or shipper without first obtaining a license as provided in this article. The license expires on August 1 of each year and is renewable annually. The license fee shall be determined according to the annual gross sales based on the dealer's or shipper's previous fiscal year as follows:

1. If the annual gross sales are five hundred thousand dollars or more, the annual fee is four hundred fifty dollars.
2. If the annual gross sales are between two hundred thousand dollars and five hundred thousand dollars, the annual fee is three hundred dollars.
3. If the annual gross sales are two hundred thousand dollars or less, the annual fee is one hundred fifty dollars.
4. If the person was not in business the previous fiscal year, the annual fee is one hundred fifty dollars.

B. If a person engages in business in more than one category as a dealer or shipper, the license designation shall be based on the category in which most of the licensee's business is conducted.

C. The license fees collected by the associate director shall be deposited in the citrus, fruit and vegetable trust fund.

D. The application for a dealer or shipper license shall contain the following information:

1. The full name of the person applying for the license.
2. Whether the applicant is an individual, partnership, firm, corporation, association, trust or cooperative association and the full name of each member of the partnership or firm, the full name of each officer and director of the association or corporation or the full name of each trustee.
3. The principal business address of the applicant in this state and elsewhere and the address where the applicant conducts the described business.
4. The name of the statutory agent in this state for service of legal notice.
5. The category of license for which the applicant is applying.
6. A statement of the facts, signed under penalty of perjury, entitling the applicant to a license under the applicable category and stating whether the applicant has ever had any license to handle citrus, fruit or vegetables in any state denied, suspended or revoked.
7. If the applicant acts as a commission merchant, a schedule of commissions and charges for services, which may not be altered during the term of the license except by written agreement between the parties involved.

E. The associate director shall issue to the applicant a license to conduct the business described for a period of one year unless it is revoked for cause.

F. An applicant who tenders a renewal application for a license that is received by the associate director after August 15 shall pay a penalty of twenty-five dollars. An applicant who tenders a renewal application for a license that is received after September 1 shall pay a penalty of fifty dollars. All penalties shall be deposited in the citrus, fruit and vegetable trust fund.

3-481. Definitions

In this article, unless the context otherwise requires:

1. "Associate director" means the associate director of the division.
2. "Bulk lot" means fresh fruit or vegetables that are not contained in a box, carton, crate or lug but may be contained in a bin or a similar container and are set apart from fresh fruit and vegetables that are packaged in containers authorized pursuant to this article or rules adopted pursuant to this article.
3. "By-products" means a product that is commercially processed or manufactured for resale from fruits or vegetables or their juices.
4. "Commission merchant" means a person that receives on consignment or solicits from the producer any fruit or vegetable for sale on commission on behalf of the producer or that accepts any fruit or vegetable in trust from the producer for the purpose of resale. Commission merchant does not include a shipper.
5. "Container" means a box, carton or lug that is used for packing, shipping or selling fruit or vegetables that are authorized by this article or rules adopted pursuant to this article.
6. "Dealer" means a person that sells, markets or distributes fruit or vegetables that the person purchased from a producer or markets as an agent, broker or commission merchant, except at retail. Dealer does not include a shipper.
7. "Division" means the citrus, fruit and vegetable division of the department.
8. "Lot" means a unit of identical or similar items that are produced by one person and that are grouped or consolidated in one or more containers for packaging or transporting or a cluster of identical or similar items that are produced by one person and that are included in the same shipping order, bill of lading or other itemized transport order.
9. "Packer" means a person, other than a producer, shipper or dealer, that is engaged in the business of harvesting or packing fruit or vegetables.
10. "Person" includes an individual, firm, association, partnership, trust or corporation.
11. "Producer" means a person that is engaged in this state in the business of producing or causing fruit or vegetables to be produced for market in commercial quantities.
12. "Shipper" means a person that ships, transports, sells or markets fruit or vegetables under the person's registered trademark or label or a person that first markets the fruit or vegetables on behalf of the producer. Shipper does not include a commission merchant.

