DEPARTMENT OF ENVIRONMENTAL QUALITY (F-16-1004)

Title 18, Chapter 5, Article 1, Classification of Water and Wastewater Facilities and Certification of Operators; Article 2, Public and Semipublic Swimming Pools and Spas; Article 3, Water Quality Management Planning; Article 4, Subdivisions; Article 5, Minimum Design Criteria

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

MEETING DATE: March 7, 2017 **AGENDA ITEM: E-3**

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

FROM: Marcus McGillivray, Legal Intern

DATE : February 21, 2017

SUBJECT: **DEPARTMENT OF ENVIRONMENTAL QUALITY (F-16-1004)**
Title 18, Chapter 5, Article 1, Classification of Water and Wastewater Facilities and Certification of Operators; Article 2, Public and Semipublic Swimming Pools and Spas; Article 3, Water Quality Management Planning; Article 4, Subdivisions; Article 5, Minimum Design Criteria

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COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

This is a five-year-review report from the Arizona Department of Environmental Quality (Department) regarding 78 rules in 18 A.A.C. Chapter 5, Articles 1, 2, 3, 4, and 5 pertaining to water quality for subdivisions and public swimming pools and water and waste water facilities. The rules were made at various points between 1990 and 2009.

Article 1 sets forth the standards and processes for the classification of water and wastewater facilities, as well as the certification requirements for the operators of those facilities. Article 2 sets forth the design criteria for public and semi-public swimming pools and spas, and ensures that they are safe and sanitary. Article 3 regulates the development and implementation of area wide wastewater treatment plans in order to avoid underutilization of existing wastewater treatment plans. Article 4 establishes a process to ensure that subdivisions have adequate public water systems, sewage collection and disposal systems, and garbage collection. Article 5 sets forth minimum design criteria for the construction and modification of public water systems.

Proposed Action

As detailed below, the Department anticipates submitting a rulemaking to the Council for Articles 2, 4, and 5 by July 2020.

Substantive or Procedural Concerns

None.

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

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

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

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

The rules are generally effective in achieving their objectives. However, the Department plans on repealing rules in Article 2 to incorporate a federal standard, and making amendments in Articles 4 and 5 to enhance effectiveness.

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

The Department has not received any written criticism regarding these rules in the last five years.

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

Yes. The Department cites to general and specific statutory authority. Under A.R.S. § 49-104(B)(12), the Department must prescribe reasonable measures to prevent pollution in public and semi-public swimming pools. Under A.R.S. § 49-361, the Department must adopt rules to classify sewage collection systems and treatment plants, and to certify operating personnel. Under A.R.S. § 49-203(B)(4), the Department may develop, implement, and administer a water quality planning process.

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

Yes. The rules are generally consistent with A.R.S. § 49-104(b)(13), 36-132(A)(12), 136(H)(10), and 33 U.S.C. § 1288. Sections R18-4-401, 407, 409, 410, 504 have outdated citations and references, which the Department plans to amend.

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

The Department indicates that the rules are enforced as written. The Department can delegate enforcement power to local municipal authorities for Articles 2, 4, and 5.

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

Yes. The Department believes the rules are clear, concise, and understandable.

8. Has the agency analyzed whether:

a. The rules are more stringent than corresponding federal law?

Yes. The Department states that the rules are not more stringent than federal law.

b. There is statutory authority to exceed the requirements of federal law?

N/A.

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

The rules were adopted before July 29, 2010.

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

N/A.

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

N/A.

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

Yes. In the previous report, the Department indicated its intention to amend Article 5 by July 2015. The Department was unable to complete this course of action due to the continued moratorium on rulemaking and changing Department priorities.

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

Yes. The Department indicates that it will submit a final rulemaking by December 2020.

- Article 2: The Department intends to repeal some of the rules and incorporate by reference a federal standard. The Department is working with the Department of Health Services (DHS) to determine which rules can be repealed without leaving a gap in regulation.
- Article 4: The Department plans to amend seven rules to update citations and references, and to reflect current rulemaking style.
- Article 5: The Department is considering updating the minimum design criteria in R18-5-502, which incorporates by reference a DHS standard. The rulemaking, if approved, would affect every public water system; the Department plans on extensive stakeholder outreach before submitting this rulemaking.

Conclusion

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

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

MEETING DATE: March 7, 2017 **AGENDA ITEM: E-3**

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

FROM: GRRC Economic Team

DATE : February 21, 2017

SUBJECT: **DEPARTMENT OF ENVIRONMENTAL QUALITY (F-16-1004)**
Title 18, Chapter 5, Article 1, Classification of Water and Wastewater Facilities and Certification of Operators; Article 2, Public and Semipublic Swimming Pools and Spas; Article 3, Water Quality Management Planning; Article 4, Subdivisions; Article 5, Minimum Design Criteria

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

1. Economic Impact Comparison

Economic, small business, and consumer impact statements (EIS) from the most recent rulemakings were available for the Article 1 through 5 rules contained in the five-year-review report.

The rules in Article 1 establish standards and processes for the classification of water and wastewater facilities, and for the certification of operators of those facilities. As of 2017, there are a total of 13,309 active certificates and 6,029 active operators. Some operators have multiple certificates in both drinking water and wastewater. There are 4,947 operators holding drinking water certificates, and 3,790 operators holding wastewater certificates.

The rules in Article 2 ensure that public and semipublic swimming pools and spas are designed and constructed in accordance with the minimum design standards in the rules. Since the last five-year review, the Department has been increasing the amount of approvals for plans of new construction or modification of public and semipublic swimming pools and spas. The Department averaged nine approvals in 2012 and approximately 20 plans in 2016.

The rules in Article 3 facilitate the development and implementation of area-wide wastewater treatment plans, in order to avoid underutilization of existing wastewater treatment plants and avoid the inefficiencies associated with the use of numerous small wastewater treatment plans. In the past five years, the Department has received a total of eleven 208 plan amendments and about 15-20 requests for determinations of conformance.

The rules in Article 4 establish a process that ensures that sanitary facilities for a subdivision are provided that meet minimum standards, including an adequate public water system, sewage collection and disposal systems, and garbage collection and disposal.

The Article 5 rules ensure that public water systems are constructed or modified in accordance with the minimum design requirements set out in these rules. In the past five years, the Department has increased the number of applications for Approvals to Construct received and processed from 157 in 2012 to 216 in 2016.

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

The Department has determined that the rules in Articles 1 through 5 are mostly effective and impose the least burden and costs to the regulated community. The cost to comply with these rules is minimal and necessary to protect public health and safety.

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

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

4. Conclusion

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

ARIZONA DEPARTMENT OF
ENVIRONMENTAL QUALITY

Douglas A. Ducey
Governor

Misael Cabrera
Director

August 18, 2016

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

Re: Five-year-Review Report: Title 18, Chapter 5

Dear Ms. Ong:

The Arizona Department of Environmental Quality has reviewed Title 1 8, Chapter 5 pursuant to A.R.S. § 41-1056 and the Governor's Regulatory Review Council's five-year review schedule. Enclosed is a report of ADEQ's findings, proposed courses of action and reasons, and justifications. As this Report details, ADEQ evaluated its rules in accordance with Executive Order 2015-01 , Paragraph 5. As ADEQ reviews and establishes its rulemaking priorities, and pending the status of the rule moratorium, ADEQ anticipates submitting rulemakings to the Council for certain sections in these Articles.

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

You may contact Wendy LeStarge with questions on the report at (602) 771-4836 or e-mail at WI 1@azdeq.gov. Sincerely,

Misae Cabrera
Director

Enclosures: Five-year Review Report

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FIVE-YEAR REVIEW REPORT

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 5. DEPARTMENT OF ENVIRONMENTAL QUALITY

ENVIRONMENTAL REVIEWS AND CERTIFICATION

ARTICLE 1. CLASSIFICATION OF WATER AND WASTEWATER FACILITIES AND CERTIFICATION OF OPERATORS

ARTICLE 2. PUBLIC AND SEMIPUBLIC SWIMMING POOLS AND SPAS

ARTICLE 3. WATER QUALITY MANAGEMENT PLANNING

ARTICLE 4. SUBDIVISIONS

ARTICLE 5. MINIMUM DESIGN CRITERIA

ARTICLE 1. CLASSIFICATION OF WATER AND WASTEWATER FACILITIES AND CERTIFICATION OF OPERATORS

I. Information That Is Identical For All Rules in A.A.C. Title 18, Chapter 5, Article 1 (unless stated otherwise in the Section-by-Section Analysis)

1. Authorization of rules by existing statutes:

   The rules in 18 A.A.C. 5, Article 1 are authorized by A.R.S. §§ 49-352 and 49-361.

2. Objective of the rules:

   The Article 1 rules establish standards and processes for the classification of water and wastewater facilities, and for the certification of operators of those facilities. There are a total of 13,309 active certificates and 6,029 active operators. Some operators have multiple certificates in both drinking water and wastewater. There are 4,947 operators holding drinking water certificates, and 3,790 operators holding wastewater certificates.

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

   The Arizona Department of Environmental Quality (ADEQ) uses the following statutes and rules to determine that the rules are consistent: A.R.S. § 49-104(B)(13); 18 A.A.C. Chapter 9, Articles 1 through 4, 18 A.A.C. Chapter 4, and 18 A.A.C. Chapter 14, Article 3. ADEQ's rules are consistent with the applicable statutes and rules, unless stated otherwise in the Section-By-Section Analysis.

   The Article 1 rules are consistent with the federal incentive created by 42 U.S.C. 300j-12(a)(1)(ii), which states that the U.S. Environmental Protection Agency will withhold 20 percent of each state's capitalization grant unless that state has met the requirements of 42 U.S.C. § 300g-8, relating to operator certification for drinking water systems.

5. Status of Agency enforcement policy regarding the rules:

   Under A.R.S. §§ 49-352(A) and 49-361, ADEQ must establish and enforce rules for the classification of public water systems and sewage collection systems and treatment plants, and certifying operating personnel. These rules prescribe compliance with the criteria and apply to public water systems and sewage collection systems and treatment plants. ADEQ enforces these rules in classifying public water systems and sewage collection systems and treatment plants, and in reviewing and determining approval or denial of an application or renewal of operator certification.

   A.R.S. § 49-261(A) grants ADEQ authority to take enforcement action for creating an imminent and

substantial endangerment to the public health or environment. ADEQ's enforcement policies and strategies are described in the ADEQ Compliance and Enforcement Handbook, which is a consolidation of existing compliance and enforcement policies, procedures, and guidelines used by ADEQ when initiating and escalating enforcement.

6. Analysis of clarity, conciseness, and understandability:

   The rules are clear, concise, and understandable.

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

   ADEQ has not received any written criticisms on the rules within the past five years.

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

   No such analysis was submitted for any rule in this Article.

10. Completion of previous proposed courses of action:

    ADEQ did not propose any changes to the rules in the previous Five-Year Review report approved by the Governor's Regulatory Review Council at its October 4, 2011 meeting.

11. A determination that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

    ADEQ believes that these rules impose the least burden and costs to regulated persons, including paperwork and other compliance costs, necessary to achieve the underlying regulatory and statutory objective.

12. Stringency Compared to Corresponding Federal Law:

    Article 1 does not have a corresponding federal law, but the rules are consistent with the federal incentive created by 42 U.S.C. 300j-12(a)(1)(ii), which states that the U.S. Environmental Protection Agency will withhold 20 percent of each state's capitalization grant unless that state has met the requirements of 42 U.S.C. § 300g-8, relating to operator certification for drinking water systems.

13. Compliance with A.R.S. § 41-1037:

    The rules were amended before July 29, 2010. A.R.S. §§ 49-352 and 49-361 require ADEQ to certify operating personnel according to their skill, knowledge and experience. However, the operator certification rules are similar to the definition of a general permit; the applicant is issued the certification if the applicant meets the applicable requirements of the certification, there is no individual or traditional certification, and no public hearing is required.

14. Proposed course of action:

    Since the rules are effective and any changes would be minor, ADEQ does not plan to amend the rules within the next five years due to competing priorities and limited resources.

II. Section by Section Analysis of Rules

R18-5-101. Definitions

2. Objective of the rules:

   The definition section defines important terms used in Article 1, so that the rules are understandable to the general public.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively defines important terms used in the rules.

5. Status of Agency enforcement policy regarding the rule:

   Definitions are not enforceable.

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

   R18-5-101 was last amended in April 2005. ADEQ described probable economic impacts in qualitative and quantitative terms in the economic impact statement. ADEQ believes that the qualitative assessments of the economic impacts to the rule were accurate and any costs have been minor. ADEQ believes that the Article 1 rules' impact on the state's economy, small business and consumers has not changed and the only changes would be to adjust any dollar values for inflation.

R18-5-102. Applicability

2. Objective of the rules:

   The rule clarifies the scope and applicability of the operator certification rules by prescribing various exemptions.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively prescribes exemptions from the operator certification rules.

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

   The citation in subsection (B)(1) to a rule in Chapter 4 is no longer correct since the Safe Drinking Water rules were amended in 2008.

5. Status of Agency enforcement policy regarding the rule:

   This rule is not directly enforced. Rather R18-5-102 describes who is regulated by this Article.

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

   R18-5-102 was last amended in October 2001. ADEQ described probable economic impacts in qualitative terms in the economic impact statement. ADEQ believes that the qualitative assessments of the economic impacts to the rule were accurate and any costs have been minor. ADEQ believes that the Article 1 rules' impact on the state's economy, small business and consumers has not changed.

R18-5-103. Certification Committee

2. Objective of the rules:

   The rule establishes an operator certification advisory committee to make recommendations to ADEQ and to provide ADEQ with technical advice and assistance on the operator certification program as may be requested. The rule prescribes the make-up of the certification committee, establishes terms of office and term limits, and prescribes procedures for the selection of a chairman, determining quorums, filling vacancies, and reappointing committee members.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively establishes an operator certification committee.

5. Status of Agency enforcement policy regarding the rule:

This rule governs how the advisory committee is established and applies when it meets. The advisory committee is not currently meeting and meets on an as-needed basis. This rule and the advisory committee were last used extensively when ADEQ was evaluating the examination process. The rule should be retained as it provides a process for ADEQ to seek technical expertise and assistance from members of the certification committee when issues arise as to the operator certification rules or procedures.

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

   R18-5-103 was last amended in February 2001. ADEQ described probable economic impacts in qualitative and quantitative terms in the economic impact statement. ADEQ believes that the qualitative assessments of the economic impacts to the rule were accurate and any costs have been minor. ADEQ believes that the Article 1 rules' impact on the state's economy, small business and consumers has not changed and the only changes would be to adjust any dollar values for inflation.

R18-5-104. General Requirements

2. Objective of the rules:

   This rule establishes general requirements for both the facility owner and the certified operator of a facility.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively informs facility owners and certified operators of their general responsibilities.

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

   R18-5-104 was last amended in April 2005. ADEQ described probable economic impacts in qualitative and quantitative terms in the economic impact statement. ADEQ believes that the qualitative assessments of the economic impacts to the rule were accurate and any costs have been minor. ADEQ believes that the Article 1 rules' impact on the state's economy, small business and consumers has not changed and the only changes would be to adjust any dollar values for inflation.

R18-5-105. Certification

2. Objective of the rules:

   The rule prescribes three eligibility requirements for ADEQ operator certification. An applicant for operator certification must: 1) submit an application for operator certification, 2) comply with education and experience requirements, and 3) pass a written examination.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively informs operators of the certification requirements.

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

   R18-5-105 was last amended in January 2009. ADEQ described probable economic impacts in qualitative terms in the economic impact statement. ADEQ believes that the qualitative assessments of the economic impacts to the rule were accurate and any costs have been minor. ADEQ believes that the Article 1 rules' impact on the state's economy, small business and consumers has not changed.

R18-5-106. Examinations

2. Objective of the rules:

   The rule establishes written examination requirements for operator certification.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively prescribes the substantive requirements and procedures that apply to written examinations for operator certification.

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

   In practice, ADEQ complies with A.R.S. § 41-1080 and requests appropriate documentation of citizenship or alien status. The rule could be amended to reflect the requirements in the current law.

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

   R18-5-106 was last amended in February 2001. ADEQ described probable economic impacts in qualitative and quantitative terms in the economic impact statement. ADEQ believes that the qualitative assessments of the economic impacts to the rule were accurate and any costs have been minor. ADEQ believes that the Article 1 rules' impact on the state's economy, small business and consumers has not changed and the only changes would be to adjust any dollar values for inflation.

R18-5-107. Certificate Renewal

2. Objective of the rules:

   The rule establishes a three year term for the certificate. To renew, the operator must demonstrate completion of sufficient professional development training at the time of renewal. Alternatively, an operator may renew a certificate by taking and passing an examination for the applicable class and grade.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively establishes that an operator is proficient in the area of certification by requiring that the operator renew the certificate every three years.

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

   R18-5-107 was last amended in April 2005. ADEQ described probable economic impacts in qualitative and quantitative terms in the economic impact statement. ADEQ believes that the qualitative assessments of the economic impacts to the rule were accurate and any costs have been minor. ADEQ believes that the Article 1 rules' impact on the state's economy, small business and consumers has not changed and the only changes would be to adjust any dollar values for inflation.

R18-5-108. Certificate Expiration

2. Objective of the rules:

   The rule provides for the lapsing of an operator certificate that is not renewed in a timely way. The rule provides for a 90-day grace period during which a lapsed operator certificate may be reinstated. If a lapsed operator certificate is not reinstated within the 90-day grace period, the operator must reapply for operator certification and comply with all of the requirements that apply to new applicants for operator certification.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively establishes procedures for lapsed certificates and recertification.

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

   R18-5-108 was last amended in February 2001. ADEQ described probable economic impacts in qualitative and quantitative terms in the economic impact statement. ADEQ believes that the qualitative assessments of the economic impacts to the rule were accurate and any costs have been minor. ADEQ believes that the Article 1 rules' impact on the state's economy, small business and consumers has not changed and the only changes would be to adjust any dollar values for inflation.

R18-5-109. Denial, Suspension, Probation, and Revocation

2. Objective of the rules:

   This rule sets forth criteria for denial, suspension, and revocation of certificates, and depending on the severity of the infraction, allows ADEQ to revoke or suspend licenses or to place operators on probation.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively allows ADEQ to impose corrective actions that can respond appropriately to a range of compliance and enforcement matters.

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

   R18-5-109 was last amended in January 2009. ADEQ described probable economic impacts in qualitative terms in the economic impact statement. ADEQ believes that the qualitative assessments of the economic impacts to the rule were accurate and any costs have been minor. ADEQ believes that the Article 1 rules' impact on the state's economy, small business and consumers has not changed.

R18-5-110. Reciprocity

2. Objective of the rules:

   The rule prescribes procedures for granting reciprocity to an operator who holds a certificate issued by an operator certification program in another jurisdiction (a State, territory, or possession of the United States.) The rule requires an applicant to have passed a written examination that is approved by ADEQ and meet education and experience requirements prescribed in the rule for the operator certificate sought.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively authorizes reciprocity and effectively prescribes the criteria for granting reciprocity.

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

   R18-5-110 was last amended in February 2001. ADEQ described probable economic impacts in qualitative and quantitative terms in the economic impact statement. ADEQ believes that the qualitative assessments of the economic impacts to the rule were accurate and any costs have been minor. ADEQ believes that the Article 1 rules' impact on the state's economy, small business and consumers has not changed and the only changes would be to adjust any dollar values for inflation.

R18-5-112. Experience and Education

2. Objective of the rules:

The rule prescribes minimum education and experience requirements for eligibility for operator certification.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively prescribes minimum education and experience requirements.

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

   R18-5-112 was last amended in October 2001. ADEQ described probable economic impacts in qualitative terms in the economic impact statement. ADEQ believes that the qualitative assessments of the economic impacts to the rule were accurate and any costs have been minor. ADEQ believes that the Article 1 rules' impact on the state's economy, small business and consumers has not changed.

R18-5-113. Classes of Facilities

2. Objective of the rules:

   The rule establishes the criteria for the classification of drinking water and wastewater facilities.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively communicates to drinking water and wastewater facilities the criteria for classification.

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

   R18-5-113 was last amended in February 2001. ADEQ described probable economic impacts in qualitative and quantitative terms in the economic impact statement. ADEQ believes that the qualitative assessments of the economic impacts to the rule were accurate and any costs have been minor. ADEQ believes that the Article 1 rules' impact on the state's economy, small business and consumers has not changed and the only changes would be to adjust any dollar values for inflation.

R18-5-114. Grades of Wastewater Treatment Plants and Collection Systems

2. Objective of the rules:

   The rule establishes the criteria for the classification of wastewater treatment plants and wastewater collection systems; the rule establishes classification grades by the type of treatment provided, the population served, and the degree of hazard to the public health.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively communicates to wastewater facilities the criteria for grades.

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

   R18-5-114 was last amended in February 2001. ADEQ described probable economic impacts in qualitative and quantitative terms in the economic impact statement. ADEQ believes that the qualitative assessments of the economic impacts to the rule were accurate and any costs have been minor. ADEQ believes that the Article 1 rules' impact on the state's economy, small business and consumers has not changed and the only changes would be to adjust any dollar values for inflation.

R18-5-115. Grades of Water Treatment Plants and Distribution Systems

2. Objective of the rules:

The rule establishes the point system to classify water treatment plants and distribution systems, based on plant and system characteristics.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively communicates to water treatment plants and distribution systems facilities the criteria for grades.

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

   R18-5-115 was last amended in April 2005. ADEQ described probable economic impacts in qualitative and quantitative terms in the economic impact statement. ADEQ believes that the qualitative assessments of the economic impacts to the rule were accurate and any costs have been minor. ADEQ believes that the Article 1 rules' impact on the state's economy, small business and consumers has not changed and the only changes would be to adjust any dollar values for inflation.

R18-5-116. Initial Grading and Regrading of Facilities

2. Objective of the rules:

   The rule establishes the criteria for the grading and regrading of drinking water and wastewater facilities.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively communicates to facilities the criteria and process ADEQ uses for the grading and regrading of facilities. This rule allows ADEQ the flexibility to grade a facility higher, such as for new technologies. ADEQ rarely uses this rule because new technologies are usually associated with larger systems, which typically are graded higher as a result of population, or because they already use complex technology.

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

   R18-5-116 was last amended in February 2001. ADEQ described probable economic impacts in qualitative and quantitative terms in the economic impact statement. ADEQ believes that the qualitative assessments of the economic impacts to the rule were accurate and any costs have been minor. ADEQ believes that the Article 1 rules' impact on the state's economy, small business and consumers has not changed and the only changes would be to adjust any dollar values for inflation.

ARTICLE 2. PUBLIC AND SEMIPUBLIC SWIMMING POOLS AND SPAS

I. Information That Is Identical For All Rules in Title 18, Chapter 5, Article 2 (unless stated otherwise in the Section-by-Section Analysis)

1. Authorization of rules by existing statutes:

   A.R.S. § 49-104(B)(12).

2. Objective of the rules:

   The Article 2 rules ensure that public and semipublic swimming pools and spas are designed and constructed in accordance with the minimum design standards in the rules, by following the administrative procedures for design approvals and approvals of construction established in the rules. Standards for sanitary conditions and inspections for public or semipublic swimming pools or bathing places are prescribed by the Arizona Department of Health Services' (ADHS) rules.

3. Effectiveness of the rule in achieving the objectives:

   Each rule is effective in achieving its objectives. However, ADEQ believes the Article could be more effective overall if ADEQ repealed many of the rule sections and incorporated by reference a national standard for construction design.

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

   ADEQ uses the ADHS' statutes and rules on minimum standards for sanitary conditions at swimming pools to determine that its rules are consistent: A.R.S. §§ 36-132(A)(12) and 36-136(H)(10) and 9 A.A.C. 8, Article 8.

5. Status of Agency enforcement policy regarding the rule:

   Under A.R.S. § 49-104(B)(12), ADEQ must establish rules that prescribe minimum standards for the design of and for sanitary conditions at any public or semipublic swimming pool or bathing place and provide for abatement as public nuisances of premises and facilities that do not comply with the minimum standards. ADEQ enforces these rules by conducting design review and granting final approval after construction for public and semipublic swimming pools and spas.

   A.R.S. § 49-142 grants ADEQ authority to seek an abatement order on a person maintaining an environmental nuisance. ADEQ's enforcement policies and strategies are described in the ADEQ Compliance and Enforcement Handbook, which is a consolidation of existing compliance and enforcement policies, procedures, and guidelines used by ADEQ when initiating and escalating enforcement.

   Under A.R.S. § 49-107, ADEQ may authorize political subdivisions, such as county or city agencies, to exercise certain environmental regulatory functions, powers or duties by a provision of law. Some local authorities have been delegated authority to implement and enforce the design review and approval process for public and semipublic swimming pools and spas. These delegated local authorities may have standards of compliance that are more stringent than those of ADEQ but not less stringent. Currently Maricopa, Pima, Yavapai and Yuma Counties have been delegated authority to implement and enforce the design review and approval process for public and semipublic swimming pools and spas.

6. Analysis of clarity, conciseness, and understandability:

   ADEQ believes that the rules are clear, concise, and understandable.

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

   ADEQ has not received any written criticisms on the rules within the past five years.

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

   ADEQ described probable economic impacts in qualitative and quantitative terms in the economic impact statement prepared in 1998. ADEQ believes that the qualitative assessments of the economic impacts to the rules were accurate and any costs have been minor. ADEQ believes that the Article 2 rules' impact on the state's economy, small business and consumers has not changed since the effective date and the only changes would be to adjust any dollar values for inflation. For the past three years, ADEQ generally averages 20 approvals a year for new construction or modification of public and semipublic swimming pools and spas. For years 2012-2013, ADEQ averaged nine approvals.

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

   ADEQ has not received any analysis submitted by another person that compares the rules' impact on Arizona's business competitiveness to the impact on businesses in other states.

10. Completion of previous course of action:

    ADEQ did not propose any changes to the rules in the previous Five-Year Review report approved by the Governor's Regulatory Review Council at its October 4, 2011 meeting.

11. A determination that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

    ADEQ believes that these rules impose the least burden and costs to regulated persons, including paperwork and other compliance costs, necessary to achieve the underlying regulatory and statutory objective. However, ADEQ believes that it could further reduce any burden if ADEQ repealed many of the rule sections and incorporated by reference a national standard for construction design.

12. Stringency Compared to Corresponding Federal Law:

    No corresponding federal programs apply to Article 2.

13. Compliance with A.R.S. § 41-1037:

    The rules were amended before July 29, 2010. The rules govern the procedures and requirements for ADEQ to issue an design approval and an approval of construction, which are similar to the definition of a general permit. Approval is granted if the applicant meets the applicable requirements of the rules, and no public hearing is required.

14. Proposed course of action:

    In response to Executive Order 2015-01, paragraph 5, ADEQ submitted to the Office of the Governor an evaluation of its rules, with recommendations for which rules could be amended or repealed consistent with the priorities and principles set forth in the Order. In the September 1, 2015 Regulatory Review Report, ADEQ discusses that incorporating by reference a national standard for construction design would significantly reduce the number of rules.

    As the ADHS' rules refer to some of these rules, ADEQ will need to coordinate with ADHS to ensure that its proposed repeals do not leave a gap in ADHS's regulation of minimum standards for sanitary conditions at swimming pools. Also, as the vast majority of design review and approval of public and semipublic swimming pools and spas are in Maricopa and Pima Counties, ADEQ will need to coordinate with the delegated counties on how to transition regulatory oversight.

    ADEQ is reviewing its rulemaking priorities and plans to amend these rules within the next five years by repealing most of the sections and incorporating by reference current standards. ADEQ anticipates submitting a rulemaking to the Council by December 2020.

II. Section by Section Analysis of Rules

R18-5-201. Definitions

2. Objective of the rules:

   The definition section defines important terms used in Article 2, so that the rules are understandable to the general public.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively defines important terms used in the rules.

5. Status of Agency enforcement policy regarding the rule:

   Definitions are not enforceable, but are used in enforcement of the rules.

R18-5-202. Applicability

2. Objective of the rules:

   This rule defines the entities and circumstances the Article 2 rules apply to.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively prescribes the entities and circumstances the Article 2 rules apply to.

5. Status of Agency enforcement policy regarding the rule:

   This rule is not necessarily enforced as it explains who is regulated by this Article.

R18-5-203. Design Approval

2. Objective of the rules:

   The rule establishes the process and requirements that a person must comply with to obtain design approval of a new public or semipublic swimming pool or spa, or modifications thereto.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively communicates process and requirements that a person must comply with to obtain design approval and ADEQ's review process. ADEQ will update, if necessary, the classes of contractors referred to in R18-5-203(D) that are permitted to prepare plans for pools and spas at the time it updates Article 2. The classes listed in R18-5-203(D) are accurate but the Arizona Registrar of Contractors has additional classes of contractors for swimming pools.

R18-5-204. Approval of Construction

2. Objective of the rules:

   The rule establishes the process and requirements for a person to receive ADEQ's approval of construction for a new public or semipublic swimming pool or spa, or modifications thereto.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively communicates process and requirements that a person must comply with to obtain ADEQ's approval of construction.

R18-5-205. Prohibitions

2. Objective of the rules:

   The rule prohibits that a fill-and-draw swimming pool or spa or a private residential spa be used as a public or semipublic swimming pools or spas.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively communicates that a fill-and-draw swimming pool or spa or a private residential spa are not to be used as public or semipublic swimming pools or spas.

5. Status of Agency enforcement policy regarding the rule:

   This rule generally is enforced by local health departments, who are aware of local conditions and would receive complaints. If necessary, local health departments can request ADEQ to take enforcement actions.

R18-5-206. Water Source

2. Objective of the rules:

   The rule ensures that the water used to fill public or semipublic swimming pools or spas is of a quality that will adequately protect public health.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively ensures that the water used to fill public or semipublic swimming pools or spas is of a quality that will adequately protect public health

R18-5-207. Construction Materials

2. Objective of the rules:

   The rule ensures that public or semipublic swimming pools or spas are constructed of materials that will not pose a danger to public health or the environment.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively ensures that public or semipublic swimming pools or spas are constructed of materials that will not pose a danger to public health or the environment.

R18-5-208. Maximum Bathing Load

2. Objective of the rules:

   The rule ensures that public or semipublic swimming pools or spas are not overcrowded and that there are adequate bathing and sanitary facilities.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively ensures that public or semipublic swimming pools or spas are not overcrowded and that there are adequate bathing and sanitary facilities.

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

   The citation to R18-5-242 needs to be changed to R18-5-241.

R18-5-209. Shape

2. Objective of the rules:

   The rule ensures that public or semipublic swimming pools or spas are shaped in a manner that will minimize hazards to users and provide adequate circulation of the water.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively ensures that public or semipublic swimming pools or spas are shaped in a manner that will minimize hazards to users and provide adequate circulation of the water.

R18-5-210. Walls

2. Objective of the rules:

   The rule ensures that the public or semipublic swimming pools or spas are deep enough and that their walls are connected to the floor of the pool or spa in a manner that will minimize hazards to users.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively ensures that the public or semipublic swimming pools or spas are deep enough and that their walls are connected to the floor of the pool or spa in a manner that will minimize hazards to users.

R18-5-211. Freeboard

2. Objective of the rules:

   The rule ensures that the distance between the pool deck and the water surface is of a distance that ensures the safety of users of public or semipublic swimming pools or spas.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively ensures that the distance between the pool deck and the water surface is of a distance that ensures the safety of users of public or semipublic swimming pools or spas.

R18-5-212. Floors

2. Objective of the rules:

   The rule ensures that the transition or slope of the floor from the shallow to the deep end of public or semipublic swimming pools is gradual enough to ensure the safety of persons using the pools.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively ensures that the transition or slope of the floor from the shallow to the deep end of public or semipublic swimming pools is gradual enough to ensure the safety of persons using the pools.

R18-5-213. Entries and Exits

2. Objective of the rules:

   The rule ensures that public or semipublic swimming pools have an adequate number of entries and exits, whether ladders, steps, or other means, to ensure the safety of persons using the pools.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively ensures that public or semipublic swimming pools have an adequate number of entries and exits, whether ladders, steps, or other means, to ensure the safety of persons using the pools.

R18-5-214. Steps

2. Objective of the rules:

   The rule ensures that the steps in public or semipublic swimming pools or spas have a handrail and are otherwise constructed in a manner that ensures the safety of persons using the pools.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively ensures that the steps in public or semipublic swimming pools or spas have a handrail and are otherwise constructed in a manner that ensures the safety of persons using the pools.

R18-5-215. Ladders

2. Objective of the rules:

   The rule ensures that any ladders in public or semipublic swimming pools or spas are constructed in a manner that ensures the safety of persons using the pools.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively ensures that any ladders in public or semipublic swimming pools or spas are constructed in a manner that ensures the safety of persons using the pools.

R18-5-216. Recessed Treads

2. Objective of the rules:

   The rule ensures that public or semipublic swimming pools or spas that use recessed treads in place of ladders are constructed in a manner that ensures the safety of persons using the pools.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively ensures that public or semipublic swimming pools or spas that use recessed treads in place of ladders are constructed in a manner that ensures the safety of persons using the pools.

R18-5-217. Decks and Deck Equipment

2. Objective of the rules:

   The rule ensures that decks, ramps, and similar surfaces used around public or semipublic swimming pools or spas are constructed of a slip-resistant material, and are otherwise constructed in a manner that ensures the safety of persons using the pools.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively ensures that decks, ramps, and similar surfaces used around public or semipublic swimming pools or spas are constructed of a slip-resistant material, and are otherwise constructed in a manner that ensures the safety of persons using the pools.

R18-5-218. Lighting

2. Objective of the rules:

   The rule ensures that public or semipublic swimming pools or spas and adjacent areas are lighted when in use, in order to ensure the safety of persons using the pools.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively ensures that public or semipublic swimming pools or spas and adjacent areas are lighted when in use, in order to ensure the safety of persons using the pools.

R18-5-219. Water Depths

2. Objective of the rules:

   The rule ensures that public or semipublic swimming pools or spas have a shallow end that allows most persons to stand, yet is deep enough to allow persons to dive into pools that have racing lanes.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively ensures that public or semipublic swimming pools or spas have a shallow end that allows most persons to stand, yet is deep enough to allow persons to dive into pools that have racing lanes.

R18-5-220. Depth Markers

2. Objective of the rules:

   The rule ensures that the depth of public or semipublic swimming pools is clearly marked.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively ensures that the depth of public or semipublic swimming pools is clearly marked.

R18-5-221. Diving Areas and Equipment

2. Objective of the rules:

   The rule ensures that the dimensions, diving equipment, and steps or ladders used in public or semipublic swimming pools are constructed in a manner that ensures the safety of persons using the pool.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively ensures that the dimensions, diving equipment, and steps or ladders used in public or semipublic swimming pools are constructed in a manner that ensures the safety of persons using the pool.

R18-5-222. Prohibition Against Diving; Warning Signs

2. Objective of the rules:

   The rule ensures that public or semipublic swimming pools that are not of a sufficient depth to permit persons to safely dive into the pool post warnings against diving.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively ensures that public or semipublic swimming pools that are not of a sufficient depth to permit persons to safely dive into the pool post warnings against diving.

R18-5-223. Water Circulation System

2. Objective of the rules:

   The rule ensures that public or semipublic swimming pools or spas have water circulation systems that provide complete circulation of water through all parts of the pool or spa, and can maintain water chemistry and clarity requirements.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively ensures that public or semipublic swimming pools or spas have water circulation systems that provide complete circulation of water through all parts of the pool or spa, and can maintain water chemistry and clarity requirements.

R18-5-224. Piping and Fittings

2. Objective of the rules:

   The rule ensures that the water circulation piping and fittings in public or semipublic swimming pools or spas meet established specifications, are adequately tested, and do not exceed established water velocity limits for discharge of suction piping.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively ensures that the water circulation piping and fittings in public or semipublic swimming pools or spas meet established specifications, are adequately tested, and do not exceed established water velocity limits for discharge of suction piping.

R18-5-225. Pumps and Motors

2. Objective of the rules:

   The rule ensures that public or semipublic swimming pools or spas have pumps of sufficient size to ensure proper filtering and water circulation.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively ensures that public or semipublic swimming pools or spas have pumps of sufficient size to ensure proper filtering and water circulation.

R18-5-226. Drains and Suction Outlets

2. Objective of the rules:

   The rule ensures that drains and suction outlets in public or semipublic swimming pools or spas are configured so as not to pose a danger to persons via entrapment by the suction.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively ensures that drains and suction outlets in public or semipublic swimming pools or spas are configured so as not to pose a danger to persons via entrapment by the suction.

R18-5-227. Filters

2. Objective of the rules:

   The rule ensures proper design, location, and construction of filters, to allow for inspection, cleaning, replacement, or repair of filter elements or media.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively ensures proper design, location, and construction of filters, to allow for inspection, cleaning, replacement, or repair of filter elements or media.

R18-5-228. Return Inlets

2. Objective of the rules:

   The rule ensures that the design, location, and construction of filters allow for inspection, cleaning, replacement, or repair of filter elements or media.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively ensures that the design, location, and construction of filters allow for inspection, cleaning, replacement, or repair of filter elements or media.

R18-5-229. Gauges

2. Objective of the rules:

   The rule ensures that public or semipublic swimming pools or spas have proper pressure gauges installed in accessible places.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively ensures that public or semipublic swimming pools or spas have proper pressure gauges installed in accessible places.

R18-5-230. Flow Meter

2. Objective of the rules:

   The rule ensures that public swimming pools have installed accurate flow meters to ensure that the rate of backwash through pool filters is within manufacturers' specifications.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively ensures that public swimming pools have installed accurate flow meters to ensure that the rate of backwash through pool filters is within manufacturers' specifications.

R18-5-231. Strainers

2. Objective of the rules:

   The rule ensures that public or semipublic swimming pools or spas have strainers before pumps in water circulation systems to prevent material from reaching pumps and filters.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively ensures that public or semipublic swimming pools or spas have strainers before pumps in water circulation systems to prevent material from reaching pumps and filters.

R18-5-232. Overflow Collection Systems

2. Objective of the rules:

   The rule ensures that proper water level is maintained in public or semipublic swimming pools or spas.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively ensures that proper water level is maintained in public or semipublic swimming pools or spas.

R18-5-233. Vacuum Cleaning Systems

2. Objective of the rules:

   The rule ensures that public or semipublic swimming pools install vacuum cleaning systems that do not create a hazard or interfere with use of the pool.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively ensures that public or semipublic swimming pools install vacuum cleaning systems that do not create a hazard or interfere with use of the pool.

R18-5-234. Disinfection

2. Objective of the rules:

   The rule ensures that public or semipublic swimming pools and spas have automatic disinfection equipment that maintains an adequate level of disinfectant residual, and that only authorized disinfectants are used.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively ensures that public or semipublic swimming pools and spas have automatic disinfection equipment that maintains an adequate level of disinfectant residual, and that only authorized disinfectants are used.

R18-5-235. Cross-Connection Control

2. Objective of the rules:

   The rule ensures that there are no cross-connections between public water systems and water circulations systems in public or semipublic swimming pools or spas.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively ensures that there are no cross-connections between public water systems and water circulations systems in public or semipublic swimming pools or spas.

R18-5-236. Disposal of Filter Backwash, Wasted Swimming Pool or Spa Water, and Wastewater

2. Objective of the rules:

   The rule ensures proper disposal of all wastewater, and that there is no cross-connection between the sewer system and the water circulation system of a public or semipublic swimming pool.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively ensures proper disposal of all wastewater, and that there is no cross-connection between the sewer system and the water circulation system of a public or semipublic swimming pool.

R18-5-237. Lifeguard Chairs

2. Objective of the rules:

   The rule ensures that public swimming pools install an adequate number of elevated lifeguard chairs in appropriate locations.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively ensures that public swimming pools install an adequate number of elevated lifeguard chairs in appropriate locations.

R18-5-238. Lifesaving and Safety Equipment

2. Objective of the rules:

   The rule ensures that public or semipublic swimming pools have lifesaving and safety equipment located in a conspicuous location and properly maintained.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively ensures that public or semipublic swimming pools have lifesaving and safety equipment located in a conspicuous location and properly maintained.

R18-5-239. Rope and Float Lines

2. Objective of the rules:

   The rule ensures that public swimming pools have a rope and float line separating the shallow and deep ends of the pool.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively ensures that public swimming pools have a rope and float line separating the shallow and deep ends of the pool.

R18-5-240. Barriers

2. Objective of the rules:

   The rule ensures that public or semipublic swimming pools, spas, decks, and operational equipment are enclosed by a barrier that meets specified criteria to prevent injuries and drownings.

3. Effectiveness of the rule in achieving the objectives:

The rule effectively ensures that public or semipublic swimming pools, spas, decks, and operational equipment are enclosed by a barrier that meets specified criteria to prevent injuries and drownings.

R18-5-241. Public Swimming Pools; Bathhouses and Dressing Rooms

2. Objective of the rules:

   The rule establishes minimum criteria for dressing rooms and bathrooms for public swimming pools.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively establishes minimum criteria for dressing rooms and bathrooms for public swimming pools.

R18-5-242. Semipublic Swimming Pools; Toilets and Lavatories

2. Objective of the rules:

   The rule establishes minimum criteria for bathrooms for semipublic swimming pools.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively establishes minimum criteria for bathrooms for semipublic swimming pools.

R18-5-243. Drinking Water Fountains

2. Objective of the rules:

   The rule ensures that at least one drinking water fountain is available at all public swimming pools or spas.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively ensures that at least one drinking water fountain is available at all public swimming pools or spas.

R18-5-244. Wading Pools

2. Objective of the rules:

   The rule ensures that wading pools are designed, constructed, and operated in a manner that ensures safe and sanitary conditions.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively ensures that wading pools are designed, constructed, and operated in a manner that ensures safe and sanitary conditions.

R18-5-245. Timers for Public and Semipublic Spas

2. Objective of the rules:

   The rule establishes safety criteria for spa jet timers.

3. Effectiveness of the rule in achieving the objectives:

The rule effectively establishes safety criteria for spa jet timers.

R18-5-246. Air Blower and Air Induction Systems for Public and Semipublic Spas

2. Objective of the rules:

   The rule ensures that air blowers and air induction systems used at public or semipublic spas meet the criteria set out in rule.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively ensures that air blowers and air induction systems used at public or semipublic spas meet the criteria set out in rule.

R18-5-247. Water Temperature in Public and Semipublic Spas

2. Objective of the rules:

   The rule ensures that water in public or semipublic spas is not hot enough to scald persons.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively ensures that water in public or semipublic spas is not hot enough to scald persons.

R18-5-248. Special Use Pools

2. Objective of the rules:

   The rule ensures that designs for public or semipublic special use pools are reviewed by ADEQ to ensure proper design, construction, and operation.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively ensures that designs for public or semipublic special use pools are reviewed by ADEQ to ensure proper design, construction, and operation.

R18-5-249. Variances

2. Objective of the rules:

   The rule allows variances from the requirements of Article 2 if an applicant can establish that the variance will not result in increased risk to health or safety.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively allows variances from the requirements of Article 2 if an applicant can establish that the variance will not result in increased risk to health or safety.

R18-5-250. Inspections

2. Objective of the rules:

   The rule allows inspectors to verify compliance with the requirements of the rules in Article 2.

3. Effectiveness of the rule in achieving the objectives:

The rule effectively allows inspectors to verify compliance with the requirements of the rules in Article 2.

R18-5-251. Enforcement

2. Objective of the rules:

   The rule sets out enforcement procedures that ADEQ follows when an inspection reveals a violation of the requirements of Article 2, and allows ADEQ to order the closure of a public or semipublic pool or spa when warranted.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively sets out enforcement procedures that ADEQ follows when an inspection reveals a violation of the requirements of Article 2, and allows ADEQ to order the closure of a public or semipublic pool or spa when warranted. ADEQ's enforcement policies and strategies are described in the ADEQ Compliance and Enforcement Handbook, which is a consolidation of existing compliance and enforcement policies, procedures, and guidelines used by ADEQ when initiating and escalating enforcement.

Illustration A. Diving Well Dimensions for Swimming Pools

2. Objective of the rules:

   The illustration and accompanying table enhance the textual explanation of diving well construction standards contained in R18-5-221 and R18-5-222.

3. Effectiveness of the rule in achieving the objectives:

   The illustration and accompanying table effectively enhance the textual explanation of diving well construction standards contained in R18-5-221 and R18-5-222.

Illustration B. Minimum Distance Requirements for Decks

2. Objective of the rules:

   The illustration explains in spatial form the requirements of R18-5-217, which references the illustration.

3. Effectiveness of the rule in achieving the objectives:

   The illustration effectively explains in spatial form the requirements of R18-5-217, which references the illustration.

ARTICLE 3. WATER QUALITY MANAGEMENT PLANNING

I. Information That Is Identical For All Rules in Title 18, Chapter 5, Article 3 (unless stated otherwise in the Section-by-Section Analysis)

1. Authorization of rules by existing statutes:

   The rules in 18 A.A.C. 5, Article 3 are authorized by A.R.S. § 49-203(B)(4).

2. Objective of the rules:

   The Water Quality Management Planning rules facilitate the development and implementation of areawide wastewater treatment plans, in order to avoid underutilization of existing wastewater treatment plants and avoid the inefficiencies associated with the use of numerous small wastewater treatment plans.

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

   ADEQ uses the following statutes and rules to determine that the rules are consistent: Section 208 of the Federal Water Pollution Control Act (33 U.S.C. 1288, P.L. 92-500; as amended by the Water Quality Act of 1987, P.L. 100-4), which mandates the creation of regional water quality plans, known as Certified Areawide Water Quality Management Plans, or 208 Plans.

5. Status of Agency enforcement policy regarding the rules:

   ADEQ enforces the Water Quality Management Planning rules when a designated water quality planning agency submits a 208 plan to ADEQ for review and approval.

6. Analysis of clarity, conciseness, and understandability:

   ADEQ believes that the rules are clear, concise, and understandable.

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

   ADEQ has not received any written criticisms on the rules within the past five years.

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

   ADEQ described probable economic impacts in qualitative terms in the economic impact statement prepared in 2000. ADEQ believes that the qualitative assessments of the economic impacts to the rules were accurate and any costs have been minor. ADEQ believes that the Article 3 rules' impact on the state’s economy, small business and consumers has not changed since the effective date. In the past five years, ADEQ has received eleven 208 plan amendments (under R18-5-302), and about 15-20 requests for determinations of conformance (under R18-5-303).

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

   ADEQ has not received any analysis submitted by another person that compares the rules' impact on Arizona's business competitiveness to the impact on businesses in other states.

10. Completion of previous proposed courses of action:

    ADEQ did not propose any changes to the rules in the previous Five-Year Review report approved by the Governor's Regulatory Review Council at its October 4, 2011 meeting.

11. A determination that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

    ADEQ believes that these rules impose the least burden and costs to regulated persons, including paperwork and other compliance costs, necessary to achieve the underlying regulatory and statutory

objective.

12. Stringency Compared to Corresponding Federal Law:

    Article 3 is not more stringent than Section 208 of the Federal Water Pollution Control Act, which mandates the creation of regional water quality plans, known as Certified Areawide Water Quality Management Plans, or 208 Plans.

13. Compliance with A.R.S. § 41-1037:

    The rules were amended before July 29, 2010.

14. Proposed course of action:

    Since the rules are effective and any changes would be minor, ADEQ does not plan to amend the rules within the next five years due to competing priorities and limited resources.

II. Section by Section Analysis of Rules

R18-5-301. Definitions

2. Objective of the rules:

   The rule defines the terms that are used in the Water Quality Management Planning rules.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively defines important terms used in the rules.

5. Status of Agency enforcement policy regarding the rule:

   Definitions are not enforceable.

R18-5-302. Certified Areawide Water Quality Management Plan Approval

2. Objective of the rules:

   The rule ensures that Certified Areawide Water Quality Management Plans, and plan amendments, meet the criteria in the rules prior to approval by the ADEQ Director.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively ensures that Certified Areawide Water Quality Management Plans, and plan amendments, meet the criteria in the rules prior to approval by the ADEQ Director.

R18-5-303. Determination of Conformance

2. Objective of the rules:

   The rule contains the criteria by which ADEQ determines whether a proposed sewage treatment facility, or expansion of to an existing facility, is consistent with the applicable 208 Plan.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively contains the criteria by which ADEQ determines whether a proposed sewage treatment facility, or expansion of to an existing facility, is consistent with the applicable 208 Plan.

ARTICLE 4. SUBDIVISIONS

I. Information That Is Identical For All Rules in Title 18, Chapter 5, Article 4 (unless stated otherwise in the Section-by-Section Analysis)

1. Authorization of rules by existing statutes:

   The rules in 18 A.A.C. 5, Article 4 are authorized by A.R.S. § 49-104(B)(11).

2. Objective of the rules:

   The subdivision rules establish a process that ensures that sanitary facilities for a subdivision are provided that meet minimum standards, including an adequate public water system, sewage collection and disposal systems, and garbage collection and disposal. If ADEQ approves these systems, ADEQ issues a Certificate of Approval of Sanitary Facilities for a Subdivision. ADEQ approval of sanitary facilities is incorporated into the public report required for a subdivision by the Arizona Department of Real Estate's statutes and rules before lots or homes are sold.

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

   ADEQ uses the following statutes, and rules to determine that the rules are consistent:

   - 18 A.A.C. Chapter 5, Article 5, Chapter 9, Articles 3 and 4, and Chapter 14, Article 1.
   - Arizona Department of Real Estate's statutes and rules related to the sale of subdivided lands (Arizona Revised Statutes, Title 32, Chapter 20, Article 4, and Arizona Administrative Code, Title 4, Chapter 28, Article 12, Part A). Under A.R.S. § 32-2181(A), a subdivider must provide a notice to the State Real Estate Commissioner of an intention to subdivide lands before offering subdivided lands for sale or lease. Under A.R.S. § 32-2181(A)(8), the notice must include, in part, a statement of the provisions that have been made for "*health department approved* sewage and solid waste collection and disposal and public utilities in the proposed subdivision, including water, electricity, gas and telephone facilities." ADEQ succeeded the health department referenced in the statute in approving sewage, solid waste collection and disposal, and potable water systems for subdivisions. Under R4-28-A1217, applicants seeking development application for a public report from the Arizona Department of Real Estate must first "obtain subdivision approval from ADEQ or its designee."

5. Status of Agency enforcement policy regarding the rule:

   Under A.R.S. § 49-104(B)(11), ADEQ must establish reasonably necessary rules regarding the water supply, sewage disposal, and garbage collection and disposal for subdivisions. ADEQ enforces these rules by conducting review and approval or denial when a subdivider submits an application for Approval of a Certificate of Sanitary Facilities. Subdividers submit the required design plans and specifications because they cannot legally sell lots without obtaining the required ADEQ approval necessary to meet the public report requirements of the Arizona Department of Real Estate.

   A.R.S. § 49-142 grants ADEQ authority to seek an abatement order on a person maintaining an environmental nuisance. ADEQ's enforcement policies and strategies are described in the ADEQ Compliance and Enforcement Handbook, which is a consolidation of existing compliance and enforcement policies, procedures, and guidelines used by ADEQ when initiating and escalating enforcement.

   Under A.R.S. § 49-107, ADEQ may authorize political subdivisions, such as county or city agencies, to exercise certain environmental regulatory functions, powers or duties by a provision of law. Some local authorities have been delegated authority to implement and enforce the process for a Certificate of Approval of Sanitary Facilities for Subdivisions. These delegated local authorities may have standards of compliance that are more stringent than those of ADEQ but not less stringent. Currently

Maricopa, Mohave, Pima, and Yavapai Counties and the cities of Sierra Vista and Tucson have been delegated authority to implement and enforce the design review and approval process of sanitary facilities for subdivisions.

6. Analysis of clarity, conciseness, and understandability:

   ADEQ believes that the rules are clear, concise, and understandable.

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

   ADEQ has not received any written criticisms on the rules within the past five years.

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

   An economic impact statement was prepared when R18-5-406 and R18-5-407 were amended in 1990. ADEQ believes that this Article does not have a substantial economic impact or effect on the state's economy, small businesses or consumers. The primary economic impact of these rules is the cost of the time it takes a subdivider to go through the process for Approval of Certificate of Sanitary Facilities, and the benefit that incurs to the public by requiring adequate water, sewer, and waste disposal services to be in place before allowing the subdivider to offer lots or homes for sale. In the past five years, ADEQ has received and processed the following number of applications for Certificate of Approval for Sanitary Facilities:

   - 2012 – 16,
   - 2013 – 30
   - 2014 – 39,
   - 2015 – 19, and
   - 2016– 27.

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

   ADEQ has not received any analysis submitted by another person that compares the rules' impact on Arizona's business competitiveness to the impact on businesses in other states.

10. Completion of previous proposed courses of action:

    In the previous Five-Year Review report approved by the Governor's Regulatory Review Council at its October 4, 2011 meeting, ADEQ noted concerns with some of the rules, and anticipated submitting a Notice of Final Rulemaking to the Council by July 2016. ADEQ did not complete any rulemaking action on Article 4 due to the continued moratorium on rule making and changing agency priorities.

11. A determination that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

    ADEQ believes that these rules impose the least burden and costs to regulated persons, including paperwork and other compliance costs, necessary to achieve the underlying regulatory and statutory objective.

12. Stringency Compared to Corresponding Federal Law:

    Article 4 does not have a corresponding federal law.

13. Compliance with A.R.S. § 41-1037:

The rules were amended before July 29, 2010. However, subdivision approve is similar to the definition of a general permit; the applicant is issued the approval if the applicant meets the applicable requirements of the rule, and no public hearing is required.

14. Proposed course of action:

    Due to competing priorities, limited resources, and extensive stakeholder outreach that would be required for this rulemaking, ADEQ has lowered the priority of this rulemaking. Out of eleven rules, ADEQ has noted concerns with seven of the rules; the other rules would be amended to reflect current rulemaking style. ADEQ would need approximately four years to accomplish this rulemaking, assuming that the moratorium on rulemaking is not continued. ADEQ anticipates it would be able to submit a Notice of Final Rulemaking to the Council by July 2020.

II. Section by Section Analysis of Rules

R18-5-401. Definitions

2. Objective of the rules:

   The rule defines the terms that are used in the subdivision rules.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively defines important terms used in the rules.

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

   The rule is inconsistent due to an outdated statutory citation. The definition of "condominium", defined in rule by reference to a statutory definition, needs to be updated from A.R.S. § 33-551 et seq. to A.R.S. § 33-1201 et seq.

5. Status of Agency enforcement policy regarding the rule:

   Definitions are not enforceable but are used in enforcement of the rules.

R18-5-402. Approval of plans required

2. Objective of the rules:

   The rule requires the submittal of plans and specifications for the water supply and sewage disposal systems, and the method of garbage disposal to be provided in the subdivision. The rule prohibits the sale of lots in a subdivision until the plans and specifications are submitted to and approved by ADEQ.

3. Effectiveness of the rule in achieving the objectives:

   The rule is effective in regards to the submission and review of pertinent subdivision plans, but could be more effective by including a more detailed description of the subdivision application and approval process.

R18-5-403. Application for approval

2. Objective of the rules:

   The rule requires the submittal of a complete application for a Certificate of Approval of Sanitary Facilities in quadruplicate.

3. Effectiveness of the rule in achieving the objectives:

   The rule is effective in communicating the requirements for submittals for a Certificate of Approval of Sanitary Facilities.

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

6. Analysis of clarity, conciseness, and understandability:

   The text could be further clarified by providing a more detailed description of the subdivision application and approval process.

R18-5-404. Size of lots

2. Objective of the rules:

   The rule prescribes minimum sizes for lots in subdivisions to safely accommodate on-site sewage disposal systems, comply with minimum setback requirements, and to accommodate reasonable future expansion of the drinking water and sewage systems.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively sets adequate lot sizes that comply with setback requirements, which are necessary to prevent drinking water contamination or pollution of surface water by effluent from septic tank / leach field systems or alternative on-site wastewater treatment and disposal systems.

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

   The rule is consistent with other ADEQ rules on setback requirements for drinking water supply and on-site sewage disposal systems. However, the Aquifer Protection Permit rules for general permits for on-site wastewater treatment facilities (18 A.A.C. 9, Article 3, Part A), provide greater specificity, and allow for the safe accommodation of drinking water wells and on-site wastewater treatment facilities on less than one acre based on the individual characteristics of the lot and the specific treatment or disposal works being used.

R18-5-405. Responsibility of subdivider

2. Objective of the rules:

   The rule clarifies that it is the subdivider's responsibility to provide and install drinking water and wastewater infrastructure to each lot in a subdivision before occupancy in accordance with ADEQ-approved design plans and specifications when subdivision plans include a public water system or public sewage system.

3. Effectiveness of the rule in achieving the objectives:

   The rule is effective in making a subdivider responsible for providing water and wastewater infrastructure when subdivision plans include a public water system or public sewage system.

R18-5-406. Public water systems

2. Objective of the rules:

   The rule requires ADEQ approval of the potable water system that will serve a subdivision, and specifies the submittal requirements and minimum standards necessary to obtain approval.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively accomplishes the objective of ensuring that potable water systems for subdivisions meet minimum standards.

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

   References to other rules are inconsistent. The proposed water system must comply with the minimum design standards that apply to public water systems that are prescribed in Title 18, Chapter 4, Article 5. However, ADEQ's Application for Sanitary Facilities for Subdivisions contains the correct reference to the Approval to Construct process of Title 18, Chapter 4, Article 5.

R18-5-407. Public sewerage systems

2. Objective of the rules:

   The rule requires ADEQ approval of the sewer system that will serve a subdivision and specifies the submittal requirements and minimum standards necessary to obtain approval.

3. Effectiveness of the rule in achieving the objectives:

   This rule effectively ensures that sewer systems for subdivisions meet minimum standards by requiring design review.

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

   References to other rules are inconsistent. The proposed public sewerage system must comply with the sewage system rules that are now prescribed in Title 18, Chapter 9, Article 2 and 3. However, ADEQ's Application for Sanitary Facilities for Subdivisions contains references to the correct rules, thereby addressing the inconsistencies

R18-5-408. Individual sewage disposal systems

2. Objective of the rules:

   The rule establishes the criteria for approval of subdivisions that use individual sewage disposal systems for wastewater treatment and disposal (i.e., conventional septic tank/leach field systems) and specifies the submittal requirements and minimum standards necessary to obtain approval. The rule also prohibits individual sewage disposal systems where they may create an unsanitary condition or a public health nuisance, or the use of cesspools.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively establishes the criteria for approval of subdivisions that use individual sewage disposal systems for wastewater treatment and disposal and also prohibits specific activities. However, subsection (A) is not necessary as it states that engineering bulletins can provide information on design, installation and operation of individual sewage disposal systems. ADEQ no longer uses the engineering bulletins.

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

   The proposed individual sewerage disposal system as described in subsections (B) through (E) must comply with the rules for on-site wastewater treatment facilities that are prescribed in Title 18, Chapter 9, Article 3. However, ADEQ's Application for Sanitary Facilities for Subdivisions contains references to the correct rules, thereby addressing the inconsistencies.

R18-5-409. Refuse disposal

2. Objective of the rules:

   The rule ensures that adequate garbage collection and disposal services are provided for a subdivision, and specifies the submittal requirements necessary to obtain approval.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively ensures that garbage collection service is provided to a subdivision or that buyers of lots are given notice that garbage collection and disposal is an individual responsibility and that a separate garbage disposal area that is approved by ADEQ is available to the subdivision.

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

   References to other rules are inconsistent, as the rules in A.A.C. Title 18, Chapter 8, Article 5 were recodified to A.A.C. Title 18, Chapter 13, Article 3, but the recodification is explained in the Historical Notes of A.A.C. Title 18, Chapter 8, Article 5.

R18-5-410. Condominiums

2. Objective of the rules:

   The rule prescribes approval criteria for condominiums. Condominiums are treated like subdivisions by the Department of Real Estate, and ADEQ approval of the sanitary facilities for a condominium project is required.

3. Effectiveness of the rule in achieving the objectives:

   The rule effectively prescribes the design criteria for condominiums.

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

   The reference to the Uniform Plumbing Code in R9-1-412(D) is inconsistent because this subsection does not exist. However, ADEQ has addressed inconsistencies in the Application for Sanitary Facilities for Subdivisions, which explains that the applicable building code governs.

R18-5-411. Violations

2. Objective of the rules:

   The rule provides authority for ADEQ to bring an environmental nuisance action if a subdivider offers a lot for sale, lease, or rent and does not comply with ADEQ's Sanitary Facilities for Subdivisions rules.

3. Effectiveness of the rule in achieving the objectives:

   The enforcement provision is adequate to inform that ADEQ has statutory authority to bring an environmental nuisance action if a subdivider offers a lot for sale, lease, or rent and does not comply with ADEQ's subdivision rules.

ARTICLE 5. MINIMUM DESIGN CRITERIA

I. Information That Is Identical For All Rules in Title 18, Chapter 5, Article 5 (unless stated otherwise in the Section-by-Section Analysis)

1. Authorization of rules by existing statutes:

   The rules in 18 A.A.C. 5, Article 5 are authorized by A.R.S. § 49-353(A)(2).

2. Objective of the rules:

   The Article 5 rules ensure that public water systems are constructed or modified in accordance with the minimum design requirements set out in these rules.

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

   ADEQ uses the following statutes, and rules to determine that the rules are consistent: 18 A.A.C. Chapter 4, Article 1 – 2, and Chapter 14, Article 2.

5. Status of Agency enforcement policy regarding the rule:

   Under A.R.S. § 49-353(A)(2)(b), ADEQ must establish rules regarding the production, treatment, distribution and testing of potable water by public water systems, including requiring that the plans and specifications for all public water systems be submitted to ADEQ for review. ADEQ enforces these rules by conducting design review services and final approval after construction for a public water system. A.R.S. § 49-354 grants ADEQ authority to take enforcement action against a person who violates A.R.S. Title 49, Chapter 2, Article 9 (Potable Water Systems) or a rule adopted pursuant to the Article. ADEQ's enforcement policies and strategies are described in the ADEQ Compliance and Enforcement Handbook, which is a consolidation of existing compliance and enforcement policies, procedures, and guidelines used by ADEQ when initiating and escalating enforcement.

   Under A.R.S. § 49-107, ADEQ may authorize political subdivisions, such as county or city agencies, to exercise certain environmental regulatory functions, powers or duties by a provision of law. Some local authorities have been delegated authority to implement and enforce the process for design review of public water systems. These delegated local authorities may have standards of compliance that are more stringent than those of ADEQ but not less stringent. Currently, Maricopa and Pima Counties have been delegated authority to implement and enforce the design review and approval process of public water systems. Some other cities and counties have been delegated authority to implement and enforce the design review and approval process only as to line extensions of public water systems.

6. Analysis of clarity, conciseness, and understandability:

   ADEQ believes that the rules are clear, concise, and understandable.

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

   ADEQ has not received any written criticisms on the rules within the past five years.

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

   ADEQ described probable economic impacts in qualitative and quantitative terms in the economic impact statement prepared in 2002. ADEQ believes that this Article does not have a substantial economic impact or effect on the state's economy, small businesses or consumers. The primary economic impact of these rules is the cost of the time it takes the owner of a public water system to go through the design review process, and the benefit that incurs to the public by requiring public water systems are designed to minimum criteria. In the past five years, ADEQ has received and processed the following number of applications for Approvals to Construct:

   - 2012 – 157,

- 2013 – 154,
- 2014 – 174,
- 2015 – 148, and
- 2016– 216

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

   ADEQ has not received any analysis submitted by another person that compares the rules' impact on Arizona's business competitiveness to the impact on businesses in other states.

10. Completion of previous proposed courses of action:

    In the previous Five-Year Review report approved by the Governor's Regulatory Review Council at its October 4, 2011 meeting, ADEQ noted concerns with some of the rules, and anticipated submitting a Notice of Final Rulemaking to the Council by July 2015. ADEQ did not complete any rulemaking action on Article 5 due to the continued moratorium on rule making and changing agency priorities.

11. A determination that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

    ADEQ believes that these rules impose the least burden and costs to regulated persons, including paperwork and other compliance costs, necessary to achieve the underlying regulatory and statutory objective.

12. Stringency Compared to Corresponding Federal Law:

    Article 5 does not have a corresponding federal law.

13. Compliance with A.R.S. § 41-1037:

    The rules were amended before July 29, 2010. However, the operator certification rules are similar to the definition of a general permit; the applicant is issued the certification if the applicant meets the applicable requirements of the certification, there is no individual or traditional certification, and no public hearing is required.

14. Proposed course of action:

    Overall, the rules are effective. In the previous Five-Year Review Report, ADEQ proposed amending all the rules in order to reflect current rulemaking style. Although basic design standards have not changed since the rules were adopted in 1995, ADEQ has been considering updating the minimum design criteria in R18-5-502, which incorporate by reference the 1979 Bulletin No. 10 as issued by the Arizona Department of Health Services. Since any future rulemaking would impact every public water system in the state, extensive stakeholder outreach would be required for this rulemaking. ADEQ would need approximately three years to accomplish this rulemaking, given reduced agency resources and assuming that the moratorium on rulemaking is not continued. ADEQ anticipates it would be able to submit a Notice of Final Rulemaking to the Council by July 2019.

II. Section by Section Analysis of Rules

R18-5-501. Siting Requirements

2. Objective of the rules:

The rule requires that new public water systems and extensions to existing public water systems be in a geographic location that would avoid significant risk from natural disasters that could compromise the safety of the drinking water and public health.

3. Effectiveness of the rule in achieving the objectives:

   The rule is effective in setting forth siting requirements for new public water systems and extensions to existing public water systems.

R18-5-502. Minimum Design Criteria

2. Objective of the rules:

   The rule sets forth minimum design criteria requirements for public water systems, requiring that they be designed using good engineering practices and standards that will result in a system that operates properly and reliably.

3. Effectiveness of the rule in achieving the objectives:

   The rule is effective in setting forth minimum design criteria requirements for public water systems.

R18-5-503. Storage Requirements

2. Objective of the rules:

   The rule ensures that a water system that serves a residential population or a school has adequate water storage to meet peak demand.

3. Effectiveness of the rule in achieving the objectives:

   The rule is effective in informing a water system that serves a residential population or a school about the requirements for adequate water storage.

R18-5-504. Prohibition on the Use of Lead Pipe, Solder, and Flux

2. Objective of the rules:

   The rule ensures that public water systems are designed and built using components that will not contaminate drinking water with lead.

3. Effectiveness of the rule in achieving the objectives:

   The rule is effective in ensuring that only approved components are utilized in the design and construction of public water systems.

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

   The citation to R18-4-101 is no longer correct since the Safe Drinking Water rules were amended in 2008.

R18-5-505. Approval to Construct

2. Objective of the rules:

   The rule establishes the process and requirements for a person to submit documentation to ADEQ for design review and approval to construct.

3. Effectiveness of the rule in achieving the objectives:

   The rule is effective in informing a person of the process and requirements for design review and approval to construct. Subsection (E) could be more effective if it explained the extension process in more detail.

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

   The citations in subsection (B)(1)(d)(ii) and subsection (D)(1) are no longer correct since the Safe Drinking Water rules were amended in 2008.

R18-5-506. Compliance with Approved Plans

2. Objective of the rules:

   The rule ensures that any changes to the design plans for public water systems are reviewed and approved by ADEQ prior to being built.

3. Effectiveness of the rule in achieving the objectives:

   The rule is effective in informing applicants of the requirement to submit design changes to ADEQ for approval.

R18-5-507. Approval of Construction

2. Objective of the rules:

   The rule ensures that public water systems are actually constructed as designed and approved at the "approval to construct" stage described in R18-5-505.

3. Effectiveness of the rule in achieving the objectives:

   The rule is effective in ensuring that a public water system is actually constructed as designed and approved at the "approval to construct" stage.

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

   Subsection (B)(1) requires a professional engineer registered in Arizona (or a person under direct supervision) to complete a final inspection and submit ADEQ's Certificate of Completion under seal. Subsection (B)(2) requires that final plans and specifications also be submitted with the Certificate of Completion. Subsection (B)(1) is not entirely consistent with a Board of Technical Registration statute created in 2005 that allows a professional engineer the option when submitting as built plans to distinguish that the plans submitted were based on the engineer's field observations during the construction phase, or the plans submitted were based on information received from other entities and not based on personal field observations. A.R.S. § 32-152(A). ADEQ believes that the important element of R18-5-507(B) is that the plans are reviewed and sealed by a professional engineer registered in Arizona. ADEQ plans to modify its Certificate of Completion form to reflect that either review according to A.R.S. § 32-152(A) is sufficient for completing the Approval of Construction process.

R18-5-508. Record Drawings

2. Objective of the rules:

   The rule ensures that an Arizona registered professional engineer approves all original design plans and any deviations from the original plans.

3. Effectiveness of the rule in achieving the objectives:

   The rule is effective in ensuring that an Arizona registered professional engineer approves all original design plans and any deviations from the original plans.

R18-5-509. Modification to Existing Treatment Process

2. Objective of the rules:

   The rule ensures that prior to making modifications to the processes utilized by public water systems to treat drinking water, ADEQ reviews and approves the changes to the treatment process.

3. Effectiveness of the rule in achieving the objectives:

   The rule is effective in ensuring that changes in treatment are reviewed and approved by ADEQ prior to being implemented.

6. Analysis of clarity, conciseness, and understandability:

   The text could be clearer that a modification must comply with the Approval to Construct process in R18-5-505.

ARTICLE 1. CLASSIFICATIO_ OF WATER A_D WASTEWATER FACILITIES A_D CERTIFICATIO_ OF OPERATORS

R18-5-101. Definitions

The terms in this Article have the following meanings:

"Certified operator" or "operator" means an individual who holds a current certificate issued by the Department in the field of water or wastewater treatment, water distribution, or wastewater collection.

"Collection system" means a pipeline or conduit, a pumping station, a force main, or any other device or appurtenance used to collect and conduct wastewater to a central point for treatment and disposal.

"Department" means the Department of Environmental Quality or its designated representative.

"Director" means the Director of the Department of Environmental Quality or the Director's designated representative.

"Direct responsible charge" means day-to-day decision making responsibility for a facility or a major portion of a facility.

"Distribution system" means a pipeline, appurtenance, or device of a public water system that conducts water from a water source or treatment plant to consumers for domestic or potable use.

"Facility" means a water treatment plant, wastewater treatment plant, distribution system, or collection system.

"Industrial waste" means the liquid, gaseous, or solid waste produced at an industrial operation.

"Onsite operator" means an operator who visits a facility at least daily to ensure that the facility is operating properly.

"Onsite representative" means an individual located at a facility who monitors the daily operation at the facility and maintains contact with the remote operator regarding the facility.

"Operator" has the same meaning as certified operator, as defined in this Section.

"PDH" means professional development hour, as defined in this Section.

"Population equivalent" means the population that would contribute an equal amount of biochemical oxygen demand (BOD) computed on the basis of 0.17 pounds of five-day, 20-degree centigrade BOD per capita per day.

"Professional development hour" or "PDH" means one hour of participation in an organized educational activity related to engineering, biological or chemical sciences, a closely related technical or scientific discipline, or operations management.

"Public water system" has the same meaning prescribed in A.R.S. § 49-352.

"Qualifying discipline" means engineering, biology, chemistry, or a closely related technical or scientific discipline.

"Qualifying experience" means experience, skill, or knowledge obtained through employment that is applicable to the technical or operational control of all or part of a facility.

"Remote operator" means an operator who is not an onsite operator.

"Validated examination" means an examination that is approved by the Department after being reviewed to ensure that the examination is based on the class and grade of a system or facility.

"Wastewater" means sewage, industrial waste, and all other waterborne waste that may pollute any lands or waters of the state.

"Wastewater treatment plant" means a process, device, or structure used to treat or stabilize wastewater or industrial

waste and dispose of the effluent.
"Water treatment plant" means a process, device, or structure used to improve the physical, chemical, or biological quality of the water in a public water system.

Historical _ote

Former Section R9-20-504 repealed, new Section R9-20-504 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-504 amended, renumbered as Section R9-20-501, then renumbered as Section R18-4-101 effective October 23, 1987 (Supp. 87-4). R18-5-101 recodified from R18-4-101 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 5079, effective October 16, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 998, effective April 2, 2005 (Supp. 05-1).

R18-5-102. Applicability

A. The rules in this Article apply to owners and operators of facilities in Arizona.

B. The following facilities are exempt from the requirements of this Article:

1. A public water system that meets the nonapplicability criteria in R18-4-102.
2. A septic tank or collection system that discharges to a septic tank.
3. A collection system that serves 2,500 or fewer persons and discharges into a facility that is operated by a certified operator.

4. A collection system that serves a nonresident population and discharges into a collection system operated by a certified operator.
5. An irrigation system, an industrial water facility, or a similar facility in which water is not used for domestic or drinking purposes.
6. An irrigation or industrial wastewater facility used to treat, recycle, or impound industrial or agricultural wastes within the boundaries of the industrial or agricultural property.
7. An industrial waste pretreatment facility in which treated wastewater is released to a collection system or wastewater treatment plant that is regulated by this Article.
8. A facility for treating industrial wastes that are not treatable by biological means.
9. A facility used to impound surface water before the water is conducted to a water treatment plant.
10. A wastewater treatment device that serves a home.

Historical _ote

Adopted as Section R9-20-502 and renumbered as Section R18-4-102 effective October 23, 1987 (Supp. 87-4). R18-5-102 recodified from R18-4-102 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 5079, effective October 16, 2001 (Supp. 01-4).

R18-5-103. Certification Committee

A. Upon the effective date of this rule, the Director shall establish a certification committee to make recommendations and to provide the Department with technical advice and assistance related to this Article when requested.

B. The certification committee shall consist of 11 members as follows:
1. One employee of the Department;
2. One currently employed wastewater treatment plant operator with Grade 4 certification;
3. One currently employed water treatment plant operator with Grade 4 certification;
4. One currently employed wastewater collection system operator with Grade 4 certification;
5. One currently employed water distribution system operator with Grade 4 certification;
6. One faculty member teaching sanitary sciences at an Arizona university or community college;
7. One professional engineer, registered and residing in Arizona, engaged in consulting in the field of sanitary engineering;
8. One elected or appointed municipal official;
9. One representative of an investor-owned water or wastewater facility;
10. One representative of a small public water system; and
11. One currently employed remote operator representative.

C. The Director shall appoint each certification committee member.
D. The certification committee shall meet at least twice a year. At the first meeting of each calendar year, the certification committee shall select, from its membership, a chairperson and other officers as necessary. The Department's certification committee member is the executive secretary, who is responsible for keeping records of all meetings.
E. The term of a certification committee member is three years.
F. A meeting quorum consists of the chairperson or the chairperson's designated representative, the executive secretary or the executive secretary's designated representative, and three other members of the committee.
G. In the event of a vacancy caused by death, resignation, or removal for cause, the Director shall appoint a successor for the unexpired term.
H. A certification committee member may be reappointed, but a member shall not serve more than three consecutive terms.

Historical _ote

Former Section R9-20-505 repealed, new Section R9-20-505 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-505 amended, renumbered as Section R9-20-503, then renumbered as Section R18-4-103 effective October 23, 1987 (Supp. 87-4). R18-5-103 recodified from R18-4-103 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1).

R18-5-104. General Requirements

A. A facility owner shall ensure that at all times:
1. A facility has an operator in direct responsible charge who is certified for the class of the facility and at or above the grade of the facility;
2. An operator makes all decisions about process control or system integrity regarding water quality or water quantity that affects public health; however, an administrator who is not a certified operator may make a planning decision regarding water quality or water quantity if the decision is not a direct operational process control or system integrity decision that affects public health;
3. An operator who is in direct responsible charge of more than one facility is certified for the class of each facility and at or above the grade of the facility with the highest grade;

4. An operator who replaces the operator in direct responsible charge does not begin operation of the facility before being certified for the applicable class and at or above the grade of the facility;
5. In the absence of the operator in direct responsible charge, the operator in charge of the facility is certified for the applicable class of facility and at a grade no lower than one grade below the grade of the facility; and
6. The names of all current operators are on file with the Department.
B. If the owner of a facility replaces an operator in direct responsible charge with another operator, the facility owner shall notify the Department in writing within 10 days of the replacement.
C. An operator shall notify the Department in writing within 10 days of the date the operator either ceases operation of a facility or commences operation of another facility.
D. An operator shall operate each facility in compliance with applicable state and federal law.
E. A facility owner shall ensure that a Grade 3 or Grade 4 facility has an onsite operator.
F. An operator holding certification in a particular class and grade may operate one or more Grade 1 or Grade 2 facilities as a remote operator if the facility owner ensures that the following requirements are met:
1. The remote operator is certified for the class of each facility and at or above the grade of each facility operated by the remote operator.
2. There is an onsite representative on the premises of each Grade 1 or Grade 2 facility, except for a Grade 1 water distribution system that serves fewer than 100 people, which is not required to have an onsite representative if the conditions of subsection (F)(8) are met. The onsite representative is not required to be an operator if the

facility has a remote operator who is certified at or above the grade of the facility.
3. The remote operator instructs, supervises, and provides written instructions to the onsite representative in the proper operation and maintenance of each facility and ensures that adequate records are kept.
4. The remote operator provides the onsite representative with a telephone number at which the remote operator can be reached at all times. If the remote operator is not available for any reason, the remote operator shall provide the onsite representative with the name and telephone number of a qualified substitute operator who will be available while the remote operator is not available.
5. The remote operator resides no more than 200 miles by ground travel from any facility that the remote operator serves.
6. The remote operator operates each facility in compliance with applicable state and federal laws.
7. The remote operator inspects a facility as often as necessary to ensure proper operation and maintenance, but in no case less than:
a. Monthly for a Grade 1 or Grade 2 water treatment plant or distribution system that produces and distributes groundwater;
b. Monthly for a Grade 1 wastewater treatment plant;
c. Twice a month for a collection system that serves

fewer than 2,500 people; and
d. Weekly for a Grade 2 wastewater treatment plant or collection system that serves fewer than 1,000 people.
8. For a Grade 1 water distribution system that does not have an onsite representative and serves fewer than 100 people, the following conditions are met:
a. The name and telephone number at which the remote operator can be reached is posted at the facility, enclosed with water bills, or otherwise made readily available to water users. If the remote operator is not available for any reason, the remote operator shall post at the facility the name and telephone number of a substitute operator of the applicable facility class and grade who will be available while the remote operator is not available;
b. The remote operator or substitute operator resides no more than 200 miles by ground travel from the facility; and
c. The remote operator inspects the facility weekly.