3-487. Rulemaking; definition

A. Pursuant to section 3-527.02, the associate director may recommend to the director for adoption rules not in conflict with this article, as the associate director deems necessary to carry out this article.

B. On recommendation of the associate director, the director shall prescribe:

1. Standards and grades for fruit and vegetables produced in this state and a standard for fruit and vegetables without specific standards. In establishing the specific standards, the associate director shall consider factors that apply to the product, including maturity, color, shape, size, firmness, freedom from decay, diseases, mechanical and plant pest injury and any other factors that indicate quality and condition.

2. The size, dimensions, labeling and markings of containers that are to be used to pack fruit or vegetables and the packing arrangements of the commodity in the container.

3. A permit system for experimental containers, experimental products and experimental packs, including an application, permit number, quantity allowed by the permit, duration of the permit and recordkeeping and renewal provisions.

4. Sampling rules for lots and containers of fruit and vegetables to reasonably produce a fair representation of the entire lot or container sampled.

5. The time period allowed to recondition fruit or vegetables pursuant to section 3-486.

6. Appropriate reporting and recordkeeping requirements for shippers, including:

(a) Reporting totals for each commodity shipped.

(b) A requirement for records to be retained for the preceding two years on the amount of each commodity sold by the shipper for each producer for purposes of reporting under article 1 of this chapter.

(c) A requirement for records to be retained for the preceding year on the percentage ownership interest of each producer for each commodity sold by the shipper.

7. Appropriate reporting and recordkeeping requirements for commission merchants.

C. For the purposes of this section, "year" has the same meaning prescribed in section 3-491.

3-492. Licensing dealers and shippers; application; fees; penalty

A. A person may not act as a dealer or shipper without first obtaining a license as provided in this article. Application for the license shall be filed with the associate director and accompanied by a license fee determined according to the annual gross sales based on the dealer's or shipper's previous fiscal year as follows:

1. If the annual gross sales are five hundred thousand dollars or more, the annual fee is five hundred dollars.
2. If the annual gross sales are between two hundred thousand dollars and five hundred thousand dollars, the annual fee is three hundred fifty dollars.
3. If the annual gross sales are two hundred thousand dollars or less, the annual fee is two hundred dollars.
4. If the person was not in business the previous fiscal year, the annual fee is two hundred dollars.

B. If a person engages in business in more than one category as a dealer or shipper, the license designation shall be based on the category in which most of the licensee's business is conducted.

C. The monies received as license fees under this section shall be paid into the citrus, fruit and vegetable trust fund. The license shall expire on September 1 of each year and is renewable annually.

D. The application for a dealer or shipper license shall contain the following information:

1. The full name of the person applying for the license.
2. Whether the applicant is an individual, partnership, firm, corporation, association, trust or cooperative association and the full name of each member of the partnership or firm, the full name of each officer and director of the association or corporation or the full name of each trustee.
3. The principal business address of the applicant in this state and elsewhere and the address where the applicant conducts the described business.
4. The name of the statutory agent in this state for service of legal notice.
5. The category of license for which the applicant is applying.
6. A statement of the facts, signed under penalty of perjury, entitling the applicant to a license under the applicable category and stating whether the applicant has ever had any license to handle citrus, fruit or vegetables in any state denied, suspended or revoked.
7. If the applicant acts as a commission merchant, a schedule of commissions and charges for services, which may not be altered during the term of the license except by written agreement between the parties involved.

E. The associate director shall issue to the applicant a license to conduct the business described for a period of one year unless it is revoked for cause.

F. An applicant who tenders a renewal application for a license that is received by the associate director after September 15 shall pay a penalty of twenty-five dollars. An applicant who tenders a renewal application for a license that is received after October 1 shall pay a penalty of fifty dollars. All penalties shall be deposited in the citrus, fruit and vegetable trust fund.