Historical _ote

Former Section R9-20-506 repealed, new Section R9-20-506 adopted effective November 1, 1979 (Supp. 79-6). Amended effective March 19, 1980 (Supp. 80-2). Former Section R9-20-506 amended, renumbered as Section R9-20-504, then renumbered as Section R18-4-104 effective October 23, 1987 (Supp. 87-4). R18-5-104 recodified from R18-4-104 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 5079, effective October 16, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 998, effective April 2, 2005 (Supp. 05-1).

R18-5-105. Certification

A. The Department shall issue an operator certificate to an applicant if the applicant:
1. Meets the experience and education requirements in R18-5-112 for the applicable class and grade,
2. Passes a written examination for the applicable class and grade, and
3. Has not had an operator's certificate revoked in Arizona or permanently revoked in another jurisdiction.

B. To apply for operator certification, an applicant shall submit or arrange to have submitted to the Department the following information, as applicable, in a format acceptable to the Department:
1. The applicant's full name, Social Security number, and operator number;
2. The applicant's current mailing address, home and work telephone numbers, fax number, and e-mail address;
3. The applicant's place of employment, including the facility identification number;
4. The class and grade of the facility where the applicant is employed;
5. Proof of successful completion of the examination for the applicable class and grade; and
6. Documentation of the applicant's experience and education required under R18-5-112.

Historical _ote

Former Section R9-20-507 repealed, new Section R9-20-507 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-507 amended, renumbered as Section R9-20-505, then renumbered as Section R18-4-105

effective October 23, 1987 (Supp. 87-4). R18-5-105
recodified from R18-4-105 (Supp. 95-2). Amended by
final rulemaking at 7 A.A.R. 1171, effective February 16,
2001 (Supp. 01-1). Amended by final rulemaking at 14
A.A.R. 4527, effective January 31, 2009 (Supp. 08-4).

R18-5-106. Examinations

A. The Department shall provide for examinations for certification
of operators. The Department may contract with third
party examiners for administration of examinations, based on
its assessment of the quality of the examination services. The
Department shall ensure that a list of approved examiners is
available upon request.

B. The Department shall validate all examinations before administration.
Each examination shall include topics such as treatment
technologies, system maintenance, regulatory protocols,
safety, mathematics, and general system management.

C. The examiner shall grade the examination and make the results
available to the applicant and the Department within seven
days of the date of the examination.

D. An applicant shall not be admitted to an examination without a
valid picture I.D.

E. An individual shall make a score of 70 percent on the examination
in order to attain a passing grade.

Historical _ote

Adopted effective March 19, 1980 (Supp. 80-2). Former
Section R9-20-508 amended, renumbered as Section R9-
20-506, then renumbered as Section R18-4-106 effective
October 23, 1987 (Supp. 87-4). Amended subsection (F)
effective November 30, 1988 (Supp. 88-4). R18-5-106
recodified from R18-4-106 (Supp. 95-2). Amended by
final rulemaking at 7 A.A.R. 1171, effective February 16,
2001 (Supp. 01-1).

R18-5-107. Certificate Renewal

A. If the Department renews a certificate, the certificate is
renewed for three years, unless the operator requests a shorter
renewal period in writing.

B. To renew a certificate, an operator shall complete and submit
to the Department an operator certificate renewal form

approved by the Department. An operator shall maintain documentation
and provide the documentation to the Department
upon request to verify completion of at least 30 PDHs accumulated
during a certification period. The operator shall provide
documentation of PDHs in a format acceptable to the Department.
At least 10 of the PDHs shall directly relate to the specific
job functions of the operator. If an operator holds
multiple certificates, the operator may apply required PDHs to
all certificates if the PDHs are acquired within the applicable
certification period. The operator's supervisor or the entity that
provides the education or training shall verify completion of
each PDH in writing. An operator shall maintain documentation
of completion of PDHs for a minimum of five years.

C. As an alternative to the requirements of subsection (B), an
operator may renew a certificate by taking and passing an
examination for the applicable class and grade.

Historical _ote

Former Section R9-20-509 repealed, new Section R9-20-
509 adopted effective November 1, 1979 (Supp. 79-6).
Former Section R9-20-509 amended, renumbered as Section
R9-20-507, then renumbered as Section R18-4-107

effective October 23, 1987 (Supp. 87-4). Amended subsection (B) effective November 30, 1988 (Supp. 88-4).
R18-5-107 recodified from R18-4-107 (Supp. 95-1). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1).
Amended by final rulemaking at 11 A.A.R. 998, effective April 2, 2005 (Supp. 05-1).

R18-5-108. Certificate Expiration

A. A certificate expires on the expiration date printed on the certificate. An operator may reinstate an expired certificate for the same class and grade without examination if the operator files the documentation required in R18-5-107(B) with the Department within 90 days of the certificate expiration date.

B. If an expired certificate is not renewed within 90 days of the certificate expiration date, the Department shall not reinstate the certificate. To be recertified, the operator shall reapply and be reexamined as a new applicant.

Historical _ote

Former Section R9-20-510 repealed, new Section R9-20-510 adopted effective November 1, 1979 (Supp. 79-6).
Former Section R9-20-510 amended, renumbered as Section R9-20-508, then renumbered as Section R18-4-108 effective October 23, 1987 (Supp. 87-4). Amended subsection (D) effective November 30, 1988 (Supp. 88-4).
R18-5-108 recodified from R18-4-108 (Supp. 95-2). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1).

R18-5-109. Denial, Suspension, Probation, and Revocation

A. If the Department decides to deny, suspend, or revoke a certificate, or to place an operator on probation, the Department shall act in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 18 A.A.C. 1, Article 2.

B. The Department may revoke or suspend a certificate, or place an operator on probation, if the Department finds that the operator:

1. Operates a facility in a manner that violates federal or state law;
2. Negligently operates a facility or negligently supervises the operation of a facility;
3. Fails to comply with a Department order or order of a court;
4. Obtains, or attempts to obtain, a certificate by fraud, deceit, or misrepresentation;
5. Engages in fraud, deceit, or misrepresentation in the operation or supervision of a facility;
6. Knowingly or negligently prepares a false or fraudulent report or record regarding the operation or supervision of a facility;
7. Endangers the public health, safety, or welfare;
8. Fails to comply with the terms or conditions of probation or suspension; or
9. Fails to cooperate with an investigation by the Department including failing or refusing to provide information required by this Article.

C. The Department shall deny certification to an applicant who does not meet the requirements of R18-5-105 or R18-5-110, or who is ineligible for certification pursuant to a Department order or order of a court.

D. The Department may place an operator on probation or suspend an operator's certificate to address deficiencies in operator performance. The terms of probation or suspension may include completion of additional PDHs, increased reporting of operator activity, limitations on activities the operator may

perform, or other terms to address deficiencies in operator performance.
E. During the period of suspension, an individual whose certificate is suspended shall not operate a facility of the class of the suspended certificate.
F. An operator whose certificate is suspended or revoked, or who has been placed on probation, shall immediately notify the owner of a facility where the operator is employed of the suspension, revocation, or probation.
Historical _ote
Former Section R9-20-511 repealed, new Section R9-20-511 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-511 amended, renumbered as Section R9-20-509, then renumbered as Section R18-4-109 effective October 23, 1987 (Supp. 87-4). R18-5-109 recodified from R18-4-109 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1). Amended by final rulemaking at 11 A.A.R. 998, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 4527, effective January 31, 2009 (Supp. 08-4).
R18-5-110. Reciprocity
The Department shall issue a certificate to an applicant who holds a valid certificate from another jurisdiction, if the applicant:
1. Passes a written, validated examination in Arizona or in another jurisdiction that administers an examination that is substantially equivalent to the examination in Arizona and validated by the Department, and
2. Submits written evidence of the experience and education required under R18-5-112.
Historical _ote
Former Section R9-20-512 repealed, new Section R9-20-512 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-512 amended, renumbered as Section R9-20-510, then renumbered as Section R18-4-110 effective October 23, 1987 (Supp. 87-4). Amended subsection (B) effective November 30, 1988 (Supp. 88-4). R18-5-110 recodified from R18-4-110 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1).

R18-5-111. Repealed
Historical _ote
Adopted as Section R9-20-511 and renumbered as Section R18-4-111 effective October 23, 1987 (Supp. 87-4). R18-5-111 recodified from R18-4-111 (Supp. 95-2). Section repealed by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1).
R18-5-112. Experience and Education
A. The Department shall consider the following criteria to determine whether an applicant has the experience and education required for certification in a specific class and grade:
1. Years of experience at a lower grade;
2. Qualifying experience in the same or a related field; and
3. Education in a qualifying discipline.
B. An applicant shall provide written evidence of education in a qualifying discipline. The applicant shall provide transcripts if the Department determines that the transcripts are necessary to verify completion of the education requirements.
C. An applicant shall provide written evidence of qualifying experience in the applicable facility class.

D. An applicant shall meet the following requirements for admission to a certification examination:
1. For Grade 1, high school graduation or the equivalent.
2. For Grade 2, at least:
a. High school graduation or the equivalent and one year of qualifying experience as a Grade 1 operator or the equivalent of a Grade 1 operator in another jurisdiction;
b. Two years of postsecondary education in a qualifying discipline and one year of qualifying experience, including six months as a Grade 1 operator or the equivalent of a Grade 1 operator in another jurisdiction; or
c. A bachelor's degree in a qualifying discipline and six months of qualifying experience.
3. For Grade 3, at least:
a. High school graduation or the equivalent and two years of qualifying experience, including one year as a Grade 2 operator or the equivalent of a Grade 2 operator in another jurisdiction;
b. Two years of postsecondary education in a qualifying discipline, and 18 months of qualifying experience as a Grade 2 operator or the equivalent of a Grade 2 operator in another jurisdiction; or
c. A bachelor's degree in a qualifying discipline and one year of qualifying experience.
4. For Grade 4, at least:
a. High school graduation or the equivalent and three years of qualifying experience, including one year as a Grade 3 operator or the equivalent of a Grade 3 operator in another jurisdiction;
b. Two years of postsecondary education in a qualifying discipline and 30 months of qualifying experience, including one year as a Grade 3 operator or the equivalent of a Grade 3 operator in another jurisdiction; or
c. A bachelor's degree in a qualifying discipline, and two years of qualifying experience.

Historical _ote

Former Section R9-20-517 repealed, new Section R9-20-517 adopted effective November 1, 1979 (Supp. 79-6). Amended effective March 19, 1980 (Supp. 80-2). Former Section R9-20-517 amended, renumbered as Section R9-20-512, then renumbered as Section R18-4-112 effective October 23, 1987 (Supp. 87-4). R18-5-112 recodified from R18-4-112 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 5079, effective October 16, 2001 (Supp. 01-4).

R18-5-113. Classes of Facilities

A. The Department shall classify a facility in one of four classes:
1. Water treatment plant,
2. Water distribution system,
3. Wastewater treatment plant, or
4. Wastewater collection system.

B. The Department shall classify a facility as one of four grades, Grades 1–4. The grade corresponds with the level of system complexity, with Grade 1 being the most simple and Grade 4 being the most complex.

C. For a multi-facility system, the Department shall grade each facility according to complexity and the total population or population equivalent served.

Historical _ote
Adopted as Section R9-20-513 and renumbered as Section R18-4-113 effective October 23, 1987 (Supp. 87-4). Amended subsections (A) and (C) effective November 30, 1988 (Supp. 88-4). R18-5-113 recodified from R18-4-113 (Supp. 95-2). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1).

R18-5-114. Grades of Wastewater Treatment Plants and Collection Systems

The Department shall grade a wastewater treatment plant or collection system according to population equivalent served, degree of hazard to public health, class of facility, and degree of treatment, as follows:

1. Grade 1 includes:
a. A stabilization pond that serves 2,000 or fewer persons;
b. A wastewater treatment plant not designated as Grade 2, 3, or 4; or
c. A collection system that serves 2,500 or fewer persons.
2. Grade 2 includes:
a. A stabilization pond that is designed to serve more than 2,000 persons;
b. An aerated lagoon;
c. A facility that employs biological treatment based upon the activated sludge principle or trickling filters and is designed to serve 5,000 or fewer persons, except as provided in subsection (3)(c); or
d. A collection system that serves between 2,501 to 10,000 persons.
3. Grade 3 includes:
a. A facility that employs biological treatment based upon the activated sludge principle and is designed to serve 5,001 to 20,000 persons;
b. A facility that employs trickling filtration and is designed to serve 5,001 to 25,000 persons;
c. A variation of biological treatment based on the activated sludge principle that requires specialized knowledge, including contact stabilization, and is designed to serve 20,000 or fewer persons; or
d. A collection system that serves 10,001 to 25,000 persons.
4. Grade 4 includes:

a. A facility that employs biological treatment based upon the activated sludge principle and is designed to serve more than 20,000 persons;
b. A facility that employs trickling filtration and is designed to serve a population equivalent more than 25,000 persons; or
c. A collection system that serves more than 25,000 persons.

Historical _ote
Former Section R9-20-519 repealed, new Section R9-20-519 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-519 amended, renumbered as Section R9-20-514, then renumbered as Section R18-4-114 effective October 23, 1987 (Supp. 87-4). R18-5-114 recodified from R18-4-114 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1). Amended to correct manifest typographical

error in subsection (3)(d) (Supp. 01-3).

R18-5-115. Grades of Water Treatment Plants and Distribution Systems

A. Grading of water treatment plants. This subsection does not apply to a facility that distributes water but does not treat water or to a facility that distributes water and disinfects by chlorine gas or hypochlorite only to maintain disinfection levels in the distribution system. The Department shall grade a water treatment plant according to the sum of the points it the Department assigns for each plant characteristic.

1. The Department shall assign points for the purpose of grading a water treatment plant as follows:

2. The Department shall assign a grade by the total number of points assigned to the facility, as follows:

B. Grading of water distribution systems. The Department shall grade a distribution system according to the sum of the points the Department assigns for each system characteristic.

1. The Department shall assign points for the purpose of grading a distribution system as follows:

Plant Characteristics Points

Population 1 per 5,000
Maximum Design Capacity 1 per Millions of
Gallons per Day up
to 10
Groundwater Source 3
Surface or Groundwater Under the
Direct Influence of Surface Water
Source
5
Carbon Dioxide 2
pH Adjustment 3
Packed Tower Aeration 6
Air Stripping 6
Stability or Corrosion Control 3
Taste and Odor 8
Iron/Manganese Removal 8
Ion Exchange Softening 10
Chemical Precipitation Softening 15
Coagulant Addition 6
Flocculation 4
Sedimentation 4
Upflow Clarification 2
Fluoridation 5
Activated Alumina 6
Blending 5
Residual Waste Stream 5
Control Systems Technology 2
Biologically Active Filter 20
Granular Media Filter 15
Pressure Filter 15
Gravity Sand Filter 10
Membrane Filtration 15
Chlorine Gas 6
Hypochlorite Liquid 2
Hypochlorite Solid 2
Chloramine 9
Chlorine Dioxide 9
Ozone 12
Ultraviolet 3

Grade Point Range

Grade 1 1 to 25
Grade 2 26 to 50

Grade 3 51 to 70
Grade 4 More than 70
System Characteristics Points
Population 1 per 5,000
Maximum Design
Capacity
1 per Millions of
Gallons per Day up
to 10
Pressure Zones 5
Booster Stations 5
Storage Tanks 3
Blending 5
Fire Protection Systems/Testable
Backflow Prevention Assemblies*
5
Cathodic Protection 3
Control System Technologies 2
Chlorine Gas 6
Hypochlorite Liquid 2
Hypochlorite Solid 2
Chloramine 9

*The presence of one or both of these devices earns five points for
the facility.
2. No points are added for Grade 1 small systems that:
a. Only distribute groundwater;
b. Serve fewer than 501 persons;
c. Have no disinfection or disinfect by chlorine gas or
hypochlorite only; and
d. Do not store water or store water only in storage
tanks.
3. The Department shall assign a grade by the total number
of points assigned to the facility, as follows:
Historical _ote
Former Section R9-20-520 repealed, new Section R9-20-
520 adopted effective November 1, 1979 (Supp. 79-6).
Former Section R9-20-520 amended, renumbered as Section
R9-20-515, then renumbered as Section R18-4-115
effective October 23, 1987 (Supp. 87-4). R18-5-115
recodified from R18-4-115 (Supp. 95-2). Amended by
final rulemaking at 7 A.A.R. 1171, effective February 16,
2001 (Supp. 01-1). Amended by final rulemaking at 7
A.A.R. 5079, effective October 16, 2001 (Supp. 01-4).
Amended by final rulemaking at 11 A.A.R. 998, effective
April 2, 2005 (Supp. 05-1).
R18-5-116. Initial Grading and Regrading of Facilities
A. The Department shall act under A.R.S. Title 41, Chapter 6,
Article 10 and 18 A.A.C. 1, Article 2 when initially grading or
when regrading a facility.
B. If it is determining the initial grade of a facility or whether to
regrade a facility, the Department shall consider the facility
characteristics in R18-5-114 and R18-5-115, and whether:
1. The facility has special design features or characteristics
that make it unusually difficult to operate;
2. The water or wastewater is unusually difficult to treat;
3. The facility uses effluent; or
4. The facility poses a potential risk to public health, safety
or welfare.
C. The owner of a facility that is regraded under this Article shall

ensure that the facility is operated by an operator, in compliance with this Article, no later than one year from the effective date of the facility regrading.

Historical _ote

New Section adopted by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1).

ARTICLE 2. PUBLIC A_D SEMIPUBLIC SWIMMI_G POOLS A_D SPAS

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.
Chlorine Dioxide 9

Grade Point Range

Grade 1 0
Grade 2 1 to 20
Grade 3 21 to 35
Grade 4 More than 35

“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.
Historical _ote
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-202. Applicability
A. This Article applies to public and semipublic swimming pools
and spas.
B. This Article does not apply to the following:
1. A private residential swimming pool or spa,
2. A swimming pool or spa used for medical treatment or
physical therapy and supervised by licensed medical personnel,
3. A semi-artificial bathing place,
4. A natural bathing place, or
5. An artificial lake.
Historical _ote
Adopted effective February 19, 1998 (Supp. 98-1).
R18-5-203. Design Approval
A. A person shall obtain design approval from the Department
before starting construction of:
1. A new public or semipublic swimming pool or spa;
2. A major modification to an existing public or semipublic
swimming pool or spa. For purposes of this subsection, a
major modification means a change to the shape, depth,
water circulation system, or disinfection system of a public
or semipublic swimming pool or spa or the installation
of diving equipment at a public or semipublic swimming
pool;
3. A change in use from a semipublic swimming pool to a
public swimming pool; and
4. A change in use from a private residential swimming pool
to a public or semipublic swimming pool.
B. An applicant for a design approval shall submit an ADEQ
application form to the Department in quadruplicate with four
complete sets of plans and specifications for the swimming
pool or spa and the information in subsection (C).
C. The application for design approval shall include four copies
of the following:
1. A general plot plan;
2. Plans and specifications showing the size, shape, crosssection,
slope, and dimensions of each swimming pool or
spa, deck areas, and barriers;
3. Plans and specifications showing the water circulation
and disinfection systems, including all piping, fittings,
drains, suction outlets, filters, pumps, surface skimmers,
return inlets, chemical feeders, disinfection equipment,
gauges, flow meters, and strainers;
4. Plans and specifications showing the source of water supply
and the method of disposal of filter backwash water;
used swimming pool or spa water, and wastewater from
toilets, urinals, sinks, and showers;
5. Detailed plans of bathhouses, dressing rooms, equipment
rooms, and other appurtenances; and
6. Additional data required by the Department for a complete
understanding of the project.

D. A professional engineer, architect, or a swimming pool or spa contractor with a current A-9, A-19, KA-5, KA-6 license shall prepare or supervise the preparation of all plans and specifications submitted to the Department for review.
E. An applicant shall submit an application for design approval to the Department at least 60 days prior to the date that the applicant wishes to begin construction of a swimming pool or spa.
F. The Department shall determine whether the application for design approval is complete within 30 days of the date of receipt of the application by the Department.
G. The Department shall issue or deny the application for design approval within 30 days of the date that the Department determines that the application for design approval is complete.
H. Unless an extension of time is granted in writing by the Department, a design approval is void if construction is not started within one year after the date of its issuance or there is a halt in construction of more than one year.
I. The Department may issue a design approval with conditions. The Department shall not issue an Approval of Construction if the design approval is conditioned and the construction of the swimming pool or spa does not comply with the stated conditions.
J. The Department may issue design approvals in phases to allow a political subdivision to start construction of a public swimming pool or spa without issuing a design approval for the entire construction project. A design approval may be issued in phases provided all of the following conditions are met:
1. A phased design approval is needed to accommodate a design/build contract, phased construction contract, multiple construction contracts, turnkey contract, or special contract that requires construction to begin prior to the completion of design plans and specifications for the entire public swimming pool or spa construction project.
2. The applicant submits a detailed project description for the entire public swimming pool or spa construction project to the Department.
3. There is a written agreement between the applicant and the Department which includes the following:
a. A construction project schedule,
b. A schedule to submit applications and supporting documentation for the phased design approval including any anticipated variance requests,
c. Negotiated time-frames for administrative completeness and substantive review of each application for phased design approval, and
d. A schedule of construction inspections by the Department or third-party certifications by the applicant.
4. The applicant certifies in writing that the applicant understands that the public swimming pool or spa cannot be operated without an Approval of Construction for each phase of the construction project pursuant to R18-5-204.
5. If the applicant and the Department cannot reach agreement regarding a phased design approval or Approval of Construction, then the requirements of R18-5-203(A) through (I) and R18-5-204 apply.
Historical _ote
Adopted effective February 19, 1998 (Supp. 98-1).
R18-5-204. Approval of Construction
A. A public or semipublic swimming pool or spa shall not operate without receiving an Approval of Construction issued by the Department.
B. The construction of a public or semipublic swimming pool or spa shall conform to plans and specifications that have been

approved by the Department. If the applicant wishes to make a change to the approved plans and specifications, the applicant shall submit revised plans and specifications with a written statement of the reasons for the change to the Department. The applicant shall obtain Department approval of the revised plans and specifications before starting any work affected by the change.

C. Prior to any construction that will cover the piping arrangement of the swimming pool or spa and at least 30 days prior to the expected date of completion of construction of a public swimming pool or spa, the applicant shall notify the Department to permit a construction inspection. The Department shall inspect the construction of a swimming pool or spa to determine if the swimming pool or spa has been constructed in

accordance with Department-approved plans, specifications, and conditions unless a professional engineer, architect, or registered sanitarian certifies that the swimming pool or spa has been constructed in accordance with Department-approved plans, specifications, and conditions.

D. If the swimming pool or spa has been constructed in accordance with Department-approved plans, specifications, and conditions, the Department shall issue the Approval of Construction within 30 days of the date of the construction inspection by the Department or the date the Department receives third-party certification.

Historical _ote

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-205. Prohibitions

A. A fill-and-draw swimming pool or spa shall not be used as a public or semipublic swimming pool or spa.

B. A private residential spa shall not be used as a public or semipublic spa.

Historical _ote

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-206. Water Source

Only water from a source that is approved by the Department shall be used in a public or semipublic swimming pool or spa. Reclaimed wastewater shall not be used as make-up water for a public or semipublic swimming pool or spa.

Historical _ote

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-207. Construction Materials

A. A public or semipublic swimming pool or spa shall be constructed of concrete or other structurally rigid material that is equivalent in strength or durability to concrete, except that a public or semipublic spa may be constructed of fiberglass or acrylic.

B. A public or semipublic swimming pool or spa shall be constructed of materials that are nontoxic.

C. A public or semipublic swimming pool or spa shall be constructed of waterproof materials that provide a watertight structure.

D. A public or semipublic swimming pool or spa shall have a smooth and easily cleaned surface, without cracks or joints, excluding structural joints, or to which a smooth, easily cleaned surface finish is applied or attached.

E. All corners in a public or semipublic swimming pool or spa shall be rounded, including the corners formed by the intersection of a wall and floor.

F. A surface within a public or semipublic swimming pool or spa intended to provide footing for users shall have a slip-resistant surface. The roughness or irregularity of the surface shall not cause injury or discomfort to users' feet during normal use.
G. The color, pattern, or finish of the interior of a public or semipublic swimming pool or spa shall not obscure objects, surfaces within the swimming pool or spa, debris, sediment, or algae. Surface finishes shall be white, pastel, or other light color. The interior finish shall completely line the swimming pool or spa to the coping, tile, or gutter system.
Historical _ote
Adopted effective February 19, 1998 (Supp. 98-1).
R18-5-208. Maximum Bathing Load
A. The maximum bathing load for a public or semipublic swimming pool or spa shall not be exceeded.
B. The maximum bathing load for a public or semipublic swimming pool shall be calculated as the sum of the following:
1. The shallow area of the swimming pool in square feet divided by 10 square feet, plus
2. The deep area of the swimming pool in square feet minus 300 square feet for each diving board divided by 24 square feet.
C. The maximum bathing load for a public swimming pool shall be limited by the number of users for the toilets, showers, or lavatories that are provided in the bathhouses or dressing rooms prescribed in R18-5-242.
D. The maximum bathing load for a public or semipublic spa shall not exceed the area of the spa in square feet divided by 9 square feet.
E. The maximum bathing load for a public or semipublic swimming pool or spa shall be posted.
Historical _ote
Adopted effective February 19, 1998 (Supp. 98-1).
R18-5-209. Shape
A. A public or semipublic swimming pool or spa may be any shape except that the designer shall shape a public or semipublic swimming pool or spa to minimize hazards to users and provide adequate circulation of swimming pool or spa water.
B. There shall be no protrusions, extensions, means of entanglement, or other obstructions in a public or semipublic swimming pool or spa that may cause entrapment of or injury to the user. This subsection does not prohibit water features such as water fountains, slides, water play equipment, or water volleyball and basketball nets.
Historical _ote
Adopted effective February 19, 1998 (Supp. 98-1).
R18-5-210. Walls
A. Where a racing lane terminates in a swimming pool, the wall shall be plumb to a minimum depth of 5 feet below the waterline. Below the 5-foot depth, the wall shall be radiused to join the floor.
B. There shall be no projections from a swimming pool or spa wall except for coping, cantilevered deck, ladders, and steps.
C. An underwater seat shall comply with the following:
1. The edges of an underwater seat shall be outlined with a sharply contrasting colored tile or other material that is clearly visible from the deck adjacent to the underwater seat;
2. An underwater seat shall have a slip-resistant surface;
3. An underwater seat shall be located outside of the deep area of a swimming pool that is equipped for diving. An underwater seat may be located in the deep area of a

swimming pool that is not equipped for diving provided the underwater seat is either completely recessed into the swimming pool wall, shaped to be compatible with the shape of the swimming pool wall, or in a corner of the swimming pool;
4. The maximum depth of an underwater seat is 24 inches below the waterline. The minimum depth of an underwater seat is 12 inches below the waterline; and
5. The maximum width of an underwater seat is 20 inches.
D. If a spa is located immediately adjacent to a swimming pool, the separating wall between the spa and the swimming pool shall be no more than 8 inches wide. The top of the separating wall shall be no lower than the level of the coping of the swimming pool. If a separating wall is more than 8 inches wide, then the deck width shall comply with R18-5-217(D). A spa

shall not be located immediately adjacent to the deep area of a swimming pool.
E. Coping or cantilevered deck may project from a swimming pool or spa wall to provide a handhold for users. The coping or deck shall be rounded, have a slip-resistant surface finish, and shall not exceed 3 1/2 inches in thickness. The overhang of the coping or deck shall not exceed 2 inches or be less than 1 inch. All corners created by coping or cantilevered deck shall be rounded in both the vertical and horizontal dimensions to eliminate sharp corners.
Historical _ote
Adopted effective February 19, 1998 (Supp. 98-1).
R18-5-211. Freeboard
A. The freeboard in a public or semipublic swimming pool or spa shall not exceed 8 inches, except as provided in subsection (B).
B. The freeboard in a semipublic swimming pool may exceed 8 inches to provide for walls, terraces, or other design features. The Department shall review each request to allow an increase in freeboard on a case-by-case basis. In reviewing the request, the Department shall consider safety, exit distances, alternative exits, and location. The length and height of the section where the freeboard area may be increased is limited. All of the following requirements shall be met:
1. Guard rails or similar devices are provided to prevent any raised area from being used as a diving platform.
2. The vertical surfaces of the freeboard area are constructed of inorganic materials. All vertical surfaces shall be rigid, smooth, and easily cleanable.
3. The horizontal surface areas comply with the provisions of this Article for decks.
4. The vertical surface area is included as surface area of the swimming pool to determine the type, size, location, and numbers of equipment and piping.
Historical _ote
Adopted effective February 19, 1998 (Supp. 98-1).
R18-5-212. Floors
A. The slope of the floor of a public or semipublic swimming pool, from the end wall in the shallow area towards the deep area to the point of the first slope change shall be uniform and shall not exceed 1 foot of fall in 10 feet. The floor slope in a public or semipublic spa shall not exceed 1 foot of fall in 10 feet.
B. The floor slope of a public or semipublic swimming pool, from the point of the first slope change to the deepest part of

the swimming pool, shall not exceed 1 foot of fall in 3 feet.
C. For a public or semipublic swimming pool that is equipped for diving, the depth of the swimming pool at the point of the first slope change shall be a minimum of 5 feet. For a public or semipublic swimming pool that is not equipped for diving, the depth of the swimming pool at the point of the first slope change shall be a minimum of 4 feet.
D. All portions of a swimming pool or spa floor shall slope towards a main drain.
E. The transitional radius where the floor of a public or semipublic swimming pool joins a wall shall comply with the following:
1. The center of the radius shall be no less than 3 feet below the waterline in the deep area or 2 feet below the waterline in the shallow area.
2. The radius shall be tangent at the point where the radius meets the wall or floor.
3. The radius shall be equal to or greater than the depth of the swimming pool minus the vertical wall depth measured from the waterline minus 3 inches.

Historical _ote
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-213. Entries and Exits
A. Each public or semipublic swimming pool shall have at least two means of entry or exit consisting of ladders, steps, or recessed treads.
B. There shall be at least one ladder, set of steps, or set of recessed treads for each 75 feet of perimeter of a public or semipublic swimming pool or spa.
C. At least one means of entry and exit shall be provided in the deep area and at least one means of entry and exit shall be provided in the shallow area of a public or semipublic swimming pool. Where the water depth is 2 feet at the swimming pool wall in the shallow area or where there is a zero depth entry pool [for example, an artificial beach], the area shall be considered a means of entry or exit.
D. A set of steps shall be provided in a public or semipublic spa.
E. The location of stairs, ladders, and recessed treads shall not interfere with racing lanes.

Historical _ote
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-214. Steps
A. Each set of steps shall be provided with at least one handrail to serve all treads and risers. Handrails shall be provided at one side or in the center of all steps. Handrails shall be installed in such a way that they can be removed only with tools.
B. Steps shall be permanently marked to be clearly visible from above and below the water level in a swimming pool or spa. The edges of steps shall be outlined with a sharply contrasting colored tile or other material that is clearly visible from the deck adjacent to the steps.
C. Steps may be constructed only in the shallow area of a public or semipublic swimming pool.
D. Steps shall not project into a public or semipublic swimming pool or spa in a manner that creates a hazard to users.
E. All tread surfaces on steps shall have slip-resistant surfaces.
F. Step treads shall have a minimum unobstructed horizontal depth of 10 inches. Risers shall have a maximum uniform height of 12 inches, with the bottom riser height allowed to vary ± 2 inches from the uniform riser height.

Historical _ote
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-215. Ladders

A. At least one ladder shall be provided in the deep area of a public or semipublic swimming pool. If the width of the deep area of a swimming pool is greater than 20 feet, then one ladders shall be located on opposite sides of the deep area.
B. A swimming pool or spa ladder shall be equipped with two handrails.
C. All treads on ladders shall have slip-resistant surfaces.
D. Ladder treads shall have a minimum horizontal depth of 1 1/2 inches. The distance between ladder treads shall range from a minimum of 7 inches to a maximum of 12 inches.
E. Below the waterline, there shall be a clearance of not more than 6 inches and not less than 3 inches between any ladder tread edge and the wall as measured from the side of the tread closest to the wall.

Historical _ote
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-216. Recessed Treads
A. Recessed treads with handrails may be substituted for ladders.
B. Recessed treads shall be pre-formed, readily cleanable, and designed to drain into the swimming pool or spa to prevent the accumulation of dirt in the recessed treads.
C. Each set of recessed treads shall be equipped with two handrails.
D. All recessed treads shall have slip-resistant surfaces.
E. The vertical distance between the swimming pool or spa coping edge or deck and the uppermost recessed tread shall be a maximum of 12 inches. Recessed treads at the centerline shall have a uniform vertical spacing of 12 inches maximum and 7 inches minimum.
F. Recessed treads shall be at least 5 inches deep and 12 inches wide.

Historical _ote
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-217. Decks and Deck Equipment
A. Decks, ramps, coping, and similar step surfaces shall be constructed of concrete or other inorganic material, have a slipresistant finish, and be easily cleanable.
B. The minimum continuous unobstructed deck width, including the coping, shall be 10 feet for a public swimming pool and 4 feet for a semipublic swimming pool. The dimensional design of decks at public and semipublic swimming pools shall comply with the dimensions shown in Illustration B.
C. A minimum 5 feet of deck width shall be provided on the sides and rear of any diving equipment at a public swimming pool. A minimum 4 feet of deck width shall be provided on the sides and rear of any diving equipment at a semipublic swimming pool. If diving equipment is installed at a public swimming pool, there shall be a minimum 15 feet of deck width from the swimming pool wall to the edge of the deck behind the diving equipment [See Illustration B].
D. A continuous unobstructed deck width of at least 4 feet, which may include the coping, shall be provided on at least two contiguous sides and around at least 50% of the perimeter of a public or semipublic spa.
E. Decks shall be sloped to effectively drain either to perimeter areas or to deck drains. Drainage shall remove splash water, deck cleaning water, and rain water without leaving standing water. The minimum slope of the deck shall be 1/4 inch per 1 foot. The maximum slope of the deck shall be 1 inch per 1 foot, except for ramps.

F. Decks shall be edged to eliminate sharp corners.
G. Site drainage shall be provided to direct all perimeter deck drainage and general site and roof drainage away from a public or semipublic swimming pool or spa. Yard drains may be required to prevent the accumulation or puddling of water in the general area of the deck and related improvements.
H. Hose bibbs shall be provided along the perimeter of the deck so that all parts of the deck may be washed down. At a minimum, each hose bibb shall be protected against back siphonage with an atmospheric vacuum breaker. The Department may approve quick disconnect style hose bibbs.
I. Any valve that is installed in or under any deck shall provide a minimum 10-inch diameter access cover and a valve pit to facilitate the repair and maintenance of the valve.
J. Joints in decks shall be provided to minimize the potential for cracks due to changes in elevations or movement of the slab. The maximum voids between adjoining concrete slabs or between concrete slabs and expansion joint material shall be 3/16 inch of horizontal clearance with a maximum difference in vertical elevation of 1/4 inch. Areas where the deck joins concrete shall be protected by expansion joints to protect the swimming pool or spa from the pressures of relative movements. Construction joints where pool or spa coping meets the deck shall be watertight and shall not allow water to pass through to the underlying ground.

Historical _ote

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-218. Lighting

A. A public or semipublic swimming pool or spa and adjacent deck areas shall be lighted by natural or artificial means when they are in use.
B. A public or semipublic swimming pool or spa that is intended to be used at night shall be equipped with artificial lighting that is designed and spaced so that all parts of the swimming pool or spa, including the bottom, may be seen without glare.

Historical _ote

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-219. Water Depths

A. Except as provided in subsection (B), the minimum water depth in the shallowest area of a public or semipublic swimming pool shall be 2 feet. The maximum water depth in the shallowest area of a public or semipublic swimming pool shall be 3 feet. In public swimming pools, where racing lanes terminate, the minimum depth shall be 5 feet from the water level to the point where the vertical wall is radiused to join the floor.
B. The Department may approve a depth of less than 2 feet in a wading pool or to allow a zero depth entry swimming pool.
C. The maximum water depth in a public or semipublic spa shall be 42 inches, measured from the water level.

Historical _ote

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-220. Depth Markers

A. Water depths shall be conspicuously and permanently marked at or above the water level on the vertical wall and on the top of the coping or the edge of the deck next to a swimming pool.
1. Depth markers on a vertical wall shall be positioned to be read from the water side.
2. Depth markers on a deck shall be located within 18 inches of the side of the swimming pool and positioned to be read while standing on the deck facing the water.
Depth markers that are located on a deck shall be made of slip-resistant materials.

B. Depth markers for a public or semipublic swimming pool shall be installed at points of maximum and minimum water depth and at all points of slope change. Depth markers are required in the shallow area at 1-foot depth intervals to a depth of 5 feet. Thereafter, depth markers shall be installed at 2-foot depth intervals. Depth markers shall not be spaced at distances greater than 25 feet.
C. Depth markers shall be located on both sides and at both ends of a public or semipublic swimming pool.
D. Depth markers shall be in Arabic numerals with a 4-inch minimum height. Arabic numerals shall be of contrasting color to the background.
E. In public swimming pools with racing lanes, approach warning markers shall be placed below the water level on the opposite walls at the ends of each racing lane. Warning markers shall be of contrasting color to the background. Warning markers shall be clearly visible in or out of the water from a minimum distance of 10 feet.

F. The shallow area of a public swimming pool shall be visually set apart from the deep area of the pool by a rope and float line.
G. Depth markers for a public or semipublic spa shall comply with all of the following:
1. A public or semipublic spa shall have permanent depth markers with numbers that are a minimum of 4 inches high. Depth markers shall be plainly and conspicuously visible from all points of entry.
2. The maximum depth of a public or semipublic spa shall be clearly indicated by depth markers.
3. There shall be a minimum of 2 depth markers at each public or semipublic spa.
4. Depth markers shall be spaced at no more than 25-foot intervals and shall be uniformly located around the perimeter of the spa.
5. Depth markers shall be positioned on the deck within 18 inches of the side of the spa. A depth marker shall be positioned so that it can be read by a person standing on the deck facing the water.
6. Depth markers that are on deck surfaces shall be made of slip-resistant material.

Historical _ote
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-221. Diving Areas and Equipment
A. The dimensions of a diving area in a public or semipublic swimming pool shall comply with minimum requirements for length, width, depth, area, and other dimensions specified in Illustration A. The diving well profile in Illustration A does not apply to a special use pool that is intended for competitive diving and has been approved by Department pursuant to R18-5-248(A).
B. Diving equipment shall be permanently anchored to the swimming pool deck. Equipment shall be rigidly constructed with sufficient bracing to ensure stability. Supports, platforms, steps, and ladders for diving equipment shall be designed to carry anticipated loads.
C. All diving stands higher than 21 inches, measured from the deck to the top of the board, shall be provided with stairs or a ladder.
D. Diving equipment shall have a durable finish. The surface finish

shall be free of tears, splinters, or cracks that may be a hazard to users.

E. Steps and ladders leading to diving boards and diving platforms shall be of corrosion-resisting materials and shall have slip-resistant tread surfaces. Step treads shall be self-draining.

F. Diving boards, diving platforms, and starting blocks shall have slip-resistant tread surfaces.

G. Handrails shall be provided at all steps and ladders leading to diving boards that are 1 meter or more above the water.

H. Diving boards and diving platforms that are 1 meter or higher shall be protected with guard rails. Guard rails shall be at least 30 inches above the diving board or diving platform and shall extend to the edge of the swimming pool wall.

I. A label shall be permanently affixed to a diving board and shall include the following:

1. Manufacturer's name and address,
2. Board length, and
3. Fulcrum setting instructions.

J. The maximum diving board height over the water is 3 meters. The maximum height of a diving platform over the water is 10 meters.

K. Starting blocks shall be located in the deep end of a public swimming pool or where the depth of the water is at least 5 feet.

L. There shall be a completely unobstructed clear vertical distance of 13 feet above any diving board measured from the center of the front end of the board. This clear, unobstructed vertical space shall extend horizontally at least 8 feet behind, 8 feet to each side, and 16 feet ahead of the front end of the board.

Historical _ote

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-222. Prohibition Against Diving; Warning Signs

A. Diving equipment is prohibited in a public or semipublic swimming pool that does not meet the minimum diving well dimensions specified in Illustration A. If a public or semipublic swimming pool does not meet the dimensional requirements prescribed in Illustration A for diving, then the owner shall prominently display at least one sign that cautions users that the swimming pool is not suitable for diving. The warning sign shall state "NO DIVING" in letters that are 4 inches or larger or display the international symbol for no diving.

B. Diving from the deck of a public or semipublic swimming pool into water that is less than 5 feet deep shall be prohibited. Warning markers indicating in words or symbols that diving is prohibited shall be placed on the deck within 18 inches of the side of the shallow area of the swimming pool. A warning marker shall be positioned so that it can be read by a person standing on the deck facing the water.

Historical _ote

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-223. Water Circulation System

A. A public or semipublic swimming pool or spa shall have a water circulation system that provides complete circulation of water through all parts of the swimming pool or spa and can maintain water chemistry and water clarity requirements.

B. The water circulation system for a public or semipublic swimming pool shall have a turnover rate of at least once every 8 hours. The water circulation system of a public or semipublic spa shall have a turnover rate of at least once every 30 minutes. The water circulation system for a wading pool shall have a turnover rate of at least once every hour. The water circulation

system shall be designed to give the proper turnover rate without exceeding the maximum filtration rate for the filter in R18-5-227(E).

C. Water circulation system components shall comply with American National Standard/NSF International Standard Number 50, "Circulation System Components and Related Materials for Swimming Pools, Spas/Hot Tubs," NSF International, 3475 Plymouth Road, P.O. Box 130140, Ann Arbor, Michigan [revised July, 1996, and no future editions] which is incorporated by reference and on file with the Office of the Secretary of State and the Department.

D. Water circulation system components shall be accessible for inspection, repair, or replacement.

E. Except as provided by this subsection, water withdrawn from a public or semipublic swimming pool or spa shall not be returned unless it has been filtered and adequately disinfected. Water may be withdrawn from a swimming pool for a water slide or a water fountain without being filtered or disinfected.

F. In a swimming pool complex with more than one swimming pool or where there is a combination of swimming pools and spas, each swimming pool and spa shall have a separate water circulation system.

G. Hydrotherapy jets or other devices which create roiling water or similar effects in a spa shall not be connected to the water

circulation system, but shall be operated through a separate system.

Historical _ote

Adopted effective February 19, 1998 (Supp. 98-1). Manifest typographical error corrected in subsection (B) (Supp. 01-1).

R18-5-224. Piping and Fittings

A. The water velocity in discharge piping for public and semipublic swimming pools and spas shall not exceed 10 feet per second, except for copper discharge piping where the velocity shall not exceed 8 feet per second. The water velocity in suction piping shall not exceed 6 feet per second. Piping shall be sized to permit the rated flows for filtering and cleaning without exceeding the maximum head of the pump.

B. Water circulation system piping and fittings shall be constructed of materials that are able to withstand 150% of normal operating pressures. Suction piping shall be of sufficient strength so that it does not collapse when there is a complete shutoff of flow on the suction side of the pump. A licensed Arizona contractor shall conduct an induced static hydraulic pressure test of the water circulation system piping at 25 pounds per square inch for at least 30 minutes. The pressure test shall be performed before the deck is poured. Pressure in the water circulation system piping shall be maintained during the deck pour.

C. Water circulation piping and fittings shall be made of nontoxic, corrosion-resistant materials.

D. Water circulation piping and fittings shall be installed so that piping or fittings do not project into a public or semipublic swimming pool or spa in a manner that is hazardous to users.

E. Piping that is subject to damage by freezing shall have a uniform slope in one direction and shall be equipped with valves that will permit the complete drainage of the water in the swimming pool or spa.

F. Piping shall be designed to drain the swimming pool or spa

water by removing drain plugs, manipulating valves, or other means.

G. Piping systems shall be identified by color or by stencils or labels located at conspicuous points.

H. Plastic water circulation piping shall comply with American National Standard/NSF International Standard Number 14, "Plastics Piping System Components and Related Materials," NSF International, 3475 Plymouth Road, P.O. Box 130140, Ann Arbor, Michigan [revised September, 1996, and no future editions] which is incorporated by reference and on file with the Office of the Secretary of State and the Department.

Historical _ote

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-225. Pumps and Motors

A. A pump and motor shall be provided for each water circulation system. The pump shall be sized to meet but not to exceed the flow rate required for filtering against the total head developed by the complete water circulation system. The pump shall be sized to comply with the turnover rate prescribed in R18-5-223(B).

B. Pumps and motors shall be readily and easily accessible for inspection, maintenance, and repair. When the pump is below the waterline, valves shall be installed on permanently connected suction and discharge lines. The valves shall be readily and easily accessible for maintenance and removal of the pump.

C. Each motor shall have an open, drip-proof enclosure. Each motor shall be constructed electrically and mechanically to perform satisfactorily and safely under the conditions of load in the environment normally encountered in swimming pool or spa installations. Each motor shall be capable of operating the pump under full load with a voltage variation of ± 10% from the nameplate rating. Each motor shall have thermal or current overload protection to provide locked rotor and running protection. Thermal or current overload protection may be built into the motor or in the line starter.

D. The pump shall be equipped with an emergency shut-off switch that is located within the swimming pool or spa enclosure to cut off power to the water circulation system if someone is entrapped on a main drain or suction outlet.

Historical _ote

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-226. Drains and Suction Outlets

A. A public and semipublic swimming pool shall be equipped with at least two main drains located in the deepest part of the swimming pool or a single gravity drain that discharges to a surge tank.

B. Each main drain shall be covered by a grate that is not be readily removable by users. The openings in the grate shall have a total area that is at least four times the area of the drain pipe.

C. The spacing of the main drains shall not be greater than 20 feet on centers and not more than 15 feet from each side wall.

D. A minimum of two suction outlets shall be provided for each pump in a suction outlet system for a public or semipublic spa. The suction outlets shall be separated by a minimum of 3 feet or located on two different planes [that is, one suction outlet on the bottom and one on a vertical wall or one suction outlet each on two separate vertical walls]. The suction outlets shall be plumbed to draw water through them simultaneously through a common line to the pump. Suction outlets shall be plumbed to eliminate the possibility of entrapping suction.

E. If the suction outlet system for a public or semipublic swimming pool or spa has multiple suction outlets that can be isolated by valves, then each suction outlet shall protect against user entrapment by either an antivortex cover, a grate, or other means approved by the Department.
F. A public or semipublic spa may be equipped with a single gravity drain which discharges to a surge tank instead of suction outlets. The total velocity of water through grate openings of the drain shall not exceed 2 feet per second.
Historical _ote
Adopted effective February 19, 1998 (Supp. 98-1).
R18-5-227. Filters
A. Filters shall be designed, located, and constructed to permit removal of filter manhole covers or heads for inspection, replacement, or repair of filter elements or filter media. No filtration system shall be installed beneath the surface of the ground or within an enclosure without providing adequate access for inspection and maintenance.
B. Pressure-type filters shall be equipped with a means to release internal pressure. Each pressure filter shall be equipped with an air relief piping system connected at an accessible point near the crown. Automatic air relief systems may be used instead of manual systems. The design of a filter with an automatic air relief system as its principal means of air release shall include lids that provide a slow and safe release of pressure. The design of a separation tank used in conjunction with any filter tank shall include a manual means of air release or a lid which provides a slow and safe release of pressure as it is opened.

C. Pressure filter systems shall be equipped with a sight glass installed on the waste discharge pipe.
D. Swimming pool and spa filters shall comply with American National Standard/NSF International Standard Number 50, “Circulation System Components and Related Materials for Swimming Pools, Spas/Hot Tubs,” NSF International, 3475 Plymouth Road, P.O. Box 130140, Ann Arbor, Michigan [revised July, 1996, and no future editions] which is incorporated by reference and on file with the Office of the Secretary of State and the Department.
E. The maximum filtration rate shall not exceed the design flow rate prescribed by the National Sanitation Foundation Standard 50 for commercial filters. In no case shall the maximum filtration rate exceed the following:
1. The rate of filtration in a high-rate sand filter shall not exceed 25 gallons/minute/square foot.
2. The rate of filtration of a diatomaceous earth filter shall not exceed 2 gallons/minute/square foot.
3. The rate of filtration of a cartridge filter shall not exceed 0.375 gallons/minute/square foot.
Historical _ote
Adopted effective February 19, 1998 (Supp. 98-1).
R18-5-228. Return Inlets
A. Adjustable return inlets shall be provided for each public and semipublic swimming pool or spa. Return inlets shall be designed, sized, and installed to produce a uniform circulation of water throughout the swimming pool or spa. Where surface skimmers are used, return inlets on vertical walls shall be located to help bring floating particles within range of the surface skimmers.

B. A public or semipublic swimming pool shall have a minimum of two return inlets, regardless of the size of the swimming pool. The number of return inlets shall be based on two return inlets per 600 square feet of surface area, or fraction thereof.
C. Return inlets in a public or semipublic swimming pool shall be on a closed loop piping system. Public or semipublic spas with three or more return inlets shall be on a closed loop piping system.
D. Where the width of a public or semipublic swimming pool exceeds 30 feet, bottom returns shall be required. Bottom returns shall be flush with the pool bottom or designed to prevent injury to users.
Historical _ote
Adopted effective February 19, 1998 (Supp. 98-1).
R18-5-229. Gauges
A. Pressure gauges shall be installed on the water circulation system for each public and semipublic swimming pool and spa. Pressure gauges shall be installed in accessible locations where they can be read easily.
B. Pressure gauges shall be installed on the inlet and outlet manifold of the filter. Pressure gauges shall read at intervals of 1 pound per square inch [psi].
Historical _ote
Adopted effective February 19, 1998 (Supp. 98-1).
R18-5-230. Flow meter
A public swimming pool shall be equipped with, a flow meter which indicates the rate of backwash through the filter. The flow meter shall be installed between the pump and the filter on a straight section of pipe in accordance with the manufacturer's specifications in a location where it can be read easily. The flow meter shall measure the rate of flow through the filter in gallons per minute and shall be accurate to within 5% under all conditions of flow. The flow meter shall have an indicator with a range of at least 150% of the normal flow rate.
Historical _ote
Adopted effective February 19, 1998 (Supp. 98-1).
R18-5-231. Strainers
The water circulation system shall include a removable strainer located upstream of the pump to prevent solids, debris, hair, or lint from reaching the pump and filters. The strainer shall be made of corrosion-resistant material. A strainer shall have openings that have a total area which is equal to at least four times the area of the suction piping.
Historical _ote
Adopted effective February 19, 1998 (Supp. 98-1).
R18-5-232. Overflow Collection Systems
A. An overflow collection system shall be installed in each public or semipublic swimming pool or spa.
B. The overflow collection system shall be designed and constructed so that the water level of the swimming pool is maintained at the mid-point of the operating range of the system's rim or weir device.
C. Rim type overflow collection systems shall be installed on at least two opposite sides and have a total length of at least 50% of the perimeter of a public or semipublic swimming pool. The overflow collection system shall be capable of carrying 50% of the design capacity of the water circulation system.
D. If overflow gutters are used, they shall be installed continuously around the swimming pool with the lip of the gutter level throughout its perimeter. Overflow gutters shall be provided with sufficient opening at the top and width at the bottom to permit easy cleaning. The overflow gutter bottom shall be pitched 1/4 inch per foot to drainage outlets located not more

than 10 feet apart. Outlet piping shall be sized to circulate at least 50% of the capacity of the water circulation system and be properly covered by a drain grate. The surge tank for the overflow gutters shall be equipped with float controls which regulate the main drain, fill line, and overflow. The system surge capacity shall not be less than one gallon for each square foot of swimming pool surface area. Stainless steel gutters and other specialty gutter systems may be used if they are hydraulically equivalent to overflow gutters.

E. Surface skimmers shall be recessed into the swimming pool or spa wall and shall be installed to achieve effective skimming action throughout the swimming pool or spa.

1. A surface skimmer shall be provided for each 400 square feet of surface area, or fraction thereof, of a public or semipublic swimming pool. A minimum of two surface skimmers are required in a public or semipublic swimming pool. A surface skimmer shall be provided for each 200 square feet of surface area, or fraction thereof, of a public or semipublic spa.
2. The overflow slot shall be set level and shall not be less than 8 inches in width at the narrowest section.
3. The rate of flow through the skimmers shall be a minimum of 75% of the water circulation system capacity.

Surface skimmers shall be designed to carry at least 30 gallons per minute per lineal foot of weir throat.

4. Where three or more surface skimmers are used, they must be on a closed loop piping system.
5. At least one surface skimmer shall be located on the side or near the corner of the swimming pool that is downwind of the area's prevailing winds.
6. Main drain piping shall be designed to carry at least 50% of the design flow.

F. Mixed inlet types [for example, surface skimmers and gutters] are prohibited in a public or semipublic swimming pool.

Historical _ote

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-233. Vacuum Cleaning Systems

A vacuum cleaning system shall be provided for each public and semipublic swimming pool. A vacuum cleaning system shall not create a hazard or interfere with the operation or use of the swimming pool. In integral systems, a sufficient number of vacuum cleaner fittings shall be located in accessible positions at least 10 inches below the water line. Alternatively, vacuum cleaner fittings may be installed as an attachment to the surface skimmers. A pressure cleaning system may be installed in addition to the required vacuum cleaning system.

Historical _ote

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-234. Disinfection

A. An adjustable automatic chemical feeder shall be provided to ensure the continuous disinfection of the water in a public or semipublic swimming pool or spa. Timers on disinfection equipment are prohibited. Disinfection shall be accomplished by chlorination or by another method that is approved by the Department. The method of disinfection shall effectively maintain an adequate disinfectant residual in the water which is subject to field testing by methods that are easy to use and accurate.

1. Chlorine disinfection equipment for a public or semipublic

swimming pool shall be designed to maintain a free chlorine residual of 1.0 to 3.0 ppm. Chlorine disinfection equipment for a public or semipublic spa shall be designed to maintain a free chlorine residual of 3.0 to 5.0 ppm.

2. Bromine disinfection equipment for a public or semipublic swimming pool shall be designed to maintain a bromine residual of 2.0 to 4.0 ppm. Bromine disinfection equipment for a public or semipublic spa shall be designed to maintain a bromine residual of 3.0 to 5.0 ppm.

B. The use of chlorinated isocyanurates or cyanuric acid stabilizer for disinfection and stabilization is permitted. If used, chlorinated isocyanurates shall be fed so as to maintain required disinfectant residual levels. Cyanuric acid levels, whether from chlorinated isocyanurates or from the separate addition of cyanuric acid stabilizer, shall not exceed 150 ppm.

C. The use of chloramines as a primary disinfectant of swimming pool or spa water is prohibited.

D. The addition of gaseous disinfectant directly into a public or semipublic swimming pool is prohibited. The addition of dry or liquid disinfectant directly into a public or semipublic swimming pool or spa for routine disinfection is prohibited. This prohibition does not prohibit the use of liquid or dry disinfectants for shock treatment of a swimming pool or spa. A chlorine gas disinfection system shall not be used for the disinfection of water in a public or semipublic spa.

E. A common chlorine gas disinfection system may be utilized in separate swimming pools if separate metering and feeding devices are provided for each swimming pool.

F. If gaseous chlorine is used for disinfection, the following shall be provided:

1. The chlorinator, chlorine cylinders, and associated chlorination equipment shall be located in a separate well ventilated enclosure at or above ground level. The enclosure shall be reasonably gas-tight, noncombustible, and corrosion-resistant. The door of the enclosure shall open to the outside and shall not open directly toward the swimming pool.

2. If chlorination equipment is placed in a room, then an exhaust fan or gravity ventilation system shall be provided. Mechanical exhausters shall take suction 6 inches or less above the floor and discharge through corrosion-resistant louvers to a safe outside location. A gravity ventilation system shall be designed and constructed to discharge to the outside from floor level. Fresh air intakes shall be located no closer than 3 feet above the ventilation discharge. Chlorine room exhausts shall be directed away from the swimming pool to an area which is normally unoccupied. Chlorine room fans shall be capable of completely changing the air in the room at least once a minute.

3. Electrical switches to control lighting and ventilation in the chlorine room shall be located on the outside of the enclosure and adjacent to the door.

4. Chlorine cylinders shall be kept in an upright position and securely anchored to prevent them from falling. Chlorine cylinders may be stored indoors or out. If stored outside, chlorine cylinders shall not be stored in direct sunlight. Chlorine cylinders shall not be stored near an elevator, ventilation system, or heat source.

5. A warning sign shall be placed on the outside of the door

to the chlorine room which cautions persons of the danger of chlorine gas within the enclosure. The warning shall be in letters 3 inches high or larger. The door to the chlorine room shall be provided with a shatter resistant inspection window.

6. Chlorinators shall be a solution-feed type, capable of delivering chlorine at its maximum rate without releasing chlorine gas to the atmosphere. Chlorinators shall be designed to prevent the backflow of water into the chlorine solution container.

G. Granular, tablet, stick, and other forms of dry disinfectant shall be fed by an adjustable automatic feeding device.

H. Disinfection equipment and chemical feeders shall comply with the requirements set forth in American National Standard/ NSF International Standard 50, "Circulation System Components and Related Materials for Swimming Pools, Spas/Hot Tubs," NSF International, 3475 Plymouth Road, P.O. Box 130140, Ann Arbor, Michigan [revised July, 1996, and no future editions] which is incorporated by reference and on file with the Office of the Secretary of State and the Department.

I. If a chemical feeder is used, it shall be installed to inject solution downstream from the filter and the heater. An erosiontype feeder may be installed to feed solution to the suction side of the pump. A chemical feeder shall be wired so it cannot operate unless the filter pump is running.

Historical _ote

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-235. Cross-Connection Control

A. Cross-connections between the distribution system of a public water system and the water circulation system of a public or semipublic swimming pool or spa are prohibited.

B. Potable water for make-up water purposes may be introduced into a public or semipublic swimming pool or spa in any of the following ways:

1. Through an over-the-rim spout with an air-gap of at least twice the diameter of the pipe and not less than 6 inches above the overflow level. If an over-the-rim spout is used, it shall be located so that it does present a tripping hazard. The open end of an over-the-rim spout shall have no

sharp edges and shall not protrude more than 2 inches beyond the edge of the swimming pool or spa wall;

2. Through a float controlled make-up water feed tank with an air gap of at least 3 inches above the overflow level; or

3. Through a submerged inlet that is protected against backsiphonage by at least a pressure vacuum breaker that is installed so that the bottom of the backflow prevention assembly is a minimum of 12 inches above the level of the coping.

Historical _ote

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-236. Disposal of Filter Backwash, Wasted Swimming Pool or Spa Water, and Wastewater

All sewage from plumbing fixtures, including urinals, toilets, lavatories, showers, drinking fountains, floor drains, and other sanitary facilities shall be disposed of in a sanitary manner. Filter backwash and wasted swimming pool or spa water shall be discharged into a sanitary sewer through an approved air gap, an approved subsurface disposal system, or by other means that are approved by the Department. The method of disposal shall comply with applicable disposal

requirements established by a county, municipal, or other local authority. There shall be no direct physical connection between the sewer system and the water circulation system of a public or semipublic swimming pool or spa.

Historical _ote

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-237. Lifeguard Chairs

Each public swimming pool shall have at least one elevated lifeguard chair for each 3,000 square feet of pool surface area or fraction thereof. At least one lifeguard chair shall be located close to the deep area of the swimming pool and shall provide a clear, unobstructed view of the swimming pool bottom. If a public swimming pool is provided with more than one lifeguard chair or the width of the public swimming pool is 45 feet or more, then lifeguard chairs shall be located on each side of the public swimming pool.

Historical _ote

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-238. Lifesaving and Safety Equipment

A. Public and semipublic swimming pools shall have lifesaving and safety equipment that is conspicuously and conveniently located and maintained ready for immediate use at all times.

B. Each public or semipublic swimming pool shall have one ring buoy or a similar flotation device. Each ring buoy or flotation device shall be attached to 50 feet of 1/4 inch rope.

C. Each semipublic and public swimming pool shall have at least one shepherd crook that is mounted on a rigid 16-foot pole.

Historical _ote

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-239. Rope and Float Lines

A rope and float line shall be installed across each public swimming pool on the shallow side of the break in grade between the shallow and deep portions of the pool [that is, within 1 to 2 feet of the point where the floor slope begins to exceed 1 foot in 10 feet]. The rope shall be a minimum of 3/4 inch in diameter and supported by floats spaced at intervals not greater than 7 feet. The rope and float line shall be securely fastened to wall anchors that are made of corrosion-resistant materials. The wall anchors shall be recessed or have no projection that constitutes a hazard when the float line is removed.

Historical _ote

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-240. Barriers

A. A public swimming pool or spa and deck shall be entirely enclosed by a fence, wall, or barrier that is at least 6 feet high. A semipublic swimming pool or spa and deck shall be entirely enclosed by a fence, wall, or barrier that is at least 5 feet high. The height of the fence, wall, or barrier shall be measured on the side of the barrier which faces away from the swimming pool or spa.

B. Fences or walls shall:

1. Be constructed to afford no external handholds or footholds;
2. Be of materials that are impenetrable to small children;
3. Have no openings or spacings of a size that a spherical object 4 inches in diameter can pass through; and
4. Be equipped with a gate that opens outward from the swimming pool or spa. The gate shall be equipped with a self-closing and self-latching closure mechanism or a locking closure located at or near the top of the gate, on the pool side of the gate, and at least 54 inches above the floor.

C. The distance between the horizontal components of a fence shall not be less than 45 inches apart. The horizontal members

shall be located on the interior side of the fence. Spacing or openings between vertical members shall be of a size that a spherical object 4 inches in diameter cannot pass through.

D. The maximum mesh size for a wire mesh or chain link fence shall be a 1 3/4 inches square.

E. Masonry or stone walls shall not contain indentations or protrusions except for normal construction tolerances and tooled masonry joints.

F. If a wall of a building serves as part of the barrier around a public or semipublic swimming pool or spa, there shall be no direct access to the swimming pool or spa through the wall except as follows:

1. Windows leading to the swimming pool or spa area shall be equipped with a screwed-in place wire mesh screen or a keyed lock that prevents opening the window more than 4 inches.
2. A hinged door leading to the swimming pool or spa area shall be self-closing and shall have a self-latching device. The release mechanism of the self-latching device shall be located at least 54 inches above the floor.
3. If an additional set of doors is required by the fire code allowing access to the swimming pool or spa, they shall be self-closing and self-latching, equipped with panic bars no less than 54 inches from the floor to the bottom of the bar and designated “For Emergency Use Only.”
4. Sliding doors leading to the swimming pool or spa area are prohibited except for sliding doors that are self-closing and self-latching.

G. If a barrier is composed of a combination concrete masonry unit and wrought-iron, the wrought iron portion shall be installed flush with the outside vertical surface of the concrete masonry unit. The space between the wrought iron and the concrete masonry unit shall be 1/2 inch or less. The vertical members of the wrought iron shall be spaced 4 inches on center.

H. Filtration, disinfection, and water circulation equipment shall be enclosed by a wall or fence.

Historical _ote

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-241. Public Swimming Pools; Bathhouses and Dressing Rooms

A. Separate dressing rooms shall be provided for each sex. Dressing rooms shall be equipped with baskets or other checking facilities.

B. All entrances to and exits from the dressing rooms shall be effectively screened to interrupt the line of sight of persons outside the dressing rooms.

C. Walls and partitions of dressing rooms, locker rooms, toilets, and showers shall be light colored, smooth, nonabsorbent, and easily cleanable. Concrete or pumice blocks used for interior wall construction in these locations shall be finished and sealed to provide a smooth and easily cleanable surface. Partitions shall be designed so that a waterway is provided between partitions and the floor to permit thorough cleaning of the walls and floor areas with hoses and brooms.

D. Floors shall be of nonslip construction, free of cracks or openings, and sloped to adequate drains so the surface will be free of standing water and puddles. Floors shall be sloped not less than 1/4 inch per foot toward the drains to ensure positive drainage. Carpeting is prohibited.

E. All furniture shall be of simple character and easily cleanable. Locker compartments, partitions, booths, furniture, and other appurtenances in dressing rooms shall be so installed or raised above the floor to permit washing down the dressing rooms and bathhouse interiors.
F. An adequate number of hose bibs shall be provided for washing down the dressing room or bathhouse interior.
G. Dressing rooms, toilets, and showers shall be provided with adequate lighting and ventilation.
H. Toilet facilities shall be provided for each sex. For male users, there shall be one toilet and one urinal for each 100 bathers or fraction thereof. For female users, there shall be one toilet for each 50 bathers, or fraction thereof. In no case shall less than two toilets be provided for female users. Sanitary napkin dispensers shall be installed in toilet or shower areas designated for female users.
I. Shower and handwashing facilities with hot and cold water and soap shall be provided for each dressing room. Hot and cold water shall be provided at all shower heads. The water heater and thermostatic mixing valve shall be inaccessible to users and shall be capable of providing two gallons per minute of 90°F water to each shower head. A minimum of two shower heads shall be provided in each dressing room. Each dressing room shall have one shower head for each 50 bathers or fraction thereof.
J. One lavatory with an unbreakable mirror shall be provided in each dressing room for the first 100 users. An additional lavatory and unbreakable mirror shall be provided for each additional 100 users or fraction thereof. Soap dispensers for providing either liquid or powdered soap shall be provided at each lavatory. Soap dispensers shall be made of metal or plastic with no glass permitted.
Historical _ote
Adopted effective February 19, 1998 (Supp. 98-1).
R18-5-242. Semipublic Swimming Pools; Toilets and Lavatories
A. A bathroom with a minimum of one toilet shall be provided for each sex.
B. Each bathroom shall have at least one lavatory. Soap dispensers for providing either liquid or powdered soap shall be provided at each lavatory. Soap dispensers shall be made of metal or plastic with no glass permitted.
C. An establishment that operates a semipublic swimming pool or spa and provides a private room with a toilet and lavatory for bathers shall be deemed to have complied with the requirements of this Section.
Historical _ote
Adopted effective February 19, 1998 (Supp. 98-1).
R18-5-243. Drinking Water Fountains
Drinking water from an approved source and dispensed through one or more drinking fountains shall be located on the deck of each public swimming pool or spa.
Historical _ote
Adopted effective February 19, 1998 (Supp. 98-1).
R18-5-244. Wading Pools
A. A wading pool is a type of public or semipublic swimming pool. The design criteria prescribed in this Article for public or semipublic swimming pools apply, except as provided in this Section.
B. A wading pool shall be physically set apart from public and semipublic swimming pools.
1. A wading pool shall be separated from a public swimming pool by a minimum 4-foot high fence or partition

with a self-closing, self-latching gate.
2. A wading pool shall be separated from a semipublic swimming pool by at least 4 feet of deck.
3. A wading pool shall not be located adjacent to the deep area of a public or semipublic swimming pool.
C. A wading pool shall have a maximum depth of 24 inches. Water depths may be reduced from the stated maximums and brought to zero at the most shallow point of the wading pool.
D. The floor of a wading pool shall be uniform with a maximum slope of 1 foot of fall in 10 feet. The floor of a wading pool shall have a slip-resistant surface.
E. All wading pools shall have separate equipment for water circulation and disinfection. There shall be no cross-connection between the water circulation system of a wading pool and a public or semipublic swimming pool. The water in a wading pool shall have a maximum turnover cycle of 1 hour.
F. At least two main drains shall be provided at the deepest point in a wading pool. Each main drain shall be covered by a grate which cannot be removed by users. The openings in the grate shall have a total area that is at least four times the area of the drain pipe. In the alternative, a wading pool may be equipped with a single gravity drain which discharges to a surge tank.
G. Surface skimmers shall be provided on the basis of at least one skimmer for each 200 square feet of wading pool surface area. Surface skimmer flow rates shall be the same as required for public and semipublic swimming pools. Where only one skimmer is provided, the main drain may be connected through the skimmer.
H. Return inlets shall be provided and arranged to produce a uniform circulation of water and maintain a uniform disinfectant residual throughout the wading pool. Where three or more return inlets are required, they shall be on a closed loop piping system.
I. Suction outlets in a wading pool shall have plumbing provisions so as to relieve any possibility of entrapping suction.
J. Gaseous chlorine shall not be used for the disinfection of wading pool water.
K. A drinking fountain at a height convenient to small children or a drinking fountain with a raised step shall be provided in the area of the wading pool.
Historical _ote
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-245. Timers for Public and Semipublic Spas
The timer for a public or semipublic spa which controls the hydrotherapy jets shall be located at least 5 feet from the spa and shall have a maximum time limit of 15 minutes.
Historical _ote
Adopted effective February 19, 1998 (Supp. 98-1).
R18-5-246. Air blower and Air Induction Systems for Public and Semipublic Spas
An air blower system or air induction system for a public or semipublic spa shall comply with the following requirements:
1. The system shall prevent water backflow which could cause an electrical shock hazard.
2. Air intake sources shall not introduce water, dirt, or contaminants into the spa.
3. The system shall be properly sized for a commercial spa application.
4. If the air blower is installed within an enclosure or

indoors, then adequate ventilation shall be provided.
5. Integral air passages shall be pressure tested and shall provide structural integrity to a value of 1 1/2 times the intended working pressure.

Historical _ote

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-247. Water Temperature in Public and Semipublic Spas

The temperature of heated water coming into a public or semipublic spa shall not exceed 104°.

Historical _ote

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-248. Special Use Pools

A. A person who intends to construct a special use pool shall notify the Department and provide plans, specifications, and a description of the intended use of the special use pool. The Department shall use best professional judgment in approving a special use pool, taking into consideration the intended use of the pool, the conditions under which it will operate, and the safety of users. The Department may consider the design requirements prescribed by an official sanctioning athletic body such as the National Collegiate Athletic Association [NCAA], National Federation of State High School Associations [NFSHSA], U.S. Swimming, U.S. Diving, or the Internationale de Natation Amateur [FINA] in using best professional judgement to approve a special use pool that is intended for competitive swimming and diving.

B. A special use pool that is designed with exercise or training bars in the pool shall be restricted to the special use when the bars are located in the pool. The bars shall:

1. Be constructed of durable and corrosion-resistant material;
2. Be sealed, welded shut, or capped at both ends to prevent retention of water within the bars;
3. Bars may be removable. Removable bars shall be wedge anchored in place and the anchors shall be covered. Water-tight anchor plugs [95% efficiency] shall be provided when the bars are removed; and
4. Extend not more than 4 inches from the side of the pool into the water. The minimum clear opening from the inside of the bar to the side of the swimming pool shall not be less than 2 inches.

D. A special use pool that is designed with a ramp shall comply with the following:

1. The ramp shall be constructed of slip-resistant material;
2. The slope of the ramp shall not exceed 1 foot in 12 feet;
3. The width of the ramp shall be at least 3 feet;
4. The ramp shall have a level platform at the top and the bottom of the ramp;
5. The ramp shall be equipped with at least a 3 1/2 foot high guardrail installed on the deck and extending the length of the ramp;
6. The ramp shall be constructed with return inlets located on the pool and ramp walls along the length of the ramp.

Historical _ote

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-249. Variances

A. The Department may grant a variance from a requirement prescribed in this Article upon a demonstration by the applicant that an alternative design, material, appurtenance, or technology is equivalent to a requirement prescribed in this Article. If a variance is granted, it shall be conditioned upon the applicant's use of the approved alternative.

B. The Department shall not grant a variance that results in an unreasonable risk to the health of swimming pool or spa users.
C. The applicant shall request a variance in writing. A variance request shall contain the following information:
1. Identification of the requirement prescribed in this Article for which a variance is requested;
2. Explanation of the reasons why the applicant cannot comply with the requirement;
3. A complete description of the alternative design, material, or technology to be installed and used in the swimming pool or spa, including design plans, specifications, and a description of the cost;
4. A demonstration that the alternative design, material, or technology to be installed and used in the swimming pool or spa is equivalent to the requirement in this Article and will not result in an unreasonable risk to users; and
5. A statement that the applicant will perform reasonable requirements prescribed by the Department that are conditions of a variance.
D. The applicant shall submit a request for a variance with an application for design approval. The Department shall determine whether the application for design approval and the variance request are complete. Within 30 days after the date of the submittal of the application for design approval and the variance request, the Department shall issue a written notice to the applicant that states that the request for a variance and the application for design approval are complete or which states that the request for a variance or the application for design approval is incomplete and identifies specific information deficiencies in the application for design approval or the variance request.
E. The Department may convene an advisory committee consisting of representatives of public and semipublic swimming pool and spa owners, public and semipublic swimming pool and spa building contractors, professional engineers, and county environmental and health departments to make a recommendation on a variance request.
F. If the Department grants the request for a variance, the Department shall identify the requirement for which the variance is granted, specify any conditions to the grant of a variance, and issue a design approval. If the Department denies the request for a variance, the Department shall issue a notice of intent to deny the request for a variance to the applicant. The notice shall state the reasons for the denial of the request for a variance and shall include a description of the applicant's right to request a hearing on the denial of the variance request pursuant to A.R.S. § 41-1092.03 and to request an informal settlement

conference pursuant to A.R.S. § 41-1092.06. If the Department denies a request for a variance, the Department may either deny the application for design approval or issue a design approval that requires compliance with the requirement for which the variance is requested.
G. In considering a request for a variance from a requirement prescribed in this Article, the Director shall consider the following factors:
1. The intended use of the public or semipublic swimming pool or spa;
2. The safety of the alternative design, material, or technology for which a variance is requested; and

3. The cost and other economic considerations associated with requiring compliance with the requirement prescribed in this Article as compared to the alternative for which a variance is requested.

Historical _ote

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-250. Inspections

A. An inspector from the Department, upon presentation of credentials, may enter into any public or semipublic swimming pool or spa to determine compliance with this Article. The inspector may inspect records, equipment, and facilities; take photographs; and take other action reasonably necessary to determine compliance with this Article.

B. The owner or manager of a public or semipublic swimming pool or spa may accompany the inspector during an inspection.

C. An inspector from the Department may inspect a public or semipublic swimming pool or spa without giving prior notice of the inspection to the owner or operator of the swimming pool or spa.

Historical _ote

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-251. Enforcement

A. If an inspector finds a violation of this Article, the Department may issue a notice of violation to the owner of a public or semipublic swimming pool or spa. A notice of violation shall state specifically the nature of the violation and shall allow a reasonable time for the owner to correct the violation.

B. If the Director has reasonable cause to believe that a person has constructed a public or semipublic swimming pool or spa in violation of this Article, the Director may order the closure of the swimming pool or spa by issuing a cease and desist order by following the procedures for abatement of environmental nuisances in A.R.S. § 49-142.

Historical _ote

Adopted effective February 19, 1998 (Supp. 98-1).

Illustration A. Diving Well Dimensions for Swimming Pools

Note: This profile does not apply to a special use pool that is designed for competitive diving.

A. Maximum length of diving board 10 feet

B. Maximum height of board above the water 20 inches

C. Overhang of the board from wall Minimum: 2 feet

Maximum: 3 feet

D. Minimum distance to an overhead structure 15 feet

E. Minimum depth of water at the plummet 9 feet

F. Distance from plummet to start of upslope 18 feet

G. Minimum depth of water at start of the upslope Depth of water at plummet minus 6 inches

A
B
C
D
E
F
G
H
I
J
Water Surface
Overhead Structure

Historical _ote

Adopted effective February 19, 1998 (Supp. 98-1).

Illustration B. Minimum Distance Requirements for Decks

Historical _ote

Adopted effective February 19, 1998 (Supp. 98-1).

H. Depth of water at the breakpoint Public swimming pool: 5 feet
Semipublic swimming pool: 4 feet
I. Maximum slope: breakpoint towards deep end 1 foot of fall in 3 feet
J. Slope of bottom in shallow area 1 foot of fall in 10 feet
Minimum width of pool in diving area 20 feet
From plummet to pool wall at the side 10 feet
Dimension Public
(in Feet)
Semipublic
(in feet)
A 10 4
B 5 4
C 15 11

ARTICLE 3. WATER QUALITY MA_AGEME_T
PLA__I_G
R18-5-301. Definitions
In addition to the definitions established in R18-9-101, the following terms apply to this Article:
1. "Certified Areawide Water Quality Management Plan" means a plan prepared by a designated Water Quality Management Planning Agency under Section 208 of the Federal Water Pollution Control Act (P.L. 92-500) as amended by the Water Quality Act of 1987 (P.L. 100-4), certified by the Governor or the Governor's designee, and approved by the United States Environmental Protection Agency.
2. "Designated management agency" means those entities designated in a Certified Areawide Water Quality Management Plan to manage sewage treatment facilities and sewage collection systems in their respective area.
3. "Designated water quality planning agency" means the single representative organization designated by the Governor under Section 208 of the Federal Water Pollution Control Act (P.L. 92-500) as amended by the Water Quality Act of 1987 (P.L. 100-4) as capable of developing effective areawide sewage treatment management plans for the respective area. The state acts as the planning agency for those non-tribal portions of the state for which there is no designated water quality planning agency.
4. "Facility Plan" means the plans, specifications, and estimates for a proposed sewage treatment facility, prepared under Section 201 and 203 of the Federal Water Pollution Control Act (P.L. 92-500) as amended by the Water Quality Act of 1987 (P.L. 100-4), and submitted to the Department by and for a designated management agency.
5. "General Plan" means a municipal statement of landdevelopment policies that may include maps, charts, graphs, and text that list objectives, principles, and standards for local growth and development enacted under state law.
6. "Service area" means the geographic region specified for a designated management agency by the applicable Certified Areawide Water Quality Management Plan, Facility Plan, or General Plan.
7. "State water quality management plan" means the following elements:
a. Certified Areawide Water Quality Management Plans and amendments;
b. Water quality rules and laws;

c. Final total maximum daily loads approved by the United States Environmental Protection Agency for impaired waters;
d. Water quality priorities established by the Department;
e. Intergovernmental agreements between the Department and a designated water quality planning agency or a designated management agency; and
f. Active management area plans adopted by the Department of Water Resources.

Historical _ote

New Section adopted by final rulemaking at 7 A.A.R. 559, effective January 2, 2001 (Supp. 01-1).

R18-5-302. Certified Areawide Water Quality Management Plan Approval

A designated water quality planning agency shall submit a proposed Certified Areawide Water Quality Management Plan or plan amendment to the Director for review and approval. Upon approval, the Governor or the Governor's designee shall:
1. Certify that the plan or plan amendment is incorporated into and is consistent with the state water quality management plan, and
2. Submit the plan or plan amendment to the United States Environmental Protection Agency for approval.

Historical _ote

New Section adopted by final rulemaking at 7 A.A.R. 559, effective January 2, 2001 (Supp. 01-1).

R18-5-303. Determination of Conformance

All sewage treatment facilities, including an expansion of a facility, shall, before construction, conform with the Certified Areawide Water Quality Management Plan, Facility Plan, and General Plans as specified in subsections (1) and (2).
1. The Department shall make the determination of conformance if the sewage treatment facility or expansion of the facility conforms with the Certified Areawide Water Quality Management Plan and Facility Plan that prescribe a configuration for sewage treatment and sewage collection system management by a designated management agency within the service area.
2. If the condition specified in subsection (1) is not met, the Department shall make the determination of conformance as follows:
a. If no Facility Plan is applicable and a Certified Areawide Water Quality Management Plan as described in subsection (1) is available, the Department shall rely on the Certified Areawide Water Quality Management Plan for the determination of conformance.
b. If no Certified Areawide Water Quality Management Plan as described in subsection (1) is available, the Department shall make the determination of conformance based on conformance with applicable General Plans and after conferring with the designated water quality planning agency for the area and any responsible and affected governmental unit.

Historical _ote

New Section adopted by final rulemaking at 7 A.A.R. 559, effective January 2, 2001 (Supp. 01-1).

ARTICLE 4. SUBDIVISIO_S

R18-5-401. Definitions

In this Article unless the context otherwise requires:
1. "Approved" or "approval" means approved in writing by the Department.
2. "Condominium" means a subdivision established as a

horizontal property regime pursuant to A.R.S. § 33-551 et seq.
3. “Department” means the Department of Environmental Quality or its designated representative.
4. “Garbage” means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.
5. “Refuse” means all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and solid market and industrial wastes.
6. “Subdivision” has the meaning defined in A.R.S. § 32-2101.

Historical _ote

Correction in subsection (E) citation to A.R.S. should have read § 32-2101. Amended effective June 21, 1978 (Supp. 78-3). Former Section R9-8-1011 renumbered without change as Section R18-5-401 (Supp. 89-2).

R18-5-402. Approval of plans required

A. No subdivision or portion thereof shall be sold, offered for sale, leased or rented by any corporation, company or person, or offered to the public in any manner, and no permanent building shall be erected thereon until plans and specifications for the water supply, sewage disposal and method of garbage disposal to be provided in or to serve such subdivision shall have been submitted to and approved by the Department.

B. The plans of any proposed water supply and sewage disposal system shall be submitted in quadruplicate on a plat of the subdivision as recorded, or as will be recorded, in the office of the county recorder.

Historical _ote

Former Section R9-8-1012 renumbered without change as Section R18-5-402 (Supp. 89-2).

R18-5-403. Application for approval

A. An application for approval, prepared in duplicate on forms furnished by the Department, shall be filed at the time the plans are submitted for approval. The form shall be completely filled out unless indicated otherwise.

B. The distance to the nearest public water supply main and to a sewer main of a municipal or community system shall be given.

Historical _ote

Former Section R9-8-1013 renumbered without change as Section R18-5-403 (Supp. 89-2).

R18-5-404. Size of lots

The minimum size lot approved by the Department will be governed largely by the area necessary for the safe accommodation of individual wells and/or sewage disposal systems. Where both the water supply and sewage disposal system must be developed on the same lot, the minimum size shall be at least one acre, excluding streets, alleys and other rights-of-way. Where water from a central system is provided for residential uses, the lot shall be sufficient to accommodate the sewage disposal system and provide for at least 100 percent expansion of the system based on a four-bedroom house within the bounds of the property allowing a minimum of five feet distance to the property lines. Where lots are zoned for commercial uses, the lot shall be sufficient to accommodate the sewage disposal system and provide for at least 100 percent expansion of the system within the bounds of the property allowing a

minimum of five feet distance to the property lines.

Historical _ote

Former Section R9-8-1014 renumbered without change as Section R18-5-404 (Supp. 89-2).

R18-5-405. Responsibility of subdivider

Where plans for a subdivision include a public water supply system, or public sewerage system, it shall be the responsibility of the subdivider to provide the facilities to each lot in the subdivision prior to human occupancy. The installation of such facilities shall be in accordance with plans, or any revisions thereof, approved by the Department.

Historical _ote

Former Section R9-8-1015 renumbered without change as Section R18-5-405 (Supp. 89-2).

R18-5-406. Public water systems

A. Where water from an approved public water system is proposed for use in a subdivision, the inside diameter, length, and location of all proposed and existing water mains and valves necessary to serve each and every lot shall be shown on the subdivision plat. If the existing main to which a connection will be made is not immediately adjacent to the property, the direction and distance shall be indicated on the plat by an arrow or other suitable means.

B. A letter shall be obtained and submitted with the application for approval of the subdivision from responsible officials of the water system indicating that an agreement has been reached to supply water to each individual lot in the subdivision.

C. Where the owner of a subdivision, or other interested person, firm, company or corporation, proposes to develop a source or sources of supply and to construct a distribution system to furnish water to the subdivision, either free or for charge, complete details of the proposed water system including plans and specifications shall be furnished. Department approval of the supply and proposed system shall first be obtained before an approval for the sale of lots will be granted. The installation of such facilities shall be in accordance with the plans, and any revisions thereof, approved by the Department.

D. Proposed water supply and distribution systems shall comply with A.A.C. Title 18, Chapter 4, Article 2, except those distribution lines which are a common element of a condominium shall be exempt from A.A.C. R18-4-234.

E. Where water from an approved public water system is proposed for use in a subdivision, the Department shall issue a Certificate of Approval for Sanitary Facilities for a Subdivision only if the applicant has complied with subsections (A) and (B) of this Section and the public water system is either:

1. in compliance with the provisions of A.A.C. Title 18, Chapter 4, Article 2; or
2. making satisfactory progress toward compliance with the provisions of A.A.C. Title 18, Chapter 4, Article 2 under a schedule approved by the Department.

F. The Department shall revoke the Certificate of Approval for Sanitary Facilities for a Subdivision and notify the Department of Real Estate of such action if the public water system in use by the subdivision is creating an environmental nuisance pursuant to A.R.S. § 49-141 and is neither:

1. is compliance with the provisions of A.A.C. Title 18, Chapter 4, Article 2; nor
2. making satisfactory progress toward compliance with the provisions of A.A.C. Title 18, Chapter 4, Article 2 under a schedule approved by the Department.

Historical _ote

Amended effective June 21, 1978 (Supp. 78-3). Former Section R9-8-1021 renumbered without change as Section R18-5-406 (Supp. 89-2). Amended effective July 25, 1990 (Supp. 90-3).

R18-5-407. Public sewerage systems

A. Where a public sewerage system is already in existence, or if sewers are proposed and have been approved by the Department, it shall be necessary to show lines indicating the approximate location and size of the sewers on the subdivision plat.

B. Where the proposed sewers will connect to an existing public sewerage system, a letter from officials of the system shall be required stating that acceptable plans have been submitted and that the subdivider has been granted permission to connect to and become a part of the public sewerage system.

C. Proposed sewage disposal facilities shall comply with A.A.C. Title 18, Chapter 9, Article 8, except those drain lines which

are a common element of a condominium shall be exempt from R18-5-811.

D. Where a public sewerage system is already in existence, or if sewers are proposed and have been approved by the Department, the Department shall issue a Certificate of Approval for Sanitary Facilities for a Subdivision only if the applicant has complied with subsections (A) and (B) of this Section and the public sewerage system is either:

1. in compliance with the provisions of A.A.C. Title 18, Chapter 9, Article 8; or
2. making satisfactory progress toward compliance with the provisions of A.A.C. Title 18, Chapter 9, Article 8 under a schedule approved by the Department.

E. The Department shall revoke the Certificate of Approval for Sanitary Facilities for a Subdivision and notify the Department of Real Estate of such action if the public sewerage system in use by the subdivision is creating an environmental nuisance pursuant to A.R.S. § 49-141 and is neither:

1. In compliance with the provisions of A.A.C. Title 18, Chapter 9, Article 8; nor
2. Making satisfactory progress toward compliance with the provisions of A.A.C. Title 18, Chapter 9, Article 8 under a schedule approved by the Department.

Historical _ote

Amended effective June 21, 1978 (Supp. 78-3). Former Section R9-8-1026 renumbered without change as Section R18-5-407 (Supp. 89-2). Amended effective July 25, 1990 (Supp. 90-3).

R18-5-408. Individual sewage disposal systems

A. Recommendations are found in the engineering bulletins of the Department and such additional requirements as may be provided by local health departments to assist in approval regarding the design, installation and operation of individual sewage disposal systems. Copies of these bulletins may be obtained from the Department.

B. Where soil conditions and terrain features or other conditions are such that individual sewage disposal systems cannot be expected to function satisfactorily or where groundwater or soil conditions are such that individual sewage disposal systems may cause pollution of groundwater, they are prohibited.

C. Where such installations may create an unsanitary condition or public health nuisance, individual sewage disposal systems are prohibited.

D. The use of cesspools is prohibited.
E. Where an individual sewage disposal system is proposed, the following conditions shall be satisfied:
1. A geological report shall be made by an engineer, geologist or other qualified person. The geological report shall include results from percolation tests and boring logs obtained at locations designated by the county health departments. There shall be a minimum of one percolation test and boring log per acre, or one percolation test and boring log per lot where lots are larger than one acre, except when it can be shown by submission of other reliable data that soil conditions are such that individual disposal systems could reasonably be expected to function properly on each lot in the proposed subdivision. The Department may require additional tests when it deems necessary. The approval of a subdivision, based upon such reports, shall not extend to the plat if it is further subdivided or lot lines are substantially relocated.
2. Results of all tests shall be submitted to the Department and the local health department for review and approval of the subdivision for the use of individual sewage disposal systems.
3. Such approval must be obtained in writing from the local health department and a copy of the approval shall be submitted to the Department with the subdivision application for approval.

Historical _ote
Former Section R9-8-1027 renumbered without change as Section R18-5-408 (Supp. 89-2).

R18-5-409. Refuse disposal
A. The storage, collection, transportation and disposal of refuse and other objectionable wastes shall be governed by A.A.C. Title 18, Chapter 8, Article 5.
B. Where an approved community or private refuse collection service is available, arrangements shall be made to have this service furnished to the subdivision. A letter, from the community or private collection company, stating that the collection service will be made available to the subdivision, is required.
C. Where refuse collection service is not available, it will be the responsibility of the subdivider to notify each purchaser or tenant that the hauling of all refuse is an individual responsibility and that all refuse must be properly stored pending removal and disposed of at disposal areas specified in the plan approved by the Department.
D. Where a collection service or an existing approved disposal area is not available to the subdivision, a plan approval will not be granted unless a separate disposal area is provided by the subdivider or arrangements are made to utilize a new, conveniently located disposal area. Such arrangements shall include, but not be limited to, the written permission of the person responsible for the operation of the new site.

Historical _ote
Former Section R9-8-1031 renumbered without change as Section R18-5-409 (Supp. 89-2).

R18-5-410. Condominiums
A. New water distribution lines and new wastewater drain lines which are to be used as a common element of a condominium and are not under the ownership and control of a public utility shall be constructed in accordance with applicable provisions of the Uniform Plumbing Code adopted by reference in A.A.C. R9-1-412(D), including the minimum standards for construction contained therein.

B. Plans to be submitted shall include inside diameter, length and location of all proposed and existing common usage water distribution lines and inside diameter, length, slope and location of all proposed and existing common usage wastewater drain lines necessary to serve each and every unit. Plans and specifications should be submitted with sufficient detail to indicate compliance with subsection (A) above.
C. Appropriate sections of the covenants shall be submitted that indicate adequate provisions have been made for the maintenance of water distribution lines and wastewater drain lines in common usage.
D. Approval of existing housing to be converted to condominiums is conditioned upon the water distribution system and wastewater drainage system being:
1. Approved in writing at the time of original construction by the local building inspection authority, or
2. Currently operating under a permit issued by a local building inspection authority, or
3. Certified to be adequate by an Arizona registered professional engineer who has affixed his signature and seal to as-built plans submitted for approval.

Historical _ote
Adopted effective June 21, 1978 (Supp. 78-3). Former Section R9-8-1032 renumbered without change as Section R18-5-410 (Supp. 89-2).

R18-5-411. Violations
Any person, firm, company or corporation who offers for sale, lease or rent any tract of land contrary to these regulations shall be prosecuted in accordance with A.R.S. § 49-142 or as otherwise may be provided by law.

Historical _ote
Adopted effective June 21, 1978 (Supp. 78-3). Former Section R9-8-1036 renumbered without change as Section R18-5-411 (Supp. 89-2). Amended effective April 2, 1990 (Supp. 90-2).

ARTICLE 5. MI_IMUM DESIG_ CRITERIA
Article 5, consisting of R18-5-501 through R18-5-509, recodified from 18 A.A.C. 4, Article 5 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-5-501. Siting Requirements
To the extent practicable, a new public water system or an extension to an existing public water system shall be geographically located to avoid a site which is:
1. Subject to a significant risk from earthquakes, floods, fires, or other disasters which could cause a breakdown of the public water system or portion thereof; or
2. Within the flood plain of a 100-year flood, except for intake structures and properly protected wells.

Historical _ote
Section recodified from R18-4-501 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-5-502. Minimum Design Criteria
A. A public water system shall be designed using good engineering practices. A public water system which is designed in a manner consistent with the criteria contained in Engineering Bulletin No. 10, “Guidelines for the Construction of Water Systems,” issued by the Arizona Department of Health Services, May 1978 (and no future editions), which is incorporated herein by reference and on file with the Office of the

Secretary of State, shall be considered to have been designed using good engineering practices. Other system designs shall be approved if the applicant can demonstrate that the system will function properly and may be operated reliably in compliance with this Chapter. Minimum design criteria which are not subject to modification are listed in this Section.

B. A potable water distribution system shall be designed to maintain and shall maintain a pressure of at least 20 pounds per square inch at ground level at all points in the distribution system under all conditions of flow.

C. Water and sewer mains shall be separated in order to protect public water systems from possible contamination. All distances are measured perpendicularly from the outside of the sewer main to the outside of the water main. Separation requirements are as follows:

1. A water main shall not be placed:

a. Within 6 feet, horizontal distance, and below 2 feet, vertical distance, above the top of a sewer main unless extra protection is provided. Extra protection shall consist of constructing the sewer main with mechanical joint ductile iron pipe or with slip-joint ductile iron pipe if joint restraint is provided. Alternate extra protection shall consist of encasing both the water and sewer mains in at least 6 inches of concrete for at least 10 feet beyond the area covered by this subsection (C)(1)(a).

b. Within 2 feet horizontally and 2 feet below the sewer main.

2. No water pipe shall pass through or come into contact with any part of a sewer manhole. The minimum horizontal separation between water mains and manholes shall be 6 feet, measured from the center of the manhole.

3. The minimum separation between force mains or pressure sewers and water mains shall be 2 feet vertically and 6 feet horizontally under all conditions. Where a sewer force main crosses above or less than 6 feet below a water line, the sewer main shall be encased in at least 6 inches of concrete or constructed using mechanical joint ductile iron pipe for 10 feet on either side of the water main.

4. The separation requirements do not apply to building, plumbing, or individual house service connections.

5. Sewer mains (gravity, pressure, and force) shall be kept a minimum of 50 feet from wells unless the following conditions are met:

a. Water main pipe, pressure tested in place to 50 psi without excessive leakage, is used for gravity sewers at distances greater than 20 feet from water wells; or

b. Water main pipe, pressure tested in place to 150 psi without excessive leakage, is used for pressure sewers and force mains at distances greater than 20 feet from water wells. “Excessive leakage” means any amount of leakage which is greater than that permitted under the AWWA Standard applicable to the particular pipe material or valve type.

6. Requests for authorization to use alternate construction techniques, materials, and joints shall be reviewed by the Department, and such requests may be approved on a case-by-case basis.

D. A public water system shall not construct or add to its system a well which is located:

1. Within 50 feet from existing sewers unless the sewer main has been constructed in accordance with subsection

(C)(5)(a) or (b) of this Section;
2. Within 100 feet of any existing septic tank or subsurface disposal system;
3. Within 100 feet of a discharge or activity which is required to obtain an Individual Aquifer Protection Permit, pursuant to A.R.S. §§ 49-241(A) through 49-251;
4. Within 100 feet of an underground storage tank as defined in A.R.S. § 49-1001; or
5. Within 100 feet of hazardous waste facilities operated by large quantity generators and treatment, storage, and disposal facilities regulated under the Arizona Hazardous Waste Management Act, A.R.S. § 49-921 et seq.

Historical _ote

Section recodified from R18-4-502 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-5-503. Storage Requirements

A. The minimum storage capacity for a CWS or a noncommunity water system that serves a residential population or a school shall be equal to the average daily demand during the peak month of the year. Storage capacity may be based on existing consumption and phased as the water system expands.

B. The minimum storage capacity for a multiple-well system for a CWS or a noncommunity water system that serves a residential population or a school may be reduced by the amount of the total daily production capacity minus the production from the largest producing well.

Historical _ote

Section recodified from R18-4-503 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-5-504. Prohibition on the Use of Lead Pipe, Solder, and Flux

Construction materials used in a public water system, including residential and non-residential facilities connected to the public water system, shall be lead-free as defined at R18-4-101. This Section shall not apply to leaded joints necessary for the repair of cast iron pipes.

Historical _ote

Section recodified from R18-4-504 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-5-505. Approval to Construct

A. The Department shall only approve an addition or a water main extension to a public water system that is in compliance with this Chapter or is making satisfactory progress towards compliance under a schedule approved by the Department. The Department shall approve a properly designed modification that can be expected to return a public water system to compliance.

B. A person shall not start to construct a new public water system, modify an existing facility, including an extension to an existing public water system, or make an alteration that will affect the treatment, capacity, water quality, flow, distribution, or operational performance of a public water system before receiving an Approval to Construct from the Department. Designing or consulting engineers may confer with the Department before proceeding with detailed designs of complex or innovative facilities. The following provisions shall apply:

1. An application for Approval to Construct, including the following documents and data, shall be submitted to the

Department:
a. Detailed construction plans of the site and work to be done, presented in legible form and of sufficient scale, to establish construction requirements to facilitate effective review;
b. Complete specifications to supplement the plans;
c. A design report that describes the proposed construction and basis of design, provides design data and other pertinent information that defines the work to be done, and establishes the adequacy of the design to meet the system demand;
d. Analyses of a proposed new source of water that include:
i. Microbiological; physical; radiochemical; inorganic, organic, and volatile organic chemicals; and
ii. Microscopic particulates if the source meets the criteria of R18-4-301.01(A); and
e. Other pertinent data required to evaluate the application for Approval to Construct.
2. All plans, specifications, and design reports submitted for a public water system shall be prepared by, or under the supervision of, a professional engineer registered in Arizona and have the seal and signature of the engineer affixed to them, except that an engineer not registered in Arizona may design a water treatment plant or additions, modifications, revisions, or extensions, which include extensions to potable water distribution systems, if the total cost of the construction does not exceed $12,500 for material, equipment, and labor, as verified by a cost estimate submitted with plan documents.
3. An existing public water system shall be exempt from the plan review requirements of this Article if the public water system is in compliance with this Chapter or is making satisfactory progress towards compliance under a schedule approved by the Department if the applicable structural revision, addition, extension, or modification:
a. Has a project cost of $12,500 or less; or
b. Is made to a water line that:
i. Is not for a subdivision requiring plat approval by a city, town, or county;
ii. Has a project cost of more than $12,500 but less than $50,000; and
iii. Has a design that is sealed and signed by a professional engineer registered in Arizona and the construction of which is reviewed for conformance with the design by a professional engineer registered in Arizona.
4. Upon completion of a project exempt from the plan review requirements of this Article pursuant to subsection (B)(3), the public water system shall submit a notice of compliance which contains:
a. A fair market value cost estimate for the project,
b. The name of the design engineer and the review engineer, and
c. The project completion date and the total construction time.
C. The Department shall act upon a complete Approval to Construct application submitted for approval within 30 days after its receipt.
D. The Department shall issue an Approval to Construct only when the following conditions have been met:

1. Plans and specifications submitted to the Department demonstrate that the proposed public water system reasonably can be expected to comply with this Chapter, including the MCLs in Article 2; and
2. The water system is in compliance with this Chapter or reasonably can be expected to return to compliance with this Chapter as a result of the proposed construction.

E. An Approval to Construct becomes void if an extension of time is not granted by the Department within 90 days after the passage of one of the following:
1. Construction does not begin within one year after the date the Approval to Construct is issued, or
2. There is a halt in construction of more than one year, or
3. Construction is not completed within three years after the date construction begins.

Historical _ote
Section recodified from R18-4-505 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-5-506. Compliance with Approved Plans
All construction shall conform to approved plans and specifications. In order to make a change in an approved design that will affect water quality, capacity, flow, sanitary features, or performance, a public water system shall submit revised plans and specifications to the Department for review, together with a written statement regarding the reasons for the change. The public water system shall not proceed with the construction affected by the design change without written approval from the Department. Revisions not affecting water quality, capacity, flow, sanitary features, or performance may be permitted during construction without further approval if record drawings documenting these changes, prepared by a professional engineer registered in Arizona, are submitted to the Department under R18-5-508.

Historical _ote
Section recodified from R18-4-506 at 10 A.A.R. 585,
Supp. 08-4 Page 28 December 31, 2008

R18-5-507. Approval of Construction

A. A person shall not operate a newly constructed facility until an Approval of Construction is issued by the Department.

B. The Department shall not issue an Approval of Construction on a newly constructed public water system, an extension to an existing public water system, or any alteration of an existing public water system that affects its treatment, capacity, water quality, flow, distribution, or operational performance unless the following requirements have been met:
1. A professional engineer registered in Arizona or a person under the direct supervision of a professional engineer registered in Arizona, has completed a final inspection and submitted a Certificate of Completion on a form approved by the Department to which the seal and signature of the professional engineer registered in Arizona have been affixed;
2. The construction conforms to approved plans and specifications, as indicated in the Certificate of Completion, and all changes have been documented by the submission of record drawings under R18-5-508;
3. An operations and maintenance manual has been submitted and approved by the Department if construction includes a new water treatment facility; and
4. An operator, who is certified by the Department at a

grade appropriate for each facility, is employed to operate each water treatment plant and the potable water distribution system.

C. The Department may conduct the final inspection required in subsection (B)(1), at a public water system's request, if both of the following notification requirements are met:

1. The public water system notifies the Department at least seven days before beginning construction on a public water system installation, change, or addition that is authorized by an Approval to Construct; and
2. The public water system notifies the Department of completion of construction at least 10 working days before the expected completion date.

Historical _ote

Section recodified from R18-4-507 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-5-508. Record Drawings

A. A professional engineer registered in Arizona shall clearly and accurately record or mark, on a complete set of working project drawings, each deviation from the original plan and the dimensions of the deviation. The set of marked drawings becomes the record drawings, reflecting the project as actually built.

B. The professional engineer registered in Arizona shall sign, date, and place the engineer's seal on each sheet of the record drawings and submit them to the Department upon completion of the project. The record drawings shall be accompanied by an Engineer's Certificate of Completion, signed by the professional engineer registered in Arizona, and submitted on a form approved by the Department for any project inspected under R18-5-507(B).

C. Quality control testing results and calculations, including pressure and microbiological testing, and disinfectant residual records, shall be submitted with the Engineer's Certificate of Completion together with field notes and the name of the individual witnessing the tests.

Historical _ote

Section recodified from R18-4-508 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-5-509. Modification to Existing Treatment Process

Before a public water system may make a modification to its existing treatment process, the public water system shall submit and obtain the Department's approval for a detailed plan that explains the proposed modifications and the safeguards that the public water system will implement to ensure that the quality of the water served by the system will not be adversely affected by the modification. The public water system shall comply with the provisions in the approved plans.

Historical _ote

Section recodified from R18-4-509 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

49-361. Sewage treatment plants; operator certification

The department shall adopt and enforce rules to classify sewage collection systems and treatment plants and to certify operating personnel according to the skill, knowledge and experience necessary within the classification. The rules shall provide that operating personnel may be certified on the basis of training and supervision at the place of employment. The department may assess and collect reasonable certification fees to reimburse the cost of certification services, and the fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. The rules apply to all sewage treatment plants that receive and treat wastes from common collection sewers and industrial plants but do not apply to septic tanks, to devices that serve a single home or to industrial treatment devices that are used to perform or allow recycling or impounding wastes within the boundaries of the industry's property.

49-352. Classifying systems and certifying personnel; limitation

A. The department shall establish and enforce rules for the classification of systems for potable water and certifying operating personnel according to the skill, knowledge and experience necessary within the classification. The rules shall also provide that operating personnel may be certified on the basis of training and supervision at the place of employment. The department may assess and collect reasonable certification fees to reimburse the cost of certification services, which shall be deposited in the water quality fee fund established by section 49-210. Such rules apply to all public water systems involved in the collection, storage, treatment or distribution of potable water. The rules do not apply to systems that are not public water systems, including irrigation, industrial or similar systems where the water is used for nonpotable purposes.

B. For the purposes of this article:

1. A public water system is a water system that:

(a) Provides water for human consumption through pipes or other constructed conveyances.

(b) Has at least fifteen service connections or regularly serves an average of at least twenty-five persons daily for at least sixty days a year.

2. A public water system as described in paragraph 1, subdivisions (a) and (b) of this subsection includes any collection, treatment, storage and distribution facilities that are under the control of the operator of a public water system and that are used primarily in connection with the system and any collection or pretreatment storage facilities that are not under the control of the operator of a public water system and that are used primarily in connection with a public water system.

3. A service connection does not include a connection to a system that delivers water by a constructed conveyance other than a pipe, if any of the following applies:

(a) The water is used exclusively for purposes other than residential uses consisting of drinking, cooking or bathing or other similar uses.

(b) The department determines that alternative water is provided for residential or similar uses for drinking and cooking and that the water achieves a level of public health protection that is equivalent to the applicable national primary drinking water regulations.

(c) The department determines that the water that is provided for residential or similar uses for drinking, cooking and bathing is centrally treated or is treated at the point of entry by the water provider, a pass-through

entity or the user to achieve the level of public health protection that is equivalent to the applicable national primary drinking water regulations.

4. An irrigation district in existence before May 18, 1994 and that provides primarily agricultural service through a piped water system with only incidental residential or similar use is not a public water system if the system or the residential or other similar users of the system comply with paragraph 3, subdivision (b) or (c) of this subsection.

5. Persons who receive water through connections that are not service connections pursuant to paragraph 3 of this subsection are not included in the computation of the number of persons prescribed by paragraph 1, subdivision (b) of this subsection.

49-104. Powers and duties of the department and director

B. The department, through the director, shall:

11. Define and prescribe reasonably necessary rules regarding the water supply, sewage disposal and garbage collection and disposal for subdivisions. The rules shall:

(a) Provide for minimum sanitary facilities to be installed in the subdivision and may require that water systems plan for future needs and be of adequate size and capacity to deliver specified minimum quantities of drinking water and to treat all sewage.

(b) Provide that the design documents showing or describing the water supply, sewage disposal and garbage collection facilities be submitted with a fee to the department for review and that no lots in any subdivision be offered for sale before compliance with the standards and rules has been demonstrated by approval of the design documents by the department.

12. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at such places. The rules shall prescribe minimum standards for the design of and for sanitary conditions at any public or semipublic swimming pool or bathing place and provide for abatement as public nuisances of 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 health services and shall be consistent with the rules adopted by the director of the department of health services pursuant to section 36-136, subsection H, paragraph 10.

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

B. The director may:

4. Develop, implement and administer a water quality planning process, including a ranking system for applicant eligibility, wherein appropriated state monies and available federal monies are awarded to political subdivisions of this state to support or assist regional water quality planning programs and activities.

49-353. Duties of director; rules; prohibited lead use

A. The director shall:

A. The director shall:

1. Exercise general supervision over all matters related to water quality control of public water systems throughout this state.

2. Prescribe rules regarding the production, treatment, distribution and testing of potable water by public water systems, except that such rules shall not apply to irrigation, industrial or similar systems where the water is used for nonpotable purposes. The rules shall comply with at least the following:

(a) The requirements established by the United States environmental protection agency for state primary enforcement responsibility of the safe drinking water act, including the requirements of 40 Code of Federal Regulations parts 141 and 142.

(b) Require that the plans and specifications for all public water systems, including water treatment plants, distribution systems, distribution system extensions, water treatment methods and devices and all appurtenances and devices for sale to be used in water supplies and public water systems be submitted with a fee for review to the department. 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. Monies collected from the fees shall be deposited in the water quality fee fund established by section 49-210. The director may require that plans and specifications for public water systems include programs to meet future needs for drinking water and to supply specified minimum quantities of drinking water. The director shall:

(i) Require that a new public water system demonstrate that the system possesses adequate managerial and financial capacity to operate in compliance with this article and the rules adopted pursuant to this article.

(ii) Accept adequate findings of other public authorities regarding the adequate managerial and financial capacity of a public water system to operate in compliance with this article and the rules adopted pursuant to this article.

(c) Provide that no public water system, including a water treatment plant, distribution system, distribution system extension, water treatment method or device, appurtenance and device used in water supplies or public water systems be constructed, reconstructed, installed or initiated before compliance with the standards and rules has been demonstrated by approval of the plans and specifications by the department. The rules shall prescribe minimum standards for the bacteriological, physical and chemical quality of water distributed through public water systems. The director of environmental quality may consult with the director of the department of health services in developing these standards.

(d) Provide for a simplified administrative procedure for approving structural revisions, additions, extensions or modifications to existing small public water systems for potable water serving a population of three thousand three hundred or fewer persons.

(e) Exempt from the plan review requirements of this paragraph, including any requirements for approval to construct or approval of construction, any structural revisions, additions, extensions or modifications to public water systems which are in compliance with the department's rules applicable to those systems or which are making satisfactory progress towards compliance under a schedule approved by the department if either of the following conditions is satisfied:

(i) The revision, addition, extension or modification has a project cost of twelve thousand five hundred dollars or less.

(ii) The revision, addition, extension or modification is made to a water line which is not for a subdivision requiring plat approval by a city, town or county, and has a project cost of more than twelve thousand five hundred dollars but less than fifty thousand dollars, the design of which is sealed by a professional engineer registered in this state and the construction of which is reviewed for conformance with the design by a professional engineer.

(f) Require a notice of compliance with the conditions for exemption on the completion of any revisions, additions, extensions or modifications completed in accordance with subdivision (e) of this paragraph.

(g) Provide for the submission of samples at stated intervals.

(h) Provide for inspection and certification of such water supplies.

(i) Provide for the abatement as public nuisances of any premises, equipment, process or device, or public water system that does not comply with the minimum standards and rules.

(j) Provide for records regarding water quality to be kept by owners and operators of the public water systems and that reports regarding water quality be filed with the department.

(k) Provide for appropriate actions to be taken if a water supply does not meet the standards established by the department.

(l) Require a public water system to implement a specified program to control contamination from backflow, backsiphonage or cross connection. All such programs shall be consistent with section 37-1388.

(m) Require that public water systems identify and provide notice to persons that may be affected by lead contamination of their drinking water where such contamination results from either or both of the following:

(i) The lead content in the construction materials of the public water distribution system.

(ii) Corrosivity of the water supply sufficient to cause leaching of lead.

(n) Provide for relief from water testing and monitoring requirements for public water systems qualifying under the federal safe drinking water act (P.L. 93-523; 88 Stat. 1661; P.L. 95-190; 91 Stat. 1393; P.L. 104-182; 110 Stat. 1613), as amended in 1996.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS (F-17-0203)
Title 4, Chapter 12, Articles 1, General Provisions; Article 2, Licensing Provisions; Article 3, Regulatory Provisions; Article 4, Continuing Education; Article 5, Prearranged Funeral Agreements; Article 6, Crematory and Cremation Regulation

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

MEETING DATE: March 7, 2017 **AGENDA ITEM: E-4**

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

FROM: Marcus McGillivray, Legal Intern

DATE : February 21, 2017

SUBJECT: **BOARD OF FUNERAL DIRECTORS AND EMBALMERS (F-17-0203)**
Title 4, Chapter 12, Articles 1, General Provisions; Article 2, Licensing Provisions; Article 3, Regulatory Provisions; Article 4, Continuing Education; Article 5, Prearranged Funeral Agreements; Article 6, Crematory and Cremation Regulation

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COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

This five-year review report from the Arizona Board of Funeral Directors and Embalmers (Board) covers 50 rules in A.A.C. Title 4, Chapter 12, Articles 1 through 6. The Board licenses and regulates funeral directors, funeral establishments, and embalmers. The Board is reviewing all of its rules, including rules on licensing, continuing education, prearranged funeral agreements, and cremation. Most of the rules were amended or made new after 2001; however, some of the older rules date back to 1981.

Proposed Action

The Board is proposing to amend the Article 3 rules in FY 2017, and begin working on amendments to its Article 5 rules in FY 2018.

Substantive or Procedural Concerns

None.

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

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

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

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

Yes. The following rules are mostly effective in achieving their objectives:

- R4-12-305: Lack of clarity within the statute makes the rule nominally ineffective.
- R4-12-541: Use of passive language and an incorrect citation compromises the effectiveness of this rule.
- R4-12-551 and R4-12-552: Use of passive language and the incorrect use of "which" instead of "that" affects the effectiveness of this rule.
- R4-12-561: Incorrect citation and the superfluous use of the word "concerning" affects the effectiveness of this rule.
- R4-12-556: Subsection (3) of this rule has grammar errors that affect the effectiveness of this rule.
- Appendix B: The phrase "statement not used as final bill," is ineffective.
- Appendices D and E

The following rules are partially effective in achieving their objectives:

- R4-12-302: The rule uses ambiguous and passive language, and does not conform to the proper rule writing style or format.
- R4-12-303: The rule is ambiguous regarding cremation and casket requirements.
- R4-12-304: The rule is awkwardly worded, ambiguous, and does not conform to the proper rule writing style and format.
- R4-12-306: The rule is poorly organized, uses passive language, and lacks standards for cremation containers.
- R4-12-545: The rule contains passive language, gender specific terms, and the incorrect use of "will."
- R4-12-546: The rule contains undefined terms and does not state the requirements for a prearranged funeral agreement when a casket is sold.
- R4-12-548: The rule contains undefined terms, gender specific language, and lacks a standard for the phrase "other similar documentation."
- R4-12-554: The rule is inconsistent with state law and is poorly and ambiguously written.
- R4-12-556: The second and third sentence of subsection (B) of the rule are not enforced, and the rule contains undefined terms.
- R4-12-559: The rule is inconsistent with a state statute.

The following rules are not effective in achieving their objectives:

- R4-12-301: The rule contains a subsection that is inconsistent with state law; the Board has difficulty enforcing this rule because it is not clear, concise, or understandable.
- R4-12-307: The rule is ineffective because it is not clear, concise, or understandable.
- R4-12-311: Parts of the rule are inconsistent with state law; the Board has difficulty with enforcement because it is not clear, concise, or understandable.
- R4-12-312: Parts of the rule are inconsistent with state law; the Board has difficulty with enforcement because it is not clear concise, or understandable.

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

No. The Board has not received any written criticisms of the rules in the last five years.

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

Yes. The Board cites to general and specific statutory authority. A.R.S. § 32-1391.01(A) gives the board general statutory authority.

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

Yes. The Board believes that most of the rules are consistent with other rules and statutes. Six rules, however, are inconsistent with other statutes and rules.

- R4-12-301(A)(3): The rule states that licensees are required to follow the rules to "the extent possible;" this gives the licensees too much leeway and is inconsistent with other laws since licensees are statutorily required to abide by all of the Board's rules.
- R4-12-303(A)(1): The rule requires embalming to occur if a body is not buried or cremated within 24 hours, or if the body is not refrigerated. However, A.A.C. R9-12-312 requires a body to be refrigerated within 24 hours of death if it is not buried, cremated, or embalmed.
- R4-12-311(A)(1): The rule is inconsistent with A.R.S. § 32-1324 because it voids apprentice embalmer registration after July 31, 2002.
- R4-12-312: The rule is inconsistent with A.R.S. § 32-1382; the rule merely recommends the use of instruments and standards for preparation rooms, whereas the statute mandates minimum standards.
- R4-12-554: The rule is inconsistent with A.R.S. § 32-1391.06(C) because the rule only allows payments to a taxing authority, while the statute authorizes payments to either a taxing authority or beneficiary upon a proper showing that the beneficiary has paid the taxes.
- R4-12-559: The rule is inconsistent with A.R.S. § 32-1391.07(A) because it requires funeral establishments to refund the trust fund within five days, while the statute requires the refund within five business days.

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

Yes. The Board notes the following:

- R4-12-301: The Board has difficulty enforcing the rule due to ambiguous language which can lead to multiple potential interpretations.
- R4-12-302: The Board enforces the rule to the extent that its ambiguous language allows.
- R4-12-303: The Board enforces subsection (A)(1) of the rule consistent with R9-12-312; the remainder is enforced according to the language of the rule.

- R4-12-311: The Board does not enforce the subsection (A)(1) requirements for apprentice embalmer.
- R4-12-312: The Board does not enforce the rule, because there are no standards for requirements such as "clean and sanitary" and "heath nuisance or hazard."
- R4-12-556: The Board does not enforce the first two sentences of subsection (B), relating to Board notification of a trust account transfer.
- R4-12-559: The Board enforces the rule consistently with A.R.S. § 32-1391.07(A).
- Appendix B: The Board enforces the appendix, except for the phrase "statement not used as a final bill."

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

Yes. The Board has determined that a majority of the rules are clear, concise, and understandable. The Board has also made the following determinations:

- Rules that are **mostly** clear, concise, and understandable: R4-12-305, R4-12-552, R4-12-561, and R4-12-565.
- Rules that are **partially** clear, concise, and understandable: R4-12-306, R4-12-541, R4-12-551, and R4-12-556.
- Rules that are **not** clear, concise, and understandable: R4-12-301, R4-12-302, R4-12-303, R4-12-304, R4-12-306, R4-12-307, R4-12-311, R4-12-312, R4-12-544, R4-12-545, R4-12-546, R4-12-548, and R4-12-554.

8. Has the agency analyzed whether:

a. The rules are more stringent than corresponding federal law?

No. While A.R.S. § 32-1377 requires the Board's rules to be as stringent as the Federal Trade Commission regulations relating to funeral industry practices, the Board assures that the rules are not more stringent than federal law.

b. There is statutory authority to exceed the requirements of federal law?

Yes. A.R.S. § 32-1377 states ". . . rules adopted by the board to implement this article shall be at least as stringent as federal trade commission regulations relating to funeral industry practices. . ." The Board, however, believes that the rules are not more stringent than corresponding federal law.

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

None of the rules adopted after July 29, 2010 require the issuance of a regulatory permit or license.

a. <u>The rules require issuance of a regulatory permit, license or agency authorization?</u>

N/A.

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

N/A.

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

In the last five-year-review report, the Board proposed rulemakings for Article 3, 5, and 6. The rulemaking for Article 6 was completed in 2014. However, no rulemakings for Article 3 and 5 were completed, which were proposed for 2013 and 2014 respectively.

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

Yes. The Board plans to amend all of the rules in Articles 3 and 5. These amendments are projected to address rules that are inconsistent with state law, rules which lack clarity and conciseness, and some rules which the Board does not fully enforce. The Board anticipates amending the Article 3 rules in FY 2018, and begin working on amendments to Article 5 rules in FY 2019.

<u>Conclusion</u>

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

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

MEETING DATE: March 7, 2017 **AGENDA ITEM: E-4**

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

FROM: GRRC Economic Team

DATE : February 21, 2017

SUBJECT: **BOARD OF FUNERAL DIRECTORS AND EMBALMERS (F-17-0203)**
Title 4, Chapter 12, Articles 1, General Provisions; Article 2, Licensing Provisions; Article 3, Regulatory Provisions; Article 4, Continuing Education; Article 5, Prearranged Funeral Agreements; Article 6, Crematory and Cremation Regulation

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

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

An EIS was available for some of the rules reviewed. The Board has determined that the economic impact of the rules is minimal for the Board, other state agencies, private entitles, small businesses, and consumers. Many of the specific rules vary in costs for businesses. The Board indicates that, overall, these rules have a minimal to moderate ($1,000-$10,000) impact. For example, R4-12-311 contains requirements for embalming practices which result in minimal to moderate costs for embalmers depending on how closely they followed the requirements before licensure. In addition, R4-12-312 has various costs associated with equipment and sanitation practices for businesses which depend on preparation room maintenance practices.

In 2015, the Board amended its Cremation Regulation rules to clarify requirements and meet current statutory standards. That same year, the Board conducted 21 crematory inspections and 49 funeral establishment inspections.

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

The Board states that the benefits of the rules outweigh the probable costs of the rules, and that the rules impose the least burden and cost to applicants, licensees, or registrants. There are no less costly alternatives. However, the Board does note that they intend to amend Article 3 and 5 of the rules for consistency with statue and for clarity and conciseness.

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

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

4. Conclusion

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

ARIZONA BOARD OF FUNERAL DIRECTORS AND EMBALMERS

1400 West Washington, Suite 230 Phoenix, Arizona 85007
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GRRC

December 6, 2016

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

Dear Ms. Ong:

As required by A.R.S. § 41-1056, the Arizona Board of Funeral Directors and Embalmers (Board) has reviewed its rules in 4 A.A.C. 12. The Board believes the attached five-year review complies with the requirements of A.R.S. § 41-1056. The attachment includes a five-year-review summary of the rules, information that is identical for all rules, including the economic income statement; information that is identical within groups of rules; analysis of individual rules; copies of current rules and statutes; and copies of economic impact statements, where available. The Board intends to take the course of action stated in the five-year-review report.

I certify that the Board is in compliance with A.R.S. §41-1091.

If you have any questions concerning this report, you may contact me at the above number.

Sincerely,

Rudy Thomas
Executive Director.

Board Members

John Munden
Funeral Director
President

James Ahearne, Jr.
Funeral Director
Secretary

Jack Peterson
Consumer Member

Samuel Bueler
Funeral Director

Kristina Dyrr
Consumer Member

Samuel Bueler
Funeral Director

Rev. William O. Smith
Consumer Member

Staff

Rodolfo Thomas
Executive Director

Gary Hendrix
License Administrator

Judi Stapley
Investigator

Patricia Keith
Programs and Projects
Specialist

BOARD OF FUNERAL DIRECTORS AND EMBALMERS
TITLE 4, CHAPTER 12, ARTICLES, 1, 2, 3, 4, 5, 6
2016 FIVE YEAR REVIEW REPORT

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

2016 FIVE YEAR REVIEW REPORT

TITLE 4, CHAPTER 12, ARTICLES, 1, 2, 3, 4, 5, 6

TABLE OF CONTENTS

Five-Year-Review Overview

Information that is identical for all of the rules

Information that is identical within groups of rules

Analysis of individual rules

Article 1. General Provisions

- R4-12-101. Definitions
- R4-12-106. Time-frames for Board Approval
- Table 1. Time-frames (in days)
- R4-12-108. Fees
- R4-12-109. Enforcement Advisement Committee
- R4-12-120. Inspection Procedures
- R4-12-121. Investigation Procedures
- R4-12-123 Informal Interview
- R4-12-125. Hearing Procedures
- R4-12-126. Rehearing or review of Board's Decision

Article 2. Licensing Provisions

- R4-12-201. Application for a State Equivalent Examination or Embalmer Assistant Practical Examination
- R4-12-202. Application for an Intern, an Embalmer, or a Funeral Director License
- R4-12-203. Application for an Embalmer's Assistant Registration
- R4-12-204. Application for a Funeral Establishment License or an Interim Funeral Establishment Permit
- R4-12-205. Application for a Prearranged Funeral Sales Endorsement
- R4-12-206. Application for a Prearranged Funeral Salesperson Registration
- R4-12-207. Application for a Crematory License
- R4-12-208. Annual Intern, Apprentice Embalmer, or Embalmer's Assistant Report
- R4-12-209. State Equivalent Examination
- R4-12-210. Application for a Cremationist License
- R4-12-211. Renewal
- R4-12-212. Reinstatement

R4-12-631. Records requirements for crematories and funeral establishments that provide for cremation

R4-12-633. Disposition of records

Attachment A

Attachment B

Attachment C

Attachment D

Current Rules

Statutes

Article 3. Regulatory Provisions

R4-12-301. General funeral services requirements

R4-12-302. Deceptive practices prohibited

R4-12-303. Misrepresentation of legal or cemetery requirements

R4-12-304. Telephone price disclosure requirement

R4-12-305. Price lists requirements

R4-12-306. Merchandise price card requirement

R4-12-307. Funeral goods and services memorandum

R4-12-311. Minimum embalming requirements

R4-12-312. Equipment and sanitation requirements

Article 4. Continuing Education

R4-12-413. Continuing Education Hours Required

R4-12-414. Waiver of Continuing Education

R4-12-415. Continuing Education Determinations

R4-12-416. Documentation of Continuing Education

Article 5. Prearranged Funeral Agreements

R4-12-523. Surety bond requirements

R4-12-541. Consumer disclosures

R4-12-545. Deceptive, misleading or professionally negligent practices

R4-12-546. Description of casket

R4-12-548. Possession of trust account passbook

R4-12-551. Certificate of entitlement

R4-12-552. Certificate of performance

R4-12-554. Statement of accrued taxes

R4-12-556. Notice of trust account transfer

R4-12-559. Purchaser cancellation requests

R4-12-561. Annual report format

R4-12-565. Records retention requirement

Appendix B. Statement of Funeral Goods and Services Selected

Appendix D. Prearranged Funeral Endorsement Bond

Appendix E. Annual Report

Article 6. Crematory and Cremation Regulation

R4-12-612. Crematory requirements

R4-12-613. Requirements for a funeral establishment that provides for cremation

Five-Year-Review Overview

The Arizona Board of Embalmers was created by the legislature in 1909 to establish standards for and oversight of embalmers. In 1945, the legislature changed the title to the Board of Funeral Directors and Embalmers (Board) and expanded the Board's statutory authority to include individuals and funeral establishments providing goods and services. The Board adopted its first rules in 1945 and amended the rules in 1981. In 1985, in response to complaints regarding charging practices of funeral providers, the Federal Trade Commission promulgated federal regulations governing funeral practices. In 1985, The Arizona legislature also enacted legislation that required the Board to make rules that are at least as stringent as the Federal Trade Commission's regulations. In 1998, the Arizona legislature made significant changes to the Board's statutory authority. In 2001, the Board amended its application and time-frame rules in Article 2 consistent with the statutory changes. In March 2002, the Board conducted a five-year-review of its rules, which was approved by GRRC in March 2002. As a result of the March 2002 five-year-review, the Board amended the following Article 1 rules, which became effective April 2004: definitions, time-frames- enforcement advisory committee, investigation procedures, informal interview, hearing procedures, and rehearing or review of decision. In the same rulemaking the Board made new rules in Article 2 for reinstatement, application for a cremationist license, renewal of license, registration, or endorsement. The Board also amended its continuing education requirements in Article 4. Effective October 1, 2005, the Board added a new rule for inspection procedures in R4-12-120. On November 9, 2014, new rules became effective for Article 6, Cremation and Cremation Regulation. In the rulemaking the Board amended definitions in R4-12-101, repealed six rules in Article 6, and amended four rules in Article 6.

The Board intends to amend its Article 3, Regulatory Provisions, and Article 5, Prearranged Funeral Agreements rules and has begun seeking input from those who will be affected by the rules. The Board hopes to amend its Article 3 rules in 2017 and begin working on its Article 5 rules in 2018.

The Board conducted a five-year-review that was approved by GRRC on February 7, 2012. The analysis of the rules that was performed at that time is consistent with the current analysis and much of the substance in this report, with updates, comes from the December 2012 report.

Information that is identical for all of the rules

The following information is the same for all of the Funeral Board rules:

1. **Authorization of the rule by existing statutes:**

   All of the rules have general authority under A.R.S. § 32-1307(A)(5). Article 5 rules have general authority under A.R.S. § 32-1391.01(A). Specific authority is stated in the applicable rule.

7. **Written criticisms of the rules received in the 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 Board has not received any written criticisms of the rules in the last five years.

8. **Comparison of the current economic, small business, and consumer impact statement:**

   Except as otherwise stated and as anticipated by the Board upon promulgation of the rules, the rules have had minimal economic impact on the Board, other state agencies, private entities, small businesses, and consumers. When economic impact is discussed, minimal means less than $1,000, moderate means $1,000 to $10,000, and substantial means more than $10,000.

   R4-12-311 and R4-12-312 became effective on June 16, 1981. Because R4-12-311 contains requirements for embalming, the economic impact ranges from minimal to moderate on embalmers or funeral establishments, depending on the extent to which the embalmers or funeral establishments meet the requirements before licensure. Also, because R4-12-312 is discretionary, the equipment and sanitation cost will vary, depending on what equipment the funeral establishment chooses to maintain in the preparation room. The economic impact statement related to these rules is not available.

   R4-12-302 and R4-12-303 became effective on January 12, 1985. When R4-12-302 was first promulgated, the Board thought funeral establishments would self-enforce their own practices, which would decrease Board costs for investigations. The number of complaints to the Board about funeral practices has steadily increased in proportion to the number of deaths. In 1994 to 1990, the Board received approximately 50 to 60 complaints a year. From 1993 to 1996, the Board received approximately 70 to 100 complaints a year. From 1984 to 1990, the Board retained an investigator on a contract basis and as needed basis. Because the number of complaints was increasing, the Board hired a full-time investigator in 1998, resulting in higher costs to the Board than anticipated at the time of promulgation of the rule. In 2006, the Board employed a full-time investigator and compliance officer. However, due to budget constraints, the Board was unable to retain both positions and currently has one full-time compliance administrator who is responsible for inspections, renewals, continuing education compliance and FTC compliance. In 2011, the Board conducted 75 funeral establishment inspections and 25

crematory inspections. In 2015, the Board conducted 49 funeral establishment inspections and 21 crematory inspections. The Board still believes the ultimate beneficiary of the rule to be the consumer because of the elimination of hidden charges, such as cash advance markups and the ability to choose less expensive funeral items. The goal of the rule was to prevent high pressure sales. As anticipated by the Board, the costs savings to a consumer range from minimal to moderate, depending on the cost of the cash advance item. The economic impact statement related to the rules is not available.

When the Board promulgated R4-12-303, the Board's goal was to save consumers money because the rule requirements would eliminate misunderstandings and deter purchases of unnecessary goods and services. The Board determined the savings to consumers could be substantial because many of the goods and services that might not be purchased are expensive, such as burial vaults or caskets (the rule states it is deceptive to represent that state or local law requires a casket other than an unfinished wood box for direct cremation). The economic impact statement related to this rule is not available.

The rulemaking that became effective in 2001 included requirements for all types of application and time-frames rules for processing the applications. The Board's time-frame rules have had minimal impact on applicants or the Board. The Board has not returned any fees to an applicant due to failure to meet the time-frame rules. The Board has attached the economic impact statement related to the rulemaking that was approved by GRRC as Attachment A.

The rulemaking that became effective on April 3, 2004, included definitions, time-frames, enforcement advisory committee, investigation procedures, informal interview, hearing procedures, and rehearing or review of decision. In the same rulemaking the Board made new rules in Article 2 for reinstatement, application for a cremationist license, renewal of license, registration, and endorsement. The Board also amended its continuing education requirements in Article 4. In its economic impact statement for the rulemaking, the Board projected annual costs for informal interviews would be moderate. In 2010 and in 2011, the Board held two informal interviews, which has decreased from the eight held in 2006. However, there were five hearings in 2010, six in 2011, and five in 2015. An applicant for an initial cremationist's license bears minimal costs for an application and fee. The Board currently licenses 265 cremationists and received 47 cremationist applications in 2015. Consistent with its projections the rules have had minimal economic impact on a licensed funeral establishment and crematory. The Board currently licenses 173 funeral establishment and 54 crematories. The Board's projection for minimal annual costs to funeral director, embalmers, and embalmer's assistants for completion of

continuing education has remained accurate. The economic impact statement related to the rulemaking is attached as Attachment B.

The Board's inspection rule became effective on October 1, 2005. Consistent with its projection, the rule has not imposed any additional costs on the Board, funeral establishment, or crematory. In 2015, the Board conducted 21 crematory inspections and 49 funeral establishment inspections (licensing and complaint). The economic impact statement related to the rulemaking is attached as Attachment C.

In November 2014 the Board amended its Cremation and Cremation Regulation rules. The rules did not add new requirements but were amended because of redundancy with other rules and statutes, conformance with statutes and current standards for crematories, corrections to current statutory authority, and to make them clear, concise, and understandable. Because no new requirements were added and consistent with its projections, the rules have had minimal economic impact on a licensed funeral establishment and crematory. The Board currently licenses six stand-alone crematories and 175 funeral establishments of which 49 have licensed crematories. There has been no increase in costs to consumers due to the rules. The economic impact statement for the rulemaking is attached as Attachment D.

9. **Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states:**

No one has submitted such an analysis to the Board.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

After reviewing the economic impact statements written at the time of rule promulgation (See paragraph 6) and the current economic impact of the rules, the Board has determined that the rules outweigh the probable costs of the rules and the rules impose the least burden and costs to applicants, licensees, or registrants and there are no less costly alternatives to the rules. However, the Board does intend to amend Articles 3 and 5 of the rules for consistency with statute and for clarity, conciseness.

12. **A determination that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of federal law:**

A.R.S. § 32-1377 states that the Board's rules shall be as stringent as the federal trade commission regulations relating to funeral industry practices. When the Board wrote its rules it

ensured that the rules were as stringent as but no more stringent than the federal trade commission regulations.

13. **For a rule adopted after July 29, 2010 that requires issuance of a regulatory permit, license or agency authorization, whether the rule complies with section 41-1037 (General permits; issuance of traditional permit):**

The Board does not issue general permits but issues individual licenses as required by the Board's statutes, to each person who qualifies for licensure, so this provision does not apply the Board's rules. Thus, A.R.S. § 41-1037 does not apply.

Information that is identical within groups of rules

The following information is identical for each group of rules listed. Because this information is the same for each rule in the groups listed:.

3. **Analysis of effectiveness in achieving the objective:**

The following rules effectively achieve their objective:

R4-12-101, R4-12-106, Table 1, R4-12-108, R4-12-109, R4-12-120, R4-12-121, R4-12-123, R4-12-125, R4-12-126, R4-12-201, R4-12-202, R4-12-203, R4-12-204, R4-12-205, R4-12-206, R4-12-207, R4-12-208, R4-12-209, R4-12-210, R4-12-211, R4-12-212, R4-12-413, R4-12-414, R4-12-415, R4-416, R4-12-523, R4-12-612, R4-12-613, R4-12-631, R4-12-633

The following rules are mostly effective for the reasons stated in the individual rule:

R4-12-305, R4-12-541, R4-12-551, R4-12- 552, R4-12-561, R4-12-565, Appendix B, Appendix D, Appendix E

The following rules are partially effective for the reasons stated in the individual rule:

R4-12-302, R4-12-303, R4-12-304, R4-12-306, R4-12-545, R4-12-546, R4-12-548, R4-12-554, R4-12-556, R4-12-559

The following rules are not effective for the reasons stated in the individual rule:

R4-12-301, R4-12-307, R4-12-311, R4-12-312,

4. **Whether the rule is consistent with statutes or other rules:**

All of the rules except the following are consistent with other state and federal rules and statutes as stated in the individual rule:

R4-12-301, R4-12-303, R4-12-311, R4-12-312, R4-12-554, R4-12-559

5. **Status of enforcement of the rule**

All of the rules, except the following are being enforced as stated in the individual rule:

R4-12-301, R4-12-302, R4-12-303, R4-12-311, R4-12-312, R4-12-556, R4-12-559, Appendix B

6. **Analysis of clarity, understandability, and conciseness**

The following rules are clear, concise, and understandable:

R4-12-101, R4-12-106, Table 1, R4-12-108, R4-12-109, R4-12-120, R4-12-121, R4-12-123, R4-12-125, R4-12-126, R4-12-201, R4-12-202, R4-12-203, R4-12-204, R4-12-205, R4-12-206, R4-12-207, R4-12-208, R4-12-209, R4-12-210, R4-12-211, R4-12-212, R4-12-413, R4-12-414, R4-12-415, R4-12-416, R4-12-523, R4-12-559, R4-12-612, R4-12- 613, R4-12-631, R4-12-633 Appendix B, Appendix D, Appendix E

The following rules are mostly clear, concise, and understandable:

R4-12-305, R4-12-552, R4-12-561, R4-12-565,

The following rules are partially clear, concise, and understandable:

R4-12-306, R4-12-541, R4-12-551, R4-12-556

The following rules are not clear, concise, and understandable:

R4-12-301, R4-12-302, R4-12-303, R4-12-304, R4-12-306, R4-12-307, R4-12-311, R4-12-312, R4-12-544, R4-12-545, R4-12-546, R4-12-548, R4-12-554

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

The last five-year-review report was approved by GRRC on February 7, 2012. In the report the Board proposed to amend its crematory rules in Article 6. These rules were amended effective November 9, 2014. The Board intends to amend its Article 3, Regulatory Provisions, and Article 5, Prearranged Funeral Agreements rules and has begun seeking input from those who will be affected by the rules. The Board hopes to amend its Article 3 rules in 2017 and begin working on its Article 5 rules in 2018.

14. Proposed course of action

The only rules that need to be amended at this time are in Articles 3 and 5. The Board has identified issues in Article 3, as stated in the individual rules, which need to be addressed. The Board has determined the rules in Article 5 also need to be amended to address issues similar to those in Article 3, a majority of which lack clarity, conciseness, and understandability and has begun seeking input from those who will be affected by the rules. The Board hopes to amend its Article 3 rules in FY2017 and begin working on its Article 5 rules in FY2018. It is uncertain as to the month the action will be taken. No action is necessary for the rest of the rules.

Article 1. General Provisions

R4-12-101. Definitions

2. Objective of the rule

The objective of the rule is to define terms used in the rules to make the rules understandable to the reader, achieve clarity in the rules, and afford consistent interpretation.

R4-12-106. Time-frames for Board Approval

1. Authorization of the rule by existing statutes

A.R.S. § 41-1072 through § 41-1079

2. Objective of the rule

The objective of the rule is to provide an applicant with a timeframe in which the applicant may expect an approval, license, endorsement, or registration to be approved or denied by the Board.

Table 1. Time-frames (in days)

1 Authorization of the rule by existing statutes

A.R.S. § 41-1072 through § 41-1079

Objective of the rule

2. The objective of the rule is to set forth, in table form, the time-frames for the Board to approve or deny an approval, license, endorsement, or registration.

R4-12-108. Fees

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1307(B)(5), 32-1309, 32-1391.16, 39-121.03

Objective of the rule

2. The objective of the rule is to provide notice of the fees for copying, filing an annual trust report, and publishing, distributing, and mailing consumer information pamphlets to a funeral establishment.

R4-12-109. Enforcement Advisement Committee

1. Authorization of the rule by existing statutes

A.R.S. § 32-1307(B)(2)

2. Objective of the rule

The objectives of the rule are to inform persons that the Board may appoint an enforcement advisory committee, set out the membership of the committee, and state the responsibilities of the enforcement advisory committee.

R4-12-120. Inspection Procedures

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1307(A)(5)(b), 32-1383(C)

2. Objective of the rule

The objectives of the rule are to inform applicants, licensees, and the public of the frequency of inspections conducted by the Board to determine whether the licensee meets the requirements of statutes and rules, what an inspection includes, what is required of the Board at an inspection site, and what is required of the Board, applicant, or licensee following an inspection.

R4-12-121. Investigation Procedures

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1307(A)(4), 32-1367

2. Objective of the rule

The objectives of the rule are to inform a licensee or registrant of what is required of the Board after receipt of a complaint, what is required of a licensee or registrant after receipt of the Board's written notice of the complaint, and state that the Board may request additional information of a complainant, licensee, or registrant.

R4-12-123. Informal Interview

1. Authorization of the rule by existing statutes

A.R.S. § 32-1367

2. Objective of the rule

The objective of the rule is to provide the process for conducting an informal interview.

R4-12-125. Hearing Procedures

1. Authorization of the rule by existing statutes

A.R.S. § 32-1367

2. Objective of the rule

The objective of the rule is to provide standards, procedures, and the process for conducting disciplinary hearings.

R4-12-126. Rehearing or Review of Board's Decision

1. Authorization of the rule by existing statutes

A.R.S. § 32-1367(I)

2. Objective of the rule

The objectives of the rule are to describe the procedures for a party to request a rehearing or review after a hearing has been held and explain the Board's process for denying or granting such a request.

Article 2. Licensing Provisions

R4-12-201. Application for a State Equivalent Examination or Embalmer Assistant Practical Examination

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1309(A)(3), 32-1309(A)(4), 32-1309(B)(5), 32-1322, 32-1327

2. Objective of the rule

The objective of the rule is to specify the documents and fees that are required to be submitted to the Board when applying to take a state equivalent examination or embalmer assistant practical examination.

R4-12-202. Application for an Intern, an Embalmer, or a Funeral Director License

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1309(A)(1), 32-1309(A)(2), 32-1309(A)(4), 32-1309(A)(5), 32-1309(C)(1), 32-1309(C)(2), 32-1309(C)(4), 32-1323, 32-1335, 32-1384

2. Objective of the rule

The objective of the rule is to inform an individual of the documents and fees that are required to be submitted when the individual applies for an intern, embalmer, or funeral director license so the Board can determine the qualifications of the applicant.

R4-12-203. Application for an Embalmer's Assistant Registration

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1309(A)(3), 32-1309(C)(3), 32-1325.01, 32-1335

2. Objective of the rule

The objective of the rule is to inform an individual of the documents and fees that are required to be submitted to the Board when the individual applies for an embalmer's assistant registration so the Board can determine the qualifications of the applicant.

R4-12-204. Application for a Funeral Establishment License or an Interim Funeral Establishment Permit

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1309(A)(7), 32-1381, 32-1383, 32-1388(C)

2. Objective of the rule

The objective of the rule is to inform an individual of the documents and fees that are required to be submitted to the Board when the individual applies for an establishment license or interim funeral establishment permit so the Board can determine the qualifications of the applicant..

R4-12-205. Application for a Prearranged Funeral Sales Endorsement

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1309(A)(8), 32-1391.12

2. Objective of the rule

The objective of the rule is to inform an individual of the fee and documents that are required to be submitted to the Board when the individual applies for a prearranged funeral sales endorsement so the Board can determine the qualifications of the applicant.

R4-12-206. Application for a Prearranged Funeral Salesperson Registration

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1309(A)(6), 32-1309(C)(5), 32-1391.14

2. Objective of the rule

The objective of the rule is to inform an individual of the fee and documents that are required to be submitted to the Board when the individual applies for a prearranged funeral sales registration so the Board can determine the qualifications of the applicant.

R4-12-207. Application for a Crematory License

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1309(A)(9), 32-1395

2. Objective of the rule

The objective of the rule is to inform an individual of the fee and documents that are required to be submitted to the Board when the individual applies for a crematory license so the Board can determine the qualifications of the applicant.

R4-12-208. Annual Intern, Apprentice Embalmer, or Embalmer's Assistant Report

1. Authorization of the rule by existing statutes

A.R.S. § 32-1330

2. Objective of the rule

The objective of the rule is to specify what information is needed for the annual report for interns, apprentice embalmers, and embalmers assistants.

R4-12-209. State Equivalent Examination

1. Authorization of the rule by existing statutes

A.R.S. § 32-1327

2. Objective of the rule

The objective of the rule is to inform an individual of the subjects that are tested on the arts and science sections of the state equivalent examination

R4-12-210. Application for a Cremationist License

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1309(A)(10), 32-1309(C)(6), 32-1394, 32-1394.01

2. Objective of the rule

The objective of the rule is to inform an individual of the documents and fees that are required to be submitted to the Board when the individual applies for a cremationist license so the Board can determine the qualifications of the applicant.

R4-12-211. Renewal

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1309(D), 32-1331

2. Objective of the rule

The objective of the rule is to inform an individual of the time, fee, and documents that are required to be submitted to the Board when renewing a license, registration, or endorsement.

R4-12-212. Reinstatement

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1309(E), 32-1331, 32-1391.12, 32-1391.14(C)

2. Objective of the rule

The objective of the rule is to inform an individual of the fees and documents that are required to be submitted to the Board when requesting reinstatement.

Article 3. Regulatory Provisions

R4-12-301. General funeral services requirements

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1307(A)(5)(b), 32-1307(A)(5)(c)

2. Objective of the rule

The objective of the rule is to inform a funeral director, embalmer, funeral establishment, or other person licensed by the Board of the standards of conduct required for the care, transportation, and handling of a decedent and for communications with a decedent's family.

3. Analysis of effectiveness in obtaining objective

The rule is not effective for the reasons stated in paragraphs 4, 5, and 6.

4. Analysis of consistency with state and federal rules and statutes

Most of the rule is consistent with state and federal rules and statutes. Subsection (A)(3) is inconsistent because it states that licensees are required to follow the enumerated statutes and rules "to the extent possible." The Board's statutes do not give licensees this latitude, but require that all of the Board's statutes and rules be followed by licensees.

5. Status of enforcement of the rule

Although the Board relies heavily on subsections (A)(1) and (A)(2), the Board has difficulty enforcing the other subsections because they are capable of multiple interpretations as a result of ambiguous language as stated in paragraph 6.

6. Analysis of clarity, conciseness, and understandability

The rule is not clear, concise, and understandable because it uses passive, ambiguous, and unenforceable language such as "reasonable efforts", "adequately inform", and "unnecessary".

R4-12-302. Deceptive practices prohibited

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1307(A)(5)(b), 32-1307(A)(5)(c)

2. Objective of the rule

The objective of the rule is to provide prohibited practices related to the cost of funeral goods or services to prevent licensees from using deceptive or unfair tactics to entice consumers to choose higher priced goods or services.

3. Analysis of effectiveness in obtaining objective

The rule is partially effective for the reasons stated in paragraph 6.

5. Status of enforcement of the rule

The Board enforces the rule to the extent possible considering the issues raised in paragraph 6.

6. Analysis of clarity, conciseness, and understandability

The rule is not clear, concise, and understandable because the rule's language does not conform to current rule writing style and format requirements. The rule uses passive and ambiguous language.

R4-12-303. Misrepresentation of legal or cemetery requirements

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1307(A)(5)(b), 32-1307(A)(5)(c)

2. Objective of the rule

The objectives of the rule are to inform of the acts that constitute deceptive practices and state the possible penalties for failure to substantially comply with the rule.

3. Analysis of effectiveness in obtaining objective

The rule is partially effective for the following reasons: R4-12-203(A)(1) is confusing because it appears that a body must be embalmed if burial or cremation does not occur within 24 hours of death or the body is not refrigerated immediately after death. Subsection (A)(2) seems to suggest that an unfinished wooden box is the only container that can be used for cremation, but a container can be made of cardboard or fiberboard. Subsection (B) is ambiguous because it is not clear whether the provision is meant to provide legal standards for malpractice cases in addition to professional incompetence.

4. Analysis of consistency with state and federal rules and statutes

The rule may conflict with A.A.C. R9-19-312, which requires that a body be refrigerated if it is not cremated, buried, or embalmed within 24 hours following death. The rule in subsection (A)(1) is confusing because it seems to require that embalming occur if burial or cremation does not occur within 24 hours of death or if the body is not refrigerated. The rest of the rule is consistent with state and federal rules and statutes.

5. Status of enforcement of the rule

The Board enforces subsection (A)(1) consistent with A.A.C. R9-12-312. The rest of the rule is enforced according to the language of the rule.

6. Analysis of clarity, conciseness, and understandability

The rule is not clear, concise, and understandable for the reasons stated in paragraphs 3 and 4 and because it does not provided standards for refrigeration or substantial compliance.

R4-12-304. Telephone price disclosure requirement

1. Authorization of the rule by existing statutes

A.R.S. § 32-1375

2. Objective of the rule

The objectives of the rule are to require funeral establishments to provide information about funeral goods and services to a person who requests the information over the telephone and to send a price list to the caller if requested.

3. Analysis of effectiveness in obtaining objective

The rule is partially effective for the reasons stated in paragraph 6 and the following: The rule provides discretion for the postage and handling charge for mailing a funeral price list, but provides no standards for determining the charge.

6. Analysis of clarity, conciseness, and understandability

The rule is not clear, concise, and understandable because its language does not conform to current rule writing style and format requirements. The first sentence in subsection (A) is awkwardly worded. The rule uses ambiguous language.

R4-12-305. Price lists requirement

1. Authorization of the rule by existing statutes

A.R.S. § 32-1371

2. Objective of the rule

The objective of the rule is to require that licensees and registrants provide a standardized written or printed price list to persons who inquire about funeral arrangements or prices of funeral goods and services.

3. Analysis of effectiveness in obtaining objective

Except as stated in paragraph 6, most of the rule is effective.

6. Analysis of clarity, conciseness, and understandability

Most of the rule is clear, concise and understandable. It is unclear what is meant by "on beginning a discussion" in subsection (A). The incorporation by reference language needs to be updated to meet current rule writing style and format requirements.

R4-12-306. Merchandise price card requirement

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1307(A)(5)(c), 32-1307(A)(5)(d), 32-1372

2. Objective of the rule

The objective of the rule is to provide notice to a consumer about the actual price of specified funeral goods.

3. Analysis of effectiveness in obtaining objective

The rule is partially effective for the reasons stated in paragraph 6.

6. Analysis of clarity, conciseness, and understandability

The rule is not clear, concise, and understandable because it is poorly organized, uses passive language, uses ambiguous language, and does not contain standards for cremation containers.

R4-12-307. Funeral goods and services memorandum

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1307(A)(5)(c), 32-3207(A)(5)(d), 32-1373

2. Objective of the rule

The objective of the rule is to require a funeral establishment, funeral director, or embalmer to provide an itemized written or printed statement of funeral goods and services to each potential purchaser for review by the purchaser before the purchaser enters into a contract with the funeral establishment, funeral director, or embalmer.

3. Analysis of effectiveness in obtaining objective

The rule is not effective for the reasons stated in paragraph 6 and because the relationship between subsections (A), (B), and (C) is unclear. Subsection (A) seems to require the use of Appendices B or C, but subsection (B) seems to allow the information on any contract, statement, or other document. Subsection (C) states that if the statement is used as a final bill, a disclosure must be added to the statement as shown in Appendix C, but there is no disclosure included in Appendix C.

6. Analysis of clarity, conciseness, and understandable

The rule is not clear, concise, and understandable because it does not conform to current rule writing style and format requirements. The rule uses passive voice, is poorly worded, and

incorrectly uses "must" instead of "shall". In subsection (B), it is unclear what is meant by "information required by this Section" and "clear and conspicuous manner". The use of the word "memorandum" in the rule and the rule's title does not reflect that the funeral establishment, funeral director, or embalmer is required to provide an itemized written or printed statement of funeral goods and services to each potential purchaser.

R4-12-311. Minimum embalming requirements

1. Authorization of the rule by existing statutes

   A.R.S. § 32-1307(A)(5)(b)

2. Objective of the rule

   The objective of the rule is to require that only licensed embalmers or registered apprentice embalmers can embalm human dead bodies and to specify minimum embalming procedures for health and safety reasons and to protect the dignity of the deceased.

3. Analysis of effectiveness in obtaining objective

   The rule is not effective for the reasons stated in paragraphs 4, 5, and 6 and because the rule needs to include embalmer's assistants and to be updated to include current standards of embalming practices, such as universal precautions and blood borne pathogen requirements.

4. Analysis of consistency with state and federal rules and statutes

   Subsection (A)(1) is not consistent with A.R.S. § 32-1324 because the statute voids apprentice embalmer registration after July 31, 2002. Additionally, embalmer's assistants need to be added to the rule. The rest of the rule is consistent.

5. Status of enforcement of the rule

   The Board does not enforce the requirements for apprentice embalmers in subsection (A)(1). The Board enforces for full compliance rather than substantial compliance as stated in subsection (D) of the rule. The rest of the rule is enforced.

6. Analysis of clarity, conciseness, and understandability

   The rule is not clear, concise, and understandable because it uses passive language; ambiguous language, such as "to the extent feasible under the circumstances", "adequate", "diligent effort", "substantially removed"; and incorrect references to regulations rather than rules.

R4-12-312. Equipment and sanitation requirements

1. Authorization of the rule by existing statutes

   A.R.S. § 32-1382

2. Objective of the rule

The objectives of the rule are to list the instruments, equipment, and supplies that the Board recommends be maintained in a preparation room of a funeral establishment; require a sanitary embalming table; and provide the sanitation requirements for a funeral establishment.

3. Analysis of effectiveness in obtaining objective

The rule is not effective for the reasons stated in paragraphs 4, 5, and 6 and because the Board needs to update the rule to include current standards for instruments, equipment, and supplies that are required in a preparation room.

4. Analysis of consistency with state and federal rules and statutes

The rule is not consistent with A.R.S. § 32-1382 because the statute requires that the Board establish minimum standards for a preparation room. By providing discretionary standards, the Board has not met its statutory mandate.

5. Status of enforcement of the rule

The rule is not being enforced because subsections (A) and (D) are discretionary, not mandatory; there are no standards for "clean and sanitary" in subsection (B); there are no standards for "sanitary" in subsection (C); and there are no standards for "health nuisance or hazard" in subsection (E).

6. Analysis of clarity, conciseness, and understandability

The rule is not clear, concise, and understandable because it uses passive, discretionary, and ambiguous language and undefined terms such as "preparation room", and "health nuisance or hazard".

Article 4. Continuing Education

R4-12-413. Continuing Education Hours Required

1. Authorization of the rule by existing statutes

A.R.S. § 32-1338

2. Objective of the rule

The objective of the rule is to specify the number of continuing education hours required each calendar year of a funeral director, embalmer, and embalmer's assistant to apprise them of new techniques or a refresher in the current techniques..

R4-12-414. Waiver of Continuing Education

1. Authorization of the rule by existing statutes

A.R.S. § 32-1338

2. Objective of the rule

The objectives of the rule are to describe the good cause standards for waiver of continuing education and specify the information required by the Board when submitting an application for waiver of continuing education.

R4-12-415. Continuing Education Determinations

1. Authorization of the rule by existing statutes

A.R.S. § 32-1338

2. Objective of the rule

The objective of the rule is to allow a person to submit, before renewal, a request to the Board for determination of whether continuing education meets the requirements in A.R.S. § 32-1338 and R4-12-413.

R4-12-416. Documentation of Continuing Education

1. Authorization of the rule by existing statutes

A.R.S. § 32-1338

2. Objective of the rule

The objective of the rule is to specify the information for continuing education that must be sent to the Board when renewing a license or registration.

Article 5. Prearranged Funeral Agreements

R4-12-523. Surety bond requirements

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1391.01(A), 32-1391.12(A)(4)

2. Objective of the rule

The objectives of the rule are to specify the amount of the surety bond required of a funeral establishment applying for a prearranged funeral sales endorsement and instruct a person to provide the document in Appendix D.

3. Analysis of effectiveness in achieving objective

Although the rule is effective, the Board has determined that a funeral establishment should have a choice of using the surety company's bond form or Appendix D.

R4-12-541. Consumer disclosures

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1391.01(A), 32-1391.02, 32-1391.09

2. Objective of the rule

The objective of the rule is to state the location of the consumer notice required by A.R.S. 32-1391.09.

3. Analysis of effectiveness in achieving objective

Except as stated in paragraph 6, most of the rule is effective.

6. Analysis of clarity, conciseness, and understandability

The rule is partially clear, concise, and understandable because it uses passive language and an incorrect citation to A.R.S. § 32-1391.08 in subsection (A).

R4-12-545. Deceptive, misleading or professionally negligent practices

1. Authorization of the rule by existing statutes

A.R.S. § 32-1391.01

2. Objective of the rule

The objective of the rule is to specify practices that the Board considers deceptive, misleading, or professionally negligent concerning the offer or sale of prearranged funeral arrangements or handling of trust funds.

3. Analysis of effectiveness in achieving objective

The rule is partially effective for the reasons stated in paragraph 6.

6. Analysis of clarity, conciseness, and understandability

The rule is not clear, concise, and understandable because it uses passive language; gender specific language, the incorrect term "will", and undefined terms.

R4-12-546. Description of casket

1. Authorization of the rule by existing statutes

A.R.S. § 32-1391.01(A)(2)

2. Objective of the rule

The objective of the rule is to state the information required on a prearranged funeral agreement for a casket and what is considered misleading to a customer.

3. Analysis of effectiveness in achieving objective

The rule is partially effective for the reasons stated in paragraph 6.

6. Analysis of clarity, conciseness, and understandability

The rule is not clear, concise, and understandable because it is poorly written, contains undefined terms, and does not state what must be included in a prearranged funeral agreement when a casket is sold.

R4-12-548. Possession of trust account passbook

2. Objective of the rule

The objective of the rule is to provide a purchaser with the option of personally obtaining a copy of a financial institution passbook, certificate of deposit, or similar documentation or authorizing a funeral establishment to maintain the documentation on behalf of the purchaser.

3. Analysis of effectiveness in achieving objective

The rule is partially effective for the reasons stated in paragraph 6.

6. Analysis of clarity, conciseness, and understandability

The rule is not clear, concise, and understandable because it uses gender specific language, contains undefined terms, and does not contain standards for "other similar documentation."

R4-12-551. Certificate of entitlement

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1391.06(B)

2. Objective of the rule

The objectives of the rule are to specify what information must be on a completed certificate of entitlement and what must occur after a financial institution receives the certificate signed and dated by the owner or responsible funeral director.

3. Analysis of effectiveness in achieving objective

Except as stated in paragraph 6, most of the rule is effective.

6. Analysis of clarity, conciseness, and understandability

The rule is partially clear, concise, and understandable because it does not conform to the numbering and letter system established by the Secretary of State, uses passive language, and incorrectly uses "which" instead of "that."

R4-12-552. Certificate of performance

1. Authorization of the rule by existing statutes

A.R.S. § 32-1391.08(B)

2. Objective of the rule

The objectives of the rule are to specify the information that must be on the certificate of performance, additional information that must be submitted if the certificate of performance concerns a fixed price prearranged funeral agreement, additional information that must accompany the certificate of performance, and the process for releasing funds after death of the beneficiary.

3. Analysis of effectiveness in achieving objective

Except as stated in paragraph 6, most of the rule is effective.

6. Analysis of clarity, conciseness, and understandability

Although the rule uses passive language, incorrectly uses "which" instead of "that", and uses an incorrect numbering system, it is mostly clear, concise, and understandable.

R4-12-554. Statement of accrued taxes

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1391.06(C)

2. Objective of the rule

The objective of the rule is to specify what must be submitted by a funeral establishment to a financial institution for accrued taxes for a prearranged funeral trust account.

3. Analysis of effectiveness in achieving objective

The rule is partially effective for the reasons stated in paragraphs 4 and 6.

4. Analysis of consistency with state and federal rules and statutes

Because the rule only allows payment to a taxing authority, the rule is inconsistent with A.R.S. § 32-1391.06(C), which authorizes payment to either the taxing authority or the beneficiary upon a proper showing that the beneficiary has paid the taxes.

6. Analysis of clarity, conciseness, and understandability

The rule is not clear, concise, and understandable because subsection (4) is poorly written and organized, it is unclear what is meant by "one other employee of the establishment", it is not clear whether anyone other than the responsible funeral director is necessary to sign the statement required in subsection (4), and the last sentence conflicts with A.R.S. § 32-1391.06(C).

R4-12-556. Notice of trust account transfer

1. Authorization of the rule by existing statutes

A.R.S. § 32-1391.05(C)

2. Objective of the rule

The objectives of the rule are to state when a funeral establishment must notify a participant and the Board of a transfer or change in status of a prearranged funeral trust account and the information that must be provided with the notice.

3. Analysis of effectiveness in achieving objective

The rule is partially effective for the reasons stated in paragraphs 5 and 6.

5. Status of enforcement of the rule

Except for the second and third sentences in subsection (B), the Board enforces the rule.

6. Analysis of clarity, conciseness, and understandability

The rule is partially clear, concise, and understandable because it contains undefined terms and an incorrect citation to A.R.S. § 32-1391.04(C) instead of A.R.S. § 32-1391.05(C).

R4-12-559. Purchaser cancellation requests

1. Authorization of the rule by existing statutes

A.R.S. § 32-1391.07(A)

2. Objective of the rule

The objective of the rule is to specify the information that must be contained in a written request to terminate a prearranged funeral agreement and have trust funds refunded.

3. Analysis of effectiveness in achieving objective

The rule is partially effective for the reasons stated in paragraphs 4 and 5.

4. Analysis of consistency with state and federal rules and statutes

The rule is inconsistent with A.R.S. § 32-1391.07(A) because the statute requires a funeral establishment to refund the trust funds within five business days, while the rule requires five days.

5. Status of enforcement of the rule

The Board enforces the rule according to statute.

R4-12-561. Annual report format

1. Authorization of the rule by existing statutes

A.R.S. § 32-1391.16

2. Objective of the rule

The objective of the rule is to specify the information that must be submitted on the annual report required by A.R.S. 32-1391.15 for funeral establishments that do and do not offer to sell prearranged funerals on or after January 1, 1985.

3. Analysis of effectiveness in achieving objective

Except as stated in paragraph 6, most of the rule is effective.

6. Analysis of clarity, conciseness, and understandability

Although the rule incorrectly cites A.R.S. § 32-1391.15 as its implementing statute and uses the superfluous word "concerning", it is mostly clear, concise, and understandable.

R4-12-565. Records retention requirement

1. Authorization of the rule by existing statutes

A.R.S. § 32-1391.01(A)(3)

2. Objective of the rule

The objectives of the rule are to specify the prearranged funeral agreement documents that must be kept by a funeral establishment for inspection purposes and the length of time the documents must be kept.

3. Analysis of effectiveness in achieving objective

Except as stated in paragraph 6, most of the rule is effective.

6. Analysis of clarity, conciseness, and understandability

Although subsection (3) of the rule is grammatically incorrect, the rule is mostly clear, concise, and understandable.

Appendix B. Statement of Goods and Services Selected

1. Authorization of the rule by existing statutes

A.R.S. § 32-1373

2. Objective of the rule

The objective of the rule is to provide a form that itemizes the goods and services purchased by an individual, which is to be used as a final bill by a funeral establishment.

3. Analysis of effectiveness in achieving objective

Except for the phrase "statement not used as a final bill", the appendix is effective. The form may actually be used as a final bill.

5. Status of enforcement of the rule

Except for the phrase "statement not used as a final bill", the appendix is enforced.

Appendix D. Prearranged Funeral Endorsement Bond

1. Authorization of the rule by existing statutes

A.R.S. §§ 32-1391.01(A)(4), 32-1391.12

2. Objective of the rule

The objective of appendix is to establish a form for a surety bond that is to be submitted to the Board with a prearranged funeral sales endorsement application.

Appendix E. Annual Report

1. Authorization of the rule by existing statutes

A.R.S. § 32-1391.16

2. Objective of the rule

The objective of the appendix is to establish a form for the annual report required by A.R.S. § 32-1391.16.

Article 6. Crematory and Cremation Regulation

R4-12-612. Crematory requirements

1. Authorization of the rule by existing statutes

A.R.S. § 32-1399

2. Objective of the rule

The objective of the rule is to specify the standards to keep a crematory clean, and establish requirement for human remains that are not embalmed.

R4-12-613. Requirements for a funeral establishment that provides for cremation

1. Authorization of the rule by existing statutes

A.R.S. § 32-1399

2. Objective of the rule

The objective of the rule is to require the designation of a responsible cremationist and state the requirements for a funeral establishment that provides for cremation.

R4-12-631. Records requirements for crematories and funeral establishments that provide for cremation

1. Authorization of the rule by existing statutes

A.R.S. § 32-1399(11)

2. Objective of the rule

The objective of the rule is to specify what is required of a responsible cremationist or funeral establishment for records as required by A.R.S. § 32-1399(11).

R4-12-633. Disposition of records

1. Authorization of the rule by existing statutes

A.R.S. § 32-1399(11)

2. Objective of the rule

The objective of the rule is to specify what is required of a responsible cremationist or funeral establishment when a crematory or funeral establishment that provides for cremations is sold or ceases operations.

ARTICLE 1. GENERAL PROVISIONS

R4-12-101. Definitions

In this Chapter:

1. "Applicant" means:

a. An individual requesting to take a state equivalent examination;

b. An individual requesting a reinstatement or an initial or renewal license or registration issued by the Board; or

c. One of the following if requesting an interim permit or an initial or renewal funeral establishment license, crematory license, or prearranged funeral sales establishment endorsement:

i. The individual, if a sole proprietorship;

ii. Any two of the corporation's officers, if a corporation;

iii. The managing partner, if a partnership or limited liability partnership; or

iv. The designated manger, or if no manger is designated, any two members of the limited liability company, if a limited liability company.

2. "Application packet" means the documents, forms, and additional information required by the Board for an initial or renewal application for a license, registration, endorsement, or reinstatement.

3. "Board" means the same as in A.R.S. § 32-1301.

4. "Burial" means a disposition of human remains, other than direct cremation.

5. "Cash advance item" means any service or merchandise such as pallbearers, transportation, clergy, flowers, motorcycle escorts, hair dressers, barbers, nurses, obituary notices, or death certificates, which is paid for by a funeral establishment on behalf of a purchaser and

charged to the purchaser at the same amount as originally purchased.

6. "Continuing education" means a workshop, seminar, lecture, conference, class, or instruction related to funeral practices.

7. "Credit hour" means 60 minutes of participation in continuing education.

8. "Day" means calendar day.

9. "Direct cremation" means cremation of human remains without a formal viewing, ceremony, or visitation of the human remains except for identification purposes.

10. "Disposition-transit permit" means the document that meets the requirements in A.R.S. § 36-326 and A.A.C. R4-19-302.

11. "Endorsement" means a written authorization issued by the Board to a funeral establishment to offer or sell prearranged funeral agreements under 4 A.A.C. 12, Article 5.

12. "Fraud," "misleading," or "false" means the actions described in A.R.S. § 44-1522.

13. "Funeral establishment that provides for cremation" means a funeral establishment defined in A.R.S. § 32-1301(25) that owns a crematory on or off the funeral establishments premises or contracts with a crematory for cremation.

14. "Immediate burial" means a disposition of human remains, other than direct cremation, without a formal viewing, ceremony, or visitation except for identification

purposes.
15. “Harmful” means to cause damage or impairment to an individual’s body.
16. “Manager” means an individual who manages according to A.R.S. § 32-1301.
17. “Party” has the meaning in A.R.S. § 41-1001.
18. “Permanent” means everlasting and existing perpetually.
19. “Previous owner” means a person who owned 10 percent or more of a funeral establishment before the current owner.
20. “Refrigerated” means the act of maintaining human remains at or below a temperature of 38 degrees Fahrenheit.
21. “Registrant” means an individual authorized by the Board to act as an embalmer’s assistant or a prearranged funeral salesperson.
22. “Unfinished wood box” means an unornamented receptacle or casket for human remains.
23. “Week” means seven consecutive days.

Historical Note

Adopted effective June 16, 1981 (Supp. 81-3). Amended effective January 2, 1985 (Supp. 85-1). Amended by final rulemaking at 7 A.A.R. 1441, effective March 14, 2001 (Supp. 01-1). Amended by final rulemaking at 10 A.A.R. 681, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 20 A.A.R. 2648, effective November 9, 2014 (Supp. 14-3).

R4-12-102. Reserved

R4-12-103. Expired

Historical Note

Adopted effective June 16, 1981 (Supp. 81-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 853, effective December 31, 2001 (Supp. 02-1).

R4-12-104. Expired

Historical Note

Adopted effective June 16, 1981 (Supp. 81-3). Amended effective January 2, 1985 (Supp. 85-1). Amended effective September 18, 1987 (Supp. 87-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 853, effective December 31, 2001 (Supp. 02-1).

R4-12-105. Expired

Historical Note

Adopted effective June 16, 1981 (Supp. 81-3). Former Section R4-12-105 repealed, new Section R4-12-105 adopted effective January 2, 1985 (Supp. 85-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 853, effective December 31, 2001 (Supp. 02-1).

R4-12-106. Time-frames for Board Approval

A. The overall time-frame described in A.R.S. § 41-1072(2) for each type of approval granted by the Board is listed in Table 1. The applicant and the Executive Director of the Board may agree in writing to extend the overall time-frame. The substantive review time-frame may not be extended by more than 25 percent of the overall time-frame.

B. The administrative completeness review time-frame described in A.R.S. § 41-1072(1) for each type of approval granted by the Board is listed in Table 1.

1. The administrative completeness review time-frame begins:

a. For approval to take a state equivalent examination, when the Board receives an application packet required in R4-12-201;

b. For approval or denial of a license, when the Board

receives an application packet; or
c. For approval or denial of an endorsement, a registration, or a permit, when the Board receives an application packet.
2. If the application packet is incomplete, the Board shall send to the applicant a written notice specifying the missing document or incomplete information. The administrative completeness review time-frame and the overall time-frame are suspended from the postmark date of the notice until the date the Board receives a complete application packet from the applicant.
3. If the application packet is complete, the Board shall send a written notice of administrative completeness to the applicant.
4. If the Board grants a license, registration, endorsement, or approval during the time provided to assess administrative completeness, the Board shall not issue a separate written notice of administrative completeness.
C. The substantive review time-frame described in A.R.S. § 41-1072(3) is listed in Table 1 and begins on the postmark date of the notice of administrative completeness.
1. As part of the substantive review for a funeral establishment license, the Board shall conduct an inspection of the funeral establishment that may require more than one visit.
2. During the substantive review time-frame, the Board may make one comprehensive written request for additional information or documentation. The time-frame for the Board to complete the substantive review is suspended from the postmark date of the comprehensive written request for additional information or documentation until the Board receives the additional information or documentation.

3. The Board shall send a written notice of approval to an applicant who meets the qualifications in A.R.S. Title 32, Chapter 13 and this Chapter.
4. The Board shall send a written notice of denial to an applicant who fails to meet the qualifications in A.R.S. Title 32, Chapter 13 and this Chapter.
D. The Board shall consider an application withdrawn if within 360 days from the application submission date the applicant fails to:
1. Supply the missing information under subsection (B)(2) or (C)(2); or
2. Pass a national board, state equivalent, or state laws and rules examination, as applicable.
E. An applicant who does not wish an application withdrawn may request a denial in writing within 360 days from the application submission date.
F. If a time-frame's last day falls on a Saturday, Sunday, or official state holiday, the Board shall consider the next business day as the time-frame's last day.
Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 1441, effective March 14, 2001 (Supp. 01-1).
Table 1. Time-frames (in days)
Historical Note
New Table adopted by final rulemaking at 7 A.A.R. 1441, effective March 14, 2001 (Supp. 01-1). Amended by final rulemaking at
10 A.A.R. 681, effective April 3, 2004 (Supp. 04-1).

R4-12-107. Reserved
R4-12-108. Fees
A. The Board shall charge the following nonrefundable fees for filing an annual trust report under A.R.S. § 32-1391.16:
1. For each funeral establishment that has a prearranged funeral trust account and files an annual trust report in the time and manner required in A.R.S. § 32-1391.16, $150.00.

Type of Approval Statutory Authority Overall Time-frame Administrative Completeness Time-frame Substantive Review Time-frame

Approval to take a state equivalent examination
R4-12-201
A.R.S. §§ 32-1309, 32-1327, 32-1329 50 20 30

Approval to take an Embalmer Assistant Practical Examination
R4-12-201
A.R.S. §§ 32-1309, 32-1325.01 50 20 30

Intern, embalmer, or funeral director license
R4-12-202
A.R.S. §§ 32-1309, 32-1322, 32-1323 110 20 90

Embalmer or funeral director license by an applicant who holds an out-of-state-license
R4-12-202(E)
A.R.S. §§ 32-1309, 32-1335 110 20 90

Multiple funeral director license
R4-12-202(F)
A.R.S. §§ 32-1309, 32-1335 110 20 90

Embalmer's assistant registration
R4-12-203
A.R.S. §§ 32-1309, 32-1325.01 110 20 90

Funeral establishment license
R4-12-204
A.R.S. §§ 32-1309, 32-1383 110 20 90

Prearranged funeral sales establishment endorsement
R4-12-205
A.R.S. §§ 32-1309, 32-1391.12 60 20 40

Prearranged funeral salesperson registration
R4-12-207
A.R.S. §§ 32-1309, 32- 1391.14 110 20 90

Crematory license
R4-12-207
A.R.S. §§ 32-1309, 32-1395 110 20 90

Cremationist license
R4-12-210
A.R.S. § 32-1394.01 110 20 90

License, registration, or endorsement renewal
R4-12-211
A.R.S. §§ 32-1331, 32-1338, 32-1386, 32-1391.12, 32-1391.14, 32-1394.02,

2. For each funeral establishment that has a prearranged funeral trust account and files an annual trust report late or incomplete, $200.00.

B. The Board shall charge the following fees for the duplication or copying of public records under A.R.S. § 39-121.03:

1. Noncommercial and commercial copy, 25¢ per page;
2. Copying requiring more than 15 minutes, $5.00 for each 15-minutes in excess of 15 minutes;
3. Directories for noncommercial use, 5¢ per name and address;
4. Directories for noncommercial use printed on labels, 10¢ per name and address;
5. Directories for commercial use, 25¢ per name and address;
6. Directories for commercial use printed on labels, 30¢ per name and address;
7. A directory in subsection (B)(3), (4), (5), or (6) issued on a diskette, $5.00 and the applicable name and address fee;

C. For the consumer information pamphlet, entitled Arizona Funerals Information, the Board shall charge a funeral establishment the Board's actual cost of publishing, distributing, and mailing the pamphlet.

D. The Board may waive any of the fees in subsection (B) for charitable organizations or governmental entities.

Historical Note

Adopted effective June 16, 1981 (Supp. 81-3). Amended effective January 2, 1985 (Supp. 85-1). Amended effective Dec. 27, 1985 (Supp. 85-6). Amended effective May 25, 1989 (Supp. 89-2). Amended by final rulemaking at 7 A.A.R. 1441, effective March 14, 2001 (Supp. 01-1).

R4-12-109. Enforcement Advisory Committee

A. The Board may appoint an enforcement advisory committee that consists of seven members as follows:

1. Four members representing the funeral industry, and
2. Three lay members that have no affiliation with a funeral establishment or cemetery.

B. The enforcement advisory committee may:

1. Review and evaluate investigative matters referred to it by the Board, and
2. Make recommendations to the Board about the disposition of investigative matters.

C. The Board may accept, reject, or modify the enforcement advisory committee's recommendations.

Historical Note

Adopted effective January 2, 1985 (Supp. 85-1). Amended by final rulemaking at 10 A.A.R. 681, effective April 3, 2004 (Supp. 04-1).

R4-12-110. Reserved
R4-12-111. Reserved
R4-12-112. Reserved
R4-12-113. Reserved
R4-12-114. Reserved
R4-12-115. Reserved
R4-12-116. Reserved
R4-12-117. Reserved
R4-12-118. Reserved

R4-12-119. Reserved

R4-12-120. Inspection Procedures

A. The Board shall inspect a funeral establishment or crematory:
1. Before issuing an initial license under A.R.S. § 32-1383; and
2. Once every five years under A.R.S. § 32-1307(A)(5)(h).

B. The Inspection shall include:
1. Reviewing equipment and the physical plant;
2. Interviewing personnel;
3. For a funeral establishment, inspecting for compliance with A.R.S. Title 32, Chapter 12, Articles 2, 3, 3.1, 4, and 5, and A.A.C. Title 4, Chapter 12, Articles 3 and 5; and
4. For a crematory, inspecting the crematory for compliance with A.R.S. Title 32, Chapter 12, Article 6 and A.A.C. Title 4, Chapter 12, Article 6.

C. At the inspection site, the Board shall make a verbal report of findings to an applicant or licensee upon completion of an inspection.

D. Within 15 days of the inspection, the Board shall send to the applicant or licensee a written report of its findings that includes:
1. A statement that no deficiencies were found, or
2. If deficiencies are found:
a. A list of any deficiencies identified during the inspection,
b. A citation to each statute or rule that has not been complied with,
c. A request for a written plan of correction, and
d. The time-frame for correcting the deficiencies.

E. Within 15 days after receiving a request for a written plan of corrections, an applicant or licensee shall submit to the Board a written plan of correction that includes:
1. The identified deficiency,
2. How the applicant or licensee will correct the deficiency, and
3. When the applicant or licensee will correct the deficiency.

F. The Board shall accept a written plan of correction if it:
1. Describes how each deficiency will be corrected to bring the:
a. Funeral establishment into substantial compliance with A.R.S. Title 32, Chapter 12, Articles 2, 3, 3.1, 4, and 5, and A.A.C. Title 4, Chapter 12, Articles 3 and 5; or
b. Crematory into substantial compliance with A.R.S. Title 32, Chapter 12, Article 6 and A.A.C. Title 4, Chapter 12, Article 6.
2. Includes a date for correcting each deficiency as soon as practicable based upon the actions necessary to correct the deficiency.

G. The Board shall provide an applicant or licensee with an opportunity to correct the deficiencies unless the Board determines the deficiencies are:
1. Committed intentionally;
2. Evidence a pattern of noncompliance:
a. For a funeral establishment, with A.R.S. Title 32, Chapter 12, Articles 2, 3, 3.1, 4, and 5, and A.A.C. Title 4, Chapter 12, Articles 3 and 5; or
b. For a crematory, with A.R.S. Title 32, Chapter 12, Article 6 and A.A.C. Title 4, Chapter 12, Article 6; or
3. A risk to the public health, safety, or welfare.

H. If an applicant or licensee does not correct the deficiencies

within the time-frame approved by the Board, the Board may:
1. If requested by the applicant or licensee, extend the timeframe for situations beyond the control of the applicant or licensee, such as:

a. When the applicant or licensee in good faith is unable to obtain the items necessary to correct the deficiencies within the time-frame approved by the Board, or
b. The time needed to correct the deficiencies is longer than the time-frame approved by the Board due to the complexity, nature, or amount of deficiencies.
2. If the applicant or licensee fails to correct the deficiencies within the time-frame approved by the Board, take the disciplinary actions stated in A.R.S. § 32-1390.01 or A.R.S. § 32-1398.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 3160, effective October 1, 2005 (Supp. 05-3).

R4-12-121. Investigation Procedures

A. After receiving a complaint, the Board shall send a written notice of the complaint to the licensee or registrant within 15 days of its receipt and may include a request for information or documents related to the complaint. The licensee or registrant shall provide a written response and the requested information or documents no later than 15 days from the date the Board mails the notice of the complaint.

B. In addition to the information or documents requested by the Board under subsection (A), the Board may request that a complainant, licensee, or registrant reply to or provide the Board with additional information relating to the complaint. The complainant, licensee, or registrant shall provide the Board with additional information within 15 days from the date the Board mails the request.

Historical Note

Adopted effective June 16, 1981 (Supp. 81-3). Former Section R4-12-121 repealed, new Section R4-12-121 adopted effective January 2, 1985 (Supp. 85-1). Amended by final rulemaking at 10 A.A.R. 681, effective April 3, 2004 (Supp. 04-1).

R4-12-122. Expired

Historical Note

Adopted effective June 16, 1981 (Supp. 81-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 853, effective December 31, 2001 (Supp. 02-1).

R4-12-123. Informal Interview

A. The Board shall conduct an informal interview under A.R.S. § 32-1367 as follows:
1. The Board shall send a written notice of the informal interview to each party by personal service or certified mail, return receipt requested, at least 20 days before the informal interview. The notice shall contain:
a. The time, place, and date of the informal interview;
b. An explanation of the procedures to be followed at the informal interview;
c. A statement of the subject matter or issues involved;
d. A statement of the licensee's or registrant's right to appear with or without counsel;
e. A notice that if a licensee, registrant, or complainant fails to appear at the informal interview, the informal

interview may be held in the licensee's, registrant's, or complainant's absence; and
f. A statement of the licensee's or registrant's right to a formal hearing according to A.R.S. § 32-1367 instead of attending the informal interview.
2. During the informal interview, the Board may:
a. Swear in the licensee or registrant and all witnesses;
b. Question the licensee or registrant and all witnesses; and
c. Deliberate.
3. After completing the informal interview the Board may dismiss the complaint or take any of the actions listed in A.R.S. § 32-1367(D):
B. The Board shall issue written findings of fact, conclusions of law, and Board order no later than 60 days from the date the informal interview is completed.
C. A licensee or registrant may seek a Board rehearing or review of a Board decision or the Board may grant rehearing or review on its own motion as stated in A.R.S. § 32-1367(I).
Historical Note
New Section made by final rulemaking at 10 A.A.R. 681, effective April 3, 2004 (Supp. 04-1).
R4-12-124. Expired
Historical Note
Adopted effective June 16, 1981 (Supp. 81-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 853, effective December 31, 2001 (Supp. 02-1).
R4-12-125. Hearing Procedures
A. If a formal hearing under A.R.S. § 32-1367 is to be held before an administrative law judge, the requirements in A.R.S. §§ 41-1092 through 41-1092.11 apply.
B. If a formal hearing under A.R.S. § 32-1367 is to be held before the Board, the requirements in A.R.S. §§ 41-1092 through 41-1092.11 and the following apply:
1. The Board shall provide a written complaint and notice of formal hearing to a licensee or registrant at the licensee's or registrant's last known address of record, by personal service or certified mail, return receipt requested at least 30 days before the date set for the formal hearing.
2. A licensee or registrant served with a complaint and notice of hearing shall file an answer by the date specified in the notice of hearing admitting or denying the allegations in the complaint.
3. The Board may amend a complaint and notice of hearing at any time. The Board shall send written notice of any changes in the complaint and notice of hearing to the licensee or registrant at least 20 days before the formal hearing.
4. A licensee or registrant may appear at a formal hearing with or without the assistance of counsel. If the licensee or registrant fails to appear, the Board may hold the formal hearing in the licensee's or registrant's absence.
5. The Board may conduct a formal hearing without adherence to the rules of procedure or rules of evidence used in civil proceedings. At the formal hearing the Board shall rule on the procedure to be followed and admissibility of evidence.
6. The Board shall send a written decision that includes written findings of fact, conclusions of law, and order of the Board to the licensee or registrant and all parties within 60 days after the formal hearing is concluded. A licensee, registrant, or the Board may seek rehearing or

review of the order according to A.R.S. § 32-1367(I).

Historical Note

Adopted effective January 2, 1985 (Supp. 85-1).
Amended by final rulemaking at 10 A.A.R. 681, effective
April 3, 2004 (Supp. 04-1).

R4-12-126. Rehearing or Review of Board's Decision

A. Except as provided in subsection (G), a party who is aggrieved
by a decision issued by the Board may file with the Board, no

later than 30 days after service of the decision, a written
motion for rehearing or review of the decision, specifying the
grounds for rehearing or review. For purposes of this Section,
a decision is considered to have been served when personally
delivered to the party's last known home or business address
or five days after the decision is mailed by certified mail to the
party or the party's attorney.

B. A party filing a motion for rehearing or review may amend the
motion at any time before it is ruled upon by the Board.
Another party may file a response within 15 days after the date
the motion or amended motion for rehearing is filed. The
Board may require a party to file supplemental memoranda
explaining the issues raised in the motion or response and may
permit oral argument.

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

1. Irregularity in the Board's or administrative law judge's
administrative proceedings or any order or abuse of discretion
that deprived the party of a fair hearing;
2. Misconduct of the Board, administrative law judge, or the
prevailing party;
3. Accident or surprise that could not have been prevented
by ordinary prudence;
4. Newly discovered material evidence that could not, with
reasonable diligence, have been discovered and produced
at the original hearing;
5. Excessive or insufficient penalties or disciplinary action;
6. Error in the admission or rejection of evidence or other
errors of law occurring at the administrative hearing; or
7. That the decision is not supported by the evidence or is
contrary to law.

D. The Board may affirm or modify the decision or grant a
rehearing or review on all or part of the issues for any of the
reasons in subsection (C). An order granting a rehearing or
review shall specify each ground for the rehearing or review.

E. No later than 30 days after a decision is issued by the Board,
the Board may, on its own initiative, grant a rehearing or
review of its decision for any reason in subsection (C). An
order granting a rehearing or review shall specify the grounds
for the rehearing or review.

F. If a motion for rehearing or review is based upon affidavits, a
party shall serve the affidavits with the motion. An opposing
party may, within 10 days after service, serve opposing affidavits.
The Board may extend the time for serving opposing affidavits
for no more than 20 days for good cause or by written
stipulation of the parties. The Board may permit reply affidavits.

G. If the Board makes specific findings that the immediate effectiveness
of a decision is necessary to preserve the public health
and safety and determines that a rehearing or review of the
decision is impracticable, unnecessary, or contrary to the public

interest, the Board may issue the decision as a final decision without an opportunity for rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, an aggrieved party who wishes to seek judicial review shall make an application for judicial review of the decision within the time limits permitted for judicial review of the Board's final decision at A.R.S. § 12-904.

Historical Note

Adopted effective June 16, 1981 (Supp. 81-3). Amended by final rulemaking at 10 A.A.R. 681, effective April 3, 2004 (Supp. 04-1).

ARTICLE 2. LICENSING PROVISIONS

R4-12-201. Application for a State Equivalent Examination or Embalmer Assistant Practical Examination

An applicant for a state equivalent examination or embalmer assistant practical examination shall submit an application packet to the Board that contains the following:

1. An application form provided by the Board, signed and dated by the applicant, and notarized that contains:
a. The applicant's name, mailing address, telephone number, and social security number;
b. Any prior name or alias of the applicant;
c. The applicant's date and place of birth; and
d. The applicant's height, weight, hair color, and eye color;
2. A photocopy of the applicant's high school diploma or general educational diploma issued in any state;
3. If applying to take a state equivalent examination, a photocopy of the diploma issued to the applicant upon graduation from an accredited or provisionally accredited school of mortuary science;
4. Two passport photographs of the applicant, no larger than 1 1/2 x 2 inches, taken not more than 60 days before the date of the application; and
5. The fee required by the Board.

Historical Note

Former Rule, Section 1, Article III; Former Section R4-12-26 renumbered as Section R4-12-201 effective June 16, 1981 (Supp. 81-3). Former Section R4-12-201 repealed and a new Section R4-12-201 adopted effective September 18, 1987 (Supp. 87-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 1441, effective March 14, 2001 (Supp. 01-1).

R4-12-202. Application for an Intern, an Embalmer, or a Funeral Director License

A. An applicant for an intern, an embalmer, or a funeral director license shall submit an application packet to the Board that contains the information required in A.R.S. § 32-1323, and the following:

1. An application form provided by the Board, signed and dated by the applicant, and notarized that contains:
a. The applicant's name, mailing address, telephone number, and social security number;
b. The applicant's date and place of birth;
c. Any prior name or alias of the applicant;
d. The name and address of the high school from which the applicant graduated and the graduation date or date applicant received a general equivalency diploma;
e. The name and address of the mortuary school from which the applicant graduated and graduation date;
f. The name, address, and telephone number of the

funeral establishment employing the applicant;
g. Whether the applicant has ever been convicted of or entered into a plea of no contest to a class 1 or 2 felony, including the information in subsection (A)(1)(h)(i) through (A)(1)(h)(vi);
h. Whether the applicant, within five years from the date of the application, has been convicted of or entered into a plea of no contest to a felony or to a misdemeanor that is reasonably related to the applicant's proposed area of licensure including the:
i. Charged felony or misdemeanor;
ii. Date of conviction;

iii. Court having jurisdiction over the felony or misdemeanor;
iv. Probation officer's name, address, and telephone number, if applicable;
v. A copy of the notice of expungement, if applicable; and
vi. A copy of the notice of restoration of civil rights, if applicable;
i. Whether the applicant, within five years from the date of the application, has committed any act involving dishonesty, fraud, misrepresentation, breach of fiduciary duty, gross negligence, or incompetence reasonably related to the applicant's proposed area of licensure;
j. Whether the applicant is currently incarcerated or on community supervision after a period of imprisonment in a local, state, or federal penal institution or on criminal probation;
k. Whether the applicant, within five years from the date of the application, has had an application for a license, registration, certificate, or endorsement denied or rejected by any state funeral licensing authority including the:
i. Reason for the denial or rejection,
ii. Date of the denial or rejection, and
iii. Name and address of the agency that denied or rejected the application;
l. Whether the applicant has, within five years from the date of the application, had a license, registration, certificate, or endorsement suspended or revoked by any state funeral licensing authority including the:
i. Reason for the suspension or revocation,
ii. Date of the suspension or revocation, and
iii. Name and address of the state licensing authority that suspended or revoked the license;
m. Whether the applicant has ever surrendered a license, registration, certificate, or endorsement to the Board or any state funeral licensing authority;
n. The dates the applicant served as an apprentice embalmer or intern, location of apprenticeship or internship, and the number of human bodies embalmed, if applicable;
o. A statement of whether the applicant has passed a national board examination or state equivalent examination, if applicable; and
p. A notarized statement by the applicant verifying the

information on the application is true and correct;
2. A copy of the applicant's high school or general equivalency diploma;
3. A copy of the transcript from each mortuary college attended by the applicant and, if applicable, each diploma issued to the applicant; and
4. The fee required by the Board.

B. In addition to the requirements in subsection (A), an applicant for an intern license shall submit on the application form the name and license number of the embalmer who will supervise the applicant.

C. In addition to the requirements in subsection (A), an applicant for an embalmer license shall submit to the Board:
1. On the application form:
a. Whether the applicant has embalmed 25 or more human bodies;
b. Apprenticeship or internship information including:
i. Beginning and ending dates,
ii. The state in which the apprenticeship or internship was served,
iii. The applicant's state registration number and date of issuance, and
iv. The number of human bodies embalmed by the applicant during the apprenticeship or internship;
c. The following information:
i. The name of each state in which the applicant has been licensed or registered as an embalmer or funeral director,
ii. The date of issuance of each funeral director or embalmer license or registration, and
iii. The license or registration number in each state in which the applicant is or has been licensed or registered as an embalmer or funeral director;
d. The name of each mortuary at which the applicant practiced as an embalmer or funeral director for five years immediately before the application date, beginning and ending dates of the practice, and a description of the practice, if applicable;
e. A notarized statement from a funeral director licensed or registered in any state that contains the funeral director's:
i. State in which licensed;
ii. License number and issuance date;
iii. Statement of length of time that the funeral director has known the applicant;
iv. Statement attesting to the applicant's good character, reputation, and professional ability; and
v. Recommendation for the Board's approval of the applicant; and
2. A report of apprenticeship or internship containing:
a. The applicant's name,
b. The name of the funeral establishment in which the apprenticeship or internship was served,
c. The name of the embalmer supervising the applicant,
d. The beginning and ending dates covered in the report,
e. The number of hours worked each month during the apprenticeship or internship,
f. The number of human bodies embalmed each month during the apprenticeship or internship, and
g. For each human body embalmed:

i. The name of the deceased,
ii. The date of death,
iii. A statement of whether an autopsy was performed,
and
iv. The supervising embalmer's signature and
license number,
D. In addition to the requirements in subsection (A), an applicant
for a funeral director license shall submit to the Board a report
containing:
1. The applicant's name;
2. The name of the funeral establishment in which one year
of funeral directing experience was obtained;
3. The name of the responsible funeral director;
4. The beginning and ending dates covered in the report;
and
5. For each burial, immediate burial, or direct cremation
conducted by the applicant:
a. The name of the deceased;
b. The date of the burial, immediate burial, or direct
cremation;

c. A statement of whether the applicant conducted a
burial, immediate burial, or direct cremation; and
d. The supervising funeral director's signature and
license number.
E. In addition to the requirements in subsection (A), an applicant
for an embalmer or funeral director license who holds an outof-
state embalmer or funeral director license shall:
1. Submit on the application form, the name of each state in
which the applicant is licensed or registered as an
embalmer or funeral director; and
2. Arrange for the out-of-state licensing authority to complete
the following on the application form to be submitted
with the application packet:
a. Certification of current licensure of the applicant;
b. Type of license, license number, and date license
was issued;
c. A statement of whether the applicant qualified by
examination or by being licensed by another state;
d. A statement of whether the licensing authority has
ever suspended, revoked, or taken any other action
against the applicant's license; and
e. Notarized signature and title of agency official;
F. An applicant for a multiple funeral director license shall submit
an application form that is signed and dated by the applicant,
and notarized that includes the information in
subsections (A)(1)(a) through (A)(1)(c) and:
1. The name and address of the funeral establishment for
which the applicant:
a. Currently acts as the responsible funeral director,
and
b. Is applying to act as the responsible funeral director;
2. The distance, stated in miles, between the current funeral
establishment and the funeral establishment for which
application is being made;
3. For the funeral establishment for which application is
being made and for 12 months immediately preceding the
application, the number of:
a. Funerals and cremations conducted at the funeral
establishment, and

b. Transportations of human remains arranged through the funeral establishment;
4. The fee required by the Board; and
5. Other information required by the Board.

Historical Note

Adopted effective September 18, 1987 (Supp. 87-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 1441, effective March 14, 2001 (Supp. 01-1).

R4-12-203. Application for an Embalmer's Assistant Registration

An applicant for an embalmer's assistant registration shall submit to the Board an application packet that contains the following:
1. An application form that contains:
a. The applicant's name, mailing address, telephone number, and social security number;
b. The applicant's date and place of birth;
c. Any prior name or alias of the applicant;
d. The name and address of the high school from which the applicant graduated and the graduation date or date applicant received a general equivalency diploma;
e. The name and address of each mortuary college attended by the applicant;
f. The name and address of the mortuary college from which the applicant graduated and graduation date;
g. The name, address, and telephone number of the funeral establishment employing the applicant;
h. Whether the applicant, within five years from the date of the application, has had an application for a license, registration, certificate, or endorsement denied or rejected by any state funeral licensing authority including the:
i. Reason for the denial or rejection,
ii. Date of the denial or rejection, and
iii. Name and address of the agency that denied or rejected the application;
i. Whether the applicant, within five years from the date of the application, has had a license, registration, certificate, or endorsement suspended or revoked by any state funeral licensing authority including the:
i. Reason for the suspension or revocation,
ii. Date of the suspension or revocation, and
iii. Name and address of the state licensing authority that suspended or revoked the license;
j. Whether the applicant, within five years from the date of the application, has surrendered a license, registration, certificate, or endorsement to the Board or any state funeral licensing authority;
k. The name of the applicant's current supervising embalmer;
l. If applicable, the beginning and ending dates the applicant served as an apprentice embalmer, the applicant's registration number and date of issuance, and the number of human bodies embalmed and date of each embalming; and
m. A notarized statement by the applicant verifying the information on the application is true and correct;
2. A copy of the applicant's high school or general equivalency diploma;
3. A copy of the transcript and diploma from the mortuary

college from which the applicant graduated;
4. A report of apprenticeship containing:
a. The applicant's name,
b. The name of the funeral establishment in which the apprenticeship was completed,
c. The name of the supervising embalmer,
d. The beginning and ending dates covered in the report,
e. The number of hours worked each month during the two most recent consecutive years of apprenticeship,
f. The number of human bodies embalmed by the applicant or in which the applicant assisted in the embalming for each month of the apprenticeship,
g. For each human body embalmed by the applicant or in which the applicant assisted in embalming for the two most recent consecutive years of the apprenticeship:
i. The name of the deceased,
ii. The date of death,
iii. A statement of whether an autopsy was performed,
iv. The supervising embalmer's signature and license number, and
v. The applicant's signature.
5. A completed and legible fingerprint card; and
6. The fee required by the Board.

Historical Note

Former Rule, Section 3, Article III; Former Section R4-12-27 amended and renumbered as Section R4-12-203 effective June 16, 1981 (Supp. 81-3). Former Section R4-

12-203 repealed and a new Section R4-12-203 adopted effective September 18, 1987 (Supp. 87-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 1441, effective March 14, 2001 (Supp. 01-1).

R4-12-204. Application for a Funeral Establishment License or Interim Funeral Establishment Permit

A. An applicant for a funeral establishment license shall submit an application packet to the Board that contains the fee required by the Board, information required in A.R.S. § 32-1383, and an application form that contains:
1. The funeral establishment's current and previous name, if any;
2. The address of the physical location and telephone number of the funeral establishment;
3. The responsible funeral director's name and license number;
4. The name of the funeral establishment's current and previous owner;
5. Whether the funeral establishment is a proprietorship, a corporation, a partnership, a limited liability company, or a subsidiary of a corporation, a partnership, or a limited liability company;
6. If the previous owner was a corporation, the name of the corporation;
7. The name and address of each person owning 10 percent or more of the establishment or corporation common stock;
8. If a corporation, partnership, or limited liability company:
a. The state and date of incorporation or formation;
b. The name and address of the Arizona statutory agent or agent appointed to receive process; and
c. The name, address, and title of each officer, director,

general partner, or member;
9. Whether the applicant has ever been convicted of or entered into a plea of no contest to a class 1 or 2 felony, including the information in subsections (A)(10)(a) through (A)(10)(f);
10. Whether the applicant, within five years from the date of the application, has been convicted of or entered into a plea of no contest to a felony or to a misdemeanor that is reasonably related to the applicant's proposed area of licensure including the:
a. Charged felony or misdemeanor;
b. Date of conviction;
c. Court having jurisdiction over the felony or misdemeanor;
d. Probation officer's name, address, and telephone number, if applicable;
e. A copy of the notice of expungement, if applicable; and
f. A copy of the notice of restoration of civil rights, if applicable;
11. Whether the applicant, within five years from the date of the application, has committed any act involving dishonesty, fraud, misrepresentation, breach of fiduciary duty, gross negligence, or incompetence reasonably related to the applicant's proposed area of licensure;
12. Whether the applicant is currently incarcerated or on community supervision after a period of imprisonment in a local, state, or federal penal institution or on criminal probation;
13. Whether the applicant, within five years from the date of the application, has had an application for a license, registration, certificate, or endorsement denied or rejected by any state funeral licensing authority including the:
a. Reason for the denial or rejection,
b. Date of the denial or rejection, and
c. Name and address of the agency that denied or rejected the application;
14. Whether the applicant has, within five years from the date of the application, had a license, registration, certificate, or endorsement suspended or revoked by any state funeral licensing authority including the:
a. Reason for the suspension or revocation,
b. Date of the suspension or revocation, and
c. Name and address of the state licensing authority that suspended or revoked the license;
15. Whether the applicant has ever surrendered a license, registration, certificate, or endorsement to the Board or any state funeral licensing authority;
16. A statement, signed by the responsible funeral director and notarized, affirming licensure in Arizona and confirming responsibility for the funeral establishment's compliance with Arizona state laws and rules; and
17. The applicant's signature.
B. An applicant for an interim funeral establishment permit shall submit an application packet to the Board that contains the information required in A.R.S. § 32-1388 and an application form that contains:
1. The funeral establishment's current and previous name, if any;
2. The address of the physical location and telephone number of the funeral establishment;
3. The name of the funeral establishment's current and previous owner;

4. The responsible funeral director's name and license number;
5. Whether the funeral establishment is a proprietorship, a corporation, a partnership, a limited liability company, or a subsidiary of a corporation, a partnership, or a limited liability company;
6. If the previous owner was a corporation, the name of the corporation;
7. The name and address of each person owning 10 percent or more of the establishment or corporation common stock;
8. If a corporation, partnership, or limited liability company:
a. The state and date of incorporation or formation;
b. The name and address of the Arizona statutory agent or agent appointed to receive process; and
c. The name, address, and title of each officer, director, general partner, or member;
9. The name of the previous licensed owner;
10. A statement, signed by the responsible funeral director and notarized, affirming licensure in Arizona and confirming responsibility for the funeral establishment's compliance with Arizona state laws and rules; and
11. The applicant's signature.

Historical Note

Former Rule, Section 5, Article III; Former Section R4-12-28 amended and renumbered as Section R4-12-204 effective June 16, 1981 (Supp. 81-3). Former Section R4-12-204 repealed, new Section R4-12-204 adopted effective September 18, 1987 (Supp. 87-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 1441, effective March 14, 2001 (Supp. 01-1).

R4-12-205. Application for a Prearranged Funeral Sales Endorsement

An owner and the owner's responsible funeral director applying for a prearranged funeral sales endorsement for a funeral establishment shall submit an application packet to the Board that contains the fee

required by the Board, information required in A.R.S. § 32-1391.12, and an application form that contains:
1. The funeral establishment's name, mailing address, and telephone number;
2. The funeral establishment's designated funeral director's, manager's, corporate officers', owner's, trustee's, or any controlling person's:
a. Current name and any prior name or alias;
b. Current address, telephone number, and social security number;
c. Date and place of birth; and
d. Former addresses, including dates of residence, for seven years immediately preceding the date of the application;
3. The total amount of trust funds, including accrued interest, for 12 months immediately preceding the application date;
4. The total number of currently existing prearranged funeral agreements entered into before January 1, 1985;
5. The total number of prearranged funeral agreements sold by the funeral establishment for the calendar year immediately preceding the date of the application;
6. Whether the designated funeral director, a manager, a corporate officer, a trustee, or an owner, within seven

years preceding the date of application, in any state or federal jurisdiction, has:
a. Been convicted of or entered into a plea of no contest to a felony or to a misdemeanor involving dishonesty, fraud, deception, misrepresentation, embezzlement, or breach of fiduciary duty; or
b. Been issued a judgment or consent order for consumer fraud, securities violation, or civil racketeering;
7. The name, address, alias, and telephone number of each individual named in subsection (6) and the following:
a. The charged felony or misdemeanor;
b. Date of conviction or judgment;
c. Court having jurisdiction over the felony or misdemeanor;
d. Probation officer's name, address, and telephone number, if applicable; and
e. A copy of the notice of expungement, if applicable; and
f. A copy of the notice of restoration of civil rights, if applicable; and
8. A notarized statement signed by the owner and designated funeral director verifying the information on the application is true and correct;

Historical Note

Former Section R4-12-29 amended and renumbered as Section R4-12-205 effective June 16, 1981 (Supp. 81-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 1441, effective March 14, 2001 (Supp. 01-1).

R4-12-206. Application for a Prearranged Funeral Salesperson Registration

An applicant for a prearranged funeral salesperson registration shall submit an application packet to the Board that contains the fee required by the Board, information required in A.R.S. § 32-1391.14, and an application form that contains:
1. The applicant's telephone number and social security number;
2. A statement of whether the applicant is a funeral director or embalmer licensed in Arizona;
3. Whether the applicant has ever been convicted of or entered into a plea of no contest to a felony or to a misdemeanor involving dishonesty, fraud, deception, misrepresentation, embezzlement, or breach of fiduciary duty in any state or federal court within seven years preceding the date of application including the:
a. Charged felony or misdemeanor;
b. Date of conviction;
c. Court having jurisdiction over the felony or misdemeanor;
d. Probation officer's name, address, and telephone number, if applicable;
e. A copy of the notice of expungement, if applicable; and
f. A copy of the notice of restoration of civil rights, if applicable.
4. Whether the applicant, within seven years preceding the date of the application, has had an application for a license, registration, endorsement, or certificate denied or rejected by any state funeral licensing authority including the:
a. Reason for the denial or rejection,
b. Date of the denial or rejection, and
c. Name and address of the agency that denied or rejected the application;

5. Whether the applicant, within seven years preceding the date of the application, has had a license, certificate, endorsement, or registration suspended or revoked by any state funeral licensing authority including the:
a. Reason for the suspension or revocation,
b. Date of the suspension or revocation, and
c. Name and address of the agency that suspended or revoked the license;
6. A notarized statement signed by the applicant verifying the information on the application is true and correct; and
7. A notarized statement signed by the responsible funeral director verifying the applicant will be employed by the responsible funeral director upon issuance of the registration by the Board.

Historical Note

Former Rule, Section 9, Article 111; Former Section R4-12-30 renumbered as Section R4-12-206 effective June 16, 1981 (Supp. 81-3). Former Section R4-12-206 repealed and a new Section R4-12-206 adopted effective September 18,1987 (Supp. 87-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 1441, effective March 14, 2001 (Supp. 01-1).

R4-12-207. Application for a Crematory License

An applicant for a crematory license shall submit an application packet to the Board that contains the fee required by the Board, information required in A.R.S. § 32-1395, and the following:
1. An application form that contains:
a. The name of the crematory;
b. The address of the physical location and telephone number of the crematory;
c. Whether the crematory is a proprietorship, a corporation, a partnership, a limited liability company, or a subsidiary of a corporation, a partnership, or a limited liability company;
d. The name and license number of the responsible funeral director or cremationist;
e. The name and address of each person owning 10 percent or more of the establishment or corporation common stock;

f. A statement, signed by the responsible funeral director or cremationist and notarized, affirming licensure in Arizona and confirming responsibility for the crematory's compliance with Arizona state laws and rules;
g. If a corporation, partnership, or limited liability company:
i. The state and date of incorporation or formation;
ii. The name and address of the Arizona statutory agent or agent appointed to receive process; and
iii. The name, address, and title of each officer, director, general partner, or member;
h. Whether the applicant has ever been convicted of or entered into a plea of no contest to a class 1 or 2 felony, including the information in subsection (1)(i)(i) through (1)(i)(vi);
i. Whether the applicant, within five years from the date of the application, has been convicted of or entered into a plea of no contest to a felony or to a

misdemeanor that is reasonably related to the applicant's proposed area of licensure including the:
i. Charged felony or misdemeanor;
ii. Date of conviction;
iii. Court having jurisdiction over the felony or misdemeanor;
iv. Probation officer's name, address, and telephone number, if applicable;
v. A copy of the notice of expungement; if applicable; and
vi. A copy of the notice of restoration of civil rights, if applicable;
j. Whether the applicant, within five years from the date of the application, has committed any act involving dishonesty, fraud, misrepresentation, breach of fiduciary duty, gross negligence, or incompetence reasonably related to the applicant's proposed area of licensure;
k. Whether the applicant is currently incarcerated or on community supervision after a period of imprisonment in a local, state, or federal penal institution or on criminal probation;
l. Whether the applicant, within five years from the date of the application, has had an application for a license, registration, certificate, or endorsement denied or rejected by any state funeral licensing authority including the:
i. Reason for the denial or rejection,
ii. Date of the denial or rejection, and
iii. Name and address of the agency that denied or rejected the application;
m. Whether the applicant has, within five years from the date of the application, had a license, registration, certificate, or endorsement suspended or revoked by any state funeral licensing authority including the:
i. Reason for the suspension or revocation,
ii. Date of the suspension or revocation, and
iii. Name and address of the state licensing authority that suspended or revoked the license;
n. Whether the applicant has ever surrendered a license, registration, certificate, or endorsement to the Board or any state funeral licensing authority; and
o. The applicant's signature;
2. A copy of a funeral establishment license or crematory authority certificate issued by the Arizona Department of Real Estate to a cemetery that operates a crematory.

Historical Note

Adopted effective January 2,1985 (Supp. &5-1). Amended by adding subsections (F) and (G) effective September 18, 1987 (Supp. 87-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 1441, effective March 14, 2001 (Supp. 01-1).

R4-12-208. Annual Intern, Apprentice Embalmer, or Embalmer's Assistant Report

A. To meet the requirements in A.R.S. §§ 32-1322(A), 32-1324, or 32-1325.01(B)(2), an intern, apprentice embalmer, or embalmer's assistant shall work a minimum of 40 hours each week and a minimum of 160 hours each month during an internship or apprenticeship.

B. As required in A.R.S. § 32-1330, an intern, an apprentice

embalmer, or an embalmer's assistant shall submit the following on a form provided by the Board:
1. The name of the intern, apprentice embalmer, or embalmer's assistant;
2. The name of the funeral establishment employing the intern, apprentice embalmer, or embalmer's assistant;
3. The supervising embalmer's name and license number;
4. The beginning and ending dates being covered by the report;
5. The number of hours worked each week at the employing funeral establishment;
6. For each human body embalmed:
a. The name of the deceased;
b. The date of death;
c. A statement of whether an autopsy was performed; and
d. The supervising embalmer's signature and license number;
7. A statement signed by the intern, apprentice embalmer, or embalmer's assistant verifying the information on the report is true and correct;
8. A statement signed by the responsible funeral director verifying the intern; apprentice embalmer, or embalmer's assistant has been employed by the responsible funeral director; and
9. A statement signed by the supervising embalmer verifying supervision of the intern, apprentice embalmer, or embalmer's assistant.

Historical Note

Adopted effective January 2,1985 (Supp. 85-1). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 1441, effective March 14, 2001 (Supp. 01-1).

R4-12-209. State Equivalent Examination

A. The funeral service science section of the state equivalent examination shall consist of no fewer than 70 written questions covering the following subjects:
1. Embalming practices and procedures;
2. Methods of determining whether proper embalming practices and procedures are being or have been followed for the preservation of the human body and prevention of the spread of disease;
3. Laws and regulations and approved practices governing the preparation, burial, and disposal of human bodies; and
4. Methods of shipping human bodies when the cause of death is an infectious or contagious disease.

B. The funeral services arts section of the state equivalent examination shall consist of no fewer than 70 written questions covering the following subjects:
1. Funeral directing,
2. Funeral service law,
3. Funeral merchandising,
4. Business law,
5. Accounting,
6. Sociology,
7. Accounting, and
8. Psychology.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 1441, effective March 14, 2001 (Supp. 01-1).

R4-12-210. Application for a Cremationist License

An applicant for a cremationist license shall submit an application packet to the Board that contains all of the following:

1. An application form provided by the Board, signed and dated by the applicant that contains:

a. The applicant's name, mailing address, telephone number, and social security number;

b. The applicant's date and place of birth;

c. Any prior name or alias of the applicant;

d. The name, address, and telephone number of the crematory or funeral establishment employing the applicant, if applicable;

e. Whether the applicant has ever been convicted of or entered into a plea of no contest to a class 1 or 2 felony, including the information in subsections (1)(f)(i) through (1)(f)(vi) for each felony;

f. Whether the applicant, within the five years before the date of the application, has been convicted of or entered into a plea of no contest to a felony or to a misdemeanor that is reasonably related to the applicant's proposed area of licensure and the:

i. Charged felony or misdemeanor;

ii. Date of conviction;

iii. Court that has jurisdiction over the felony or misdemeanor;

iv. Probation officer's name, address, and telephone number, if applicable;

v. A copy of the notice of expungement, if applicable; and

vi. A copy of the notice of restoration of civil rights, if applicable;

g. Whether the applicant, within five years from the date of the application, has committed any act involving dishonesty, fraud, misrepresentation, breach of fiduciary duty, gross negligence, or incompetence reasonably related to the applicant's proposed area of licensure;

h. Whether the applicant is currently incarcerated, on community supervision after a period of incarceration in a local, state, or federal penal institution, or on criminal probation;

i. Whether the applicant, within five years from the date of the application, has had an application for a license, registration, certificate, or endorsement denied or rejected by any state funeral licensing authority and the:

i. Reason for the denial or rejection,

ii. Date of the denial or rejection, and

iii. Name and address of the agency that denied or rejected the application;

j. Whether the applicant has, within five years from the date of the application, had a license, registration, certificate, or endorsement suspended or revoked by any state funeral licensing authority and the:

i. Reason for the suspension or revocation,

ii. Date of the suspension or revocation, and

iii. Name and address of the state licensing authority that suspended or revoked the license;

k. Whether the applicant has ever surrendered a license, registration, certificate, or endorsement to the Board or any other state funeral licensing authority;

and
l. A notarized statement by the applicant verifying that
the information on the application is true and correct.
2. A copy of a certificate of completion of a crematory certification
program issued by:
a. The manufacturer of a retort, or
b. An accredited organization that provides instruction
for crematory operation;
3. A completed and legible fingerprint card; and
4. The fee required by the Board under A.R.S. § 32-1309.
Historical Note
New Section made by final rulemaking at 10 A.A.R. 681,
effective April 3, 2004 (Supp. 04-1).
R4-12-211. Renewal
A. An applicant for a renewal of a license, registration, or
endorsement shall file a renewal application so the Board
receives it on or before the following dates:
1. July 1 for an intern, embalmer, funeral director, funeral
establishment, cremationist, or crematory license;
2. July 1 for an embalmer's assistant registration; or
3. July 31 for a prearranged funeral sales establishment
endorsement or prearranged funeral salesperson registration.
B. An applicant for a renewal license, registration, or endorsement
shall submit to the Board:
1. A renewal form, provided by the Board, that is signed and
dated by the applicant and contains the applicant's:
a. Name,
b. Social security number,
c. Residence and practice addresses, and
d. Telephone number; and
2. The fee required by the Board under A.R.S. § 32-1309.
C. In addition to the requirements in subsection (B), an applicant
renewing an intern, embalmer, or funeral director license or an
embalmer's assistant registration shall submit to the Board a
list of continuing education completed by the licensee or registrant
or a continuing education waiver statement that meets the
requirements in Article 4 of this Chapter.
Historical Note
Adopted effective June 16,1981 (Supp. 81-3). Former
Section R4-12-211 repealed and a new Section R4-12-
211 adopted effective September 18, 1987 (Supp. 87-3).
Section repealed by final rulemaking at 7 A.A.R. 1441,
effective March 14, 2001 (Supp. 01-1). New Section
made by final rulemaking at 10 A.A.R. 681, effective
April 3, 2004 (Supp. 04-1).
R4-12-212. Reinstatement
A. An applicant requesting reinstatement under A.R.S. §§ 32-
1331, 32-1391.12(C), or 32-1391.14(C) shall submit to the
Board:
1. An application form that contains the applicant's:

a. Name,
b. Social security number,
c. Residence and practice addresses,
d. Telephone number, and
e. Signature, and
2. The renewal and reinstatement fees required by the Board
under A.R.S. § 32-1309.
B. In addition to the requirements in subsection (A), an applicant
requesting reinstatement of a prearranged funeral sales

endorsement shall submit to the Board the information required in A.R.S. § 32-1391.12 (C).

C. The Board shall send written notice of approval or denial of reinstatement within seven days of receiving the fees and application for reinstatement.

Historical Note

Adopted effective June 16, 1981 (Supp. 81-3). Repealed effective September 18, 1987 (Supp. 87-3). New Section made by final rulemaking at 10 A.A.R. 681, effective April 3, 2004 (Supp. 04-1).

ARTICLE 3. REGULATORY PROVISIONS

R4-12-301. General funeral services requirements

A. Any funeral director, embalmer, funeral establishment or other person licensed by the Board shall comply with the following general funeral service requirements:

1. Licensees shall deal with funeral services consumers in an honest and truthful manner, and shall be responsive and sensitive to particular requirements or needs concerning funeral arrangements. Licensees shall not engage in any conduct which causes or results in disrespect for the deceased person, disruption of the funeral services or any injury to the decedent's family, contrary to the prevailing standards and practices of the profession in this state.
2. Licensees shall perform their respective responsibilities concerning the care, handling, transportation and disposition of human remains and concerning all transactions with funeral services consumers in a careful and competent manner in accordance with the prevailing standards and practices of the profession in this state.
3. Licensees shall comply with all laws and regulations pertaining to their activities in the care, handling, transportation and disposition of human remains including, without limitation, the provisions of the Funeral Directors Act (A.R.S. § 32-1301 et seq.), the Prearranged Funeral Plan Act (A.R.S. § 44-1721 et seq.), and these rules. Licensees shall comply with all health laws and regulations which pertain to the embalming and preparation of human remains. The following health laws and rules should be reviewed and followed to the extent applicable:
4. Licensees should also make reasonable efforts to cooperate with the customs of all religions and creeds according to the desires of the decedent or his family.
5. Licensees shall not make statements nor engage in activities which foreseeably could result in needless infliction of emotional distress on members of the decedent's family or result in exposing the remains to unnecessary indignity, including without limitation:

a. Making statements to members of the family designed to offend their sensibilities during grief, including unsolicited comments concerning graphic details of the embalming, or of the condition, decomposition or decay of the remains, except that statements which are necessary under the circumstances to adequately inform the family concerning the advisability of viewing the remains or having an open-casket funeral ceremony are not prohibited by this subsection.

b. Permitting the remains to be exposed or displayed to members of the family or the public in a manner not consistent with public health.

c. Permitting the remains to be exposed or displayed to members of the family or the public in a manner

designed to offend their sensibilities during grief,
including exposing or displaying the remains:
i. During the embalming or preparation process;
ii. Without clothing or suitable covering of the
trunk and limbs of the remains;
iii. For any promotional or commercial purpose;
iv. For photographs, videotape or other reproductive
process without clothing or suitable covering
or during the embalming or preparation
process.
This subsection does not apply where public officials
in the discharge of their duties view or examine
the remains.
6. Licensees shall not disclose or divulge any privacy,
secrecy, confidence or secret of the domestic or private
life of any deceased or the family thereof or of any home
or circle learned as a result of professional employment,
unless such disclosure is required by law, or is necessary
to conduct the legitimate business of the funeral establishment
in accordance with law. Licensees shall not discuss
facts concerning the cause of death, expenditures for
the funeral, the source of funds, or other matters of a personal
nature except with the members of the family or
their authorized representatives. Such information may
be released to the Board during an investigation or
inspection if a release or other permission is obtained or
received from a family member or if pursuant to a subpoena
or other court or administrative directive.
7. Licensees shall not pay or cause to be paid to any person
including without limitation a nurse, attendant, doctor,
ambulance personnel, hospital personnel, health care
facility personnel, clergy or law enforcement officers,
money or other valuable consideration to secure business
from or through such person.
B. Failure to substantially comply with the provisions of this Section
shall be deemed to be evidence of gross negligence,
repeated or continuing negligence or other professional incompetence.
Historical Note
Adopted effective June 16, 1981 (Supp. 81-3).
R4-12-302. Deceptive practices prohibited
A. In selling or offering to sell funeral goods or funeral services
to funeral services consumers, it is a deceptive act or practice
for a funeral establishment, funeral director, embalmer, or
agents or employees of a funeral establishment:
Subject Law or Rule
Vital statistics A.R.S. § 36-301 et seq.
Health menaces A.R.S. § 36-601 et seq.
Disposition of bodies A.R.S. § 36-801 et seq.
Communicable diseases
(Arizona Department of
Health Services rules)
A.A.C. R9-6-110 et seq.
Vital statistics (Arizona
Department of Health Services
rules)
A.A.C. R9-19-301 et seq.

1. To advertise for or solicit business through the use of
deceptive, misleading or inaccurate statements or other
information.

2. To display or represent funeral merchandise or services in a deceptive or misleading manner. Failure to display to or show funeral services consumers inexpensive caskets and containers regularly offered for sale and stocked by the funeral establishment is deemed to be a misleading display practice. Display of inexpensive caskets or containers, or photos or facsimiles thereof, under less favorable conditions or circumstances, including poor lighting, merchandise damage or defacement or conditions inhibiting the consumer's free choice of merchandise is also deemed to be a misleading display practice.

3. To embalm a deceased human body unless:

a. State or local law or regulation requires embalming in the particular circumstances regardless of any funeral choice which the family might make; or

b. Prior approval for embalming (expressly so described) has been obtained from a family member or other authorized person; or

c. The funeral establishment is unable to contact a family member or other authorized person after exercising due diligence, has no reason to believe the family does not want embalming performed, and obtains subsequent approval for embalming already performed (expressly so described). In seeking approval, the funeral establishment shall disclose that a fee will be charged if the family selects a funeral which requires embalming, such as a funeral with viewing, and that no fee will be charged if the family selects a service which does not require embalming, such as direct cremation or immediate burial.

4. To fail to promptly release upon request, deceased human remains to a family member, representative of the family or other person authorized by the family to take possession of the remains.

5. To make any false, misleading or unsubstantiated statements or claims, or in any manner imply that natural decomposition or decay of human remains can be prevented by embalming, or certain caskets, vaults or other burial containers, or to otherwise make any false, misleading or unsubstantiated statements or claims of watertightness or airtightness of caskets, vaults or other burial containers.

6. To reuse a casket or container previously purchased by or delivered to another decedent's family and intended for or used in connection with the burial, cremation or other final disposition of the previous decedent. This provision does not apply to the rental of caskets, containers, casket shells or other devices used in connection with the funeral services if the funeral services consumer is informed of the rental arrangement.

7. To bill or otherwise charge a purchaser for merchandise or services not actually provided by or arranged through the funeral establishment.

8. To represent that the price charged for a cash advance item is the same as the cost to the funeral establishment for the item when such is not the case, or to fail to disclose to purchasers that the price being charged for a cash advance item is not the same as the cost to the funeral establishment for the item when such is the case.

9. To make disparaging statements concerning the quality, utility, suitability or durability of inexpensive caskets or

containers without basis in fact.
10. To make false or misleading statements concerning or otherwise engage in deceptive, misleading or fraudulent practices in connection with the advertising, solicitation or sale of prearranged funeral plans.
11. To make any misrepresentations or omissions of material fact concerning funeral services, prices or the merchandise and services included in a stated price.
12. To represent or insinuate that a direct cremation, immediate burial, inexpensive funeral arrangements or inexpensive casket, container or unfinished wood box would be disrespectful or inconsiderate to the decedent or family members, or friends, neighbors or associates of the decedent or family.
13. To disrupt the funeral arrangement process or funeral service, intimidate, harass or coerce a family member, with the intent to prevent such family member from exercising existing contractual or legal rights.
B. Failure to substantially comply with the provisions of this Section shall be deemed to be evidence of gross negligence, repeated or continuous negligence or other professional incompetence.
Historical Note
Adopted effective June 16, 1981 (Supp. 81-3). Amended effective January 2, 1985 (Supp. 85-1).
R4-12-303. Misrepresentation of legal or cemetery requirements
A. In selling or offering to sell funeral goods or funeral services to funeral services consumers, it is a deceptive act or practice for a funeral establishment, funeral director, embalmer, or agents or employees of a funeral establishment to:
1. Represent that state or local law requires that a deceased person be embalmed when such is not the case, or fail to disclose that embalming is not required by law except where burial or cremation will not occur within 24 hours or where the body is not refrigerated immediately after death.
2. Represent that state or local law requires a casket for direct cremation, or represent that a casket (other than an unfinished wood box) is required for direct cremations.
3. Represent that state or local laws or regulations, or particular cemeteries require burial vaults, grave boxes or grave liners when such is not the case, or fail to disclose to persons arranging funerals that state law does not require the purchase of an outside receptacle.
4. Represent that federal, state or local laws, or particular cemeteries or crematories require the purchase of any funeral goods or funeral services when such is not the case.
B. Failure to substantially comply with the provisions of this Section shall be deemed to be evidence of gross negligence, repeated or continuous negligence or other professional incompetence.
Historical Note
Adopted effective June 16, 1981 (Supp. 81-3). Former Section R4-12-303 repealed, new Section R4-12-303 adopted effective January 2, 1985 (Supp. 85- 1).
R4-12-304. Telephone price disclosures requirement
A. Each funeral establishment shall tell persons who contact the establishment by telephone and ask about terms, conditions or prices of funeral goods or funeral services offered that price information is available over the telephone. The funeral establishment

shall provide accurate information from the funeral
price list required by R4-12-305 which reasonably answers the
question and any other information which reasonably answers

the question about the retail prices of funeral goods or funeral
services readily available for sale to the caller.
B. If the caller requests a funeral price list, the funeral establishment
shall mail its funeral price list required by R4-12-305 to
the caller. If a funeral establishment mails a funeral price list to
a caller, it may charge a reasonable postage and handling fee
not to exceed two dollars. The establishment shall mail the
price list to the caller within five days after receipt of the handling
charge, or if the establishment does not require a handling
charge, within seven days after the caller's price list
request.
Historical Note
Adopted effective January 2, 1985 (Supp. 85- 1).
R4-12-305. Price lists requirement
A. Each funeral establishment, funeral director or embalmer shall
provide a casket price list, an outside receptacle price list and a
general price list in the form and in the manner required by
Federal Trade Commission rules 16 CFR 453.2(b)(2), (3) and
(4) issued pursuant to the Federal Trade Commission Act as
amended and in effect on June 1, 1984. The items required by
the Federal rules shall be included before additional items.
B. A copy of Federal Trade Commission rule 16 CFR 453.2(b) is
on file with the Secretary of State and is incorporated by reference.
Historical Note
Adopted effective January 2, 1985 (Supp. 85-1).
R4-12-306. Merchandise price card requirement
Each funeral establishment shall place a price card on each casket,
container and outside receptacle the establishment makes available
for sale to funeral services consumers. Each price card shall be
placed on or attached to each item of merchandise in a conspicuous
manner which permits a potential purchaser to see the information
on the price card when standing near the casket or other item of
merchandise. Each price card shall conspicuously disclose the separate
retail price of the merchandise item available for sale. Price
cards on caskets or outside receptacles shall also disclose the construction
or type, manufacturer or assembler, and model number or
popular name of the casket or outside receptacle. Price cards on
containers shall also disclose the construction or type and manufacturer
or assembler of the container. Photographs or accurate pictures
of merchandise items may be used if conspicuously displayed
with the price card information required by this Section.
Historical Note
Adopted effective January 2, 1985 (Supp. 85-1).
R4-12-307. Funeral goods and services memorandum
A. Each funeral establishment, funeral director or embalmer shall
give an itemized written or printed memorandum of funeral
goods and services ("statement") for retention to each potential
purchaser of funeral goods or services at the conclusion of
the discussion of any funeral arrangements and before the
establishment enters into a contract with a purchaser of funeral
goods or services. The itemized statement shall list at least the
following information:
1. The name and address of the funeral establishment;
2. A caption entitled "Statement of Funeral Goods and Services
Selected";
3. The funeral goods and services selected by that person

and the prices to be paid for each item, specifically itemized cash advance items, the total cost of the goods and services selected and other information contained in or indicated by the "Statement of Funeral Goods and Services Selected" format in Appendices B or C (following R4-12-565) to these rules.

B. The information required by this Section may be included on any contract, statement or other document which the funeral establishment would otherwise provide at the conclusion of discussion of arrangements. The itemized disclosures required by this Section shall be made in a clear and conspicuous manner. The establishment shall indicate immediately adjacent to the appropriate items under the "funeral arrangements" and "automotive equipment" categories the funeral services, facilities and automotive equipment items selected by the purchaser. A funeral establishment may include additional itemized disclosures on the statement concerning goods and services selected. If certain charges required to be itemized on the statement are not known or reasonably ascertainable at the time the contract is signed, a good faith estimate of the charges shall be given on the statement and the establishment shall provide a written description of the actual charges to the purchaser within fifteen (15) days after the information becomes available to the establishment.

C. If an establishment uses the "statement of funeral goods and services selected" as a final bill, the following disclosures must be added to the statement, as shown in Appendix C to these rules:

"If you elected a funeral which requires embalming, such as a funeral with a viewing, you may have to pay for the embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain why in writing."

If an establishment does not use the "statement of funeral goods and services selected" as a final bill, the disclosures concerning embalming required by this subsection must be added to the final bill, contract or other written evidence of the agreement or obligation given to the purchaser, and the establishment may use the "statement of funeral goods and services selected" format as shown in Appendix B. The establishment shall disclose in writing to the purchaser on the statement any legal, cemetery or crematory requirement which mandates that the consumer purchase a specific funeral good or service. The establishment also shall disclose on the statement the "Notice to Purchaser" concerning casket and container legal requirements required by A.R.S. § 32-1373(B).

Historical Note

Adopted effective January 2, 1985 (Supp. 85-1).

R4-12-308. Expired

Historical Note

Adopted effective July 1, 1985 (Supp. 85-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 853, effective December 31, 2001 (Supp. 02-1).

R4-12-309. Expired

Historical Note

Adopted effective January 2, 1985 (Supp. 85-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 853, effective December 31, 2001 (Supp. 02-1).

R4-12-310. Expired

Historical Note

Adopted effective January 1, 1985 (Supp. 85-1).

Amended effective September 18, 1987 (Supp. 87-3).
Section expired under A.R.S. § 41-1056(E) at 8 A.A.R.
853, effective December 31, 2001 (Supp. 02-1).

R4-12-311. Minimum embalming requirements

A. Embalmers and apprentice embalmers shall comply with the following minimum embalming procedures when embalming human remains:

1. All persons participating in the embalming procedure shall be either a licensed embalmer or a registered apprentice embalmer. Apprentice embalmers shall be under the direct supervision of a licensed embalmer during the embalming. "Direct supervision," as used in this subsection, means that the licensed embalmer shall at all times be immediately available on the funeral establishment premises to supervise the apprentice embalmer, except that if the apprentice embalmer has embalmed at least ten adult human remains and has been registered with the Board for a minimum of six months, the supervision requirement is deemed to have been met if the apprentice has immediate access to and is performing according to the directions of a licensed embalmer.
2. Regulations of the Arizona Department of Health Services and of county health departments pertaining to sewage, sanitation and public health requirements shall be observed.
3. All persons engaged in the embalming process shall wear a clean smock or gown and wear impervious rubber gloves.
4. All clothing shall be removed from the remains and a visual inspection of the condition of the remains shall be conducted.
5. To the extent feasible under the circumstances, the entire remains, including all extremities (legs, arms, feet, hands and head) shall be washed with an antiseptic or detergent solution.
6. To the extent feasible under the circumstances, the arterial injection technique shall be used in the embalming process. If the arterial circulation of any portion of the remains is materially incomplete or impaired due to advanced decomposition or autopsy, then the embalming may be done by hypodermically injecting those areas.
7. Embalming solution shall be injected into the entire remains, including extremities (legs, arms, feet, hands and head), and shall be injected in such dilutions and pressures as warranted by the condition of the remains in accordance with prevailing professional practice.
8. The abdominal and thoracic cavities of the remains shall be injected with a concentrated cavity chemical after liquids and materials have been substantially removed through a trocar. The cavity chemical shall be injected into and thoroughly distributed in such cavities in accordance with prevailing professional practice.
9. If the body is to be viewed at a funeral service, cosmetic procedures should be employed in accordance with the wishes of the family and prevailing professional practice.
10. Within 24 hours after the embalming procedure, an embalming case report shall be prepared describing the elapsed time since death, condition of the remains before and after embalming, and embalming procedures used.

11. After embalming procedures have been completed, the remains shall be covered and diligent effort shall be made to maintain the privacy of the remains.

B. The care and preparation for burial or other disposition of human remains shall be strictly private and no one shall be allowed in the embalming room while a dead human body is being embalmed, except licensees or other authorized employees of the establishment, instructors of the science of embalming and their students, public officials in the discharge of their duties or other persons having the legal right to be present.

C. Each funeral establishment and responsible funeral director shall adopt and implement adequate procedures concerning the supervision of embalming personnel to assure compliance with this rule.

D. Failure to substantially comply with the minimum embalming standards contained in this rule shall be deemed to be evidence of gross negligence, repeated or continuing negligence or other professional incompetence.

Historical Note

Adopted effective June 16.1981 (Supp. 81-3).

R4-12-312. Equipment and sanitation requirements

A. The Board recommends that the following instruments, equipment and supplies be maintained in the preparation room of a funeral establishment:

1. 1 set metal or rubber drain tubes (large, medium, small)
2. 1 set metal injection tubes (large, medium, small)
3. 1 grooved director or equal
4. 1 aneurysm needle
5. 1 large trocar
6. 1 small trocar
7. 1 scalpel
8. 1 pair scissors
9. 6 hemostats
10. 2 forceps
11. 1 hypodermic syringe
12. hypodermic needles (assorted)
13. aspirator
14. suture needles
15. suture thread
16. disinfectant
17. 1 set of cream or liquid cosmetics
18. 1 powder brush
19. 1 application brush
20. wax for restorative work
21. soap
22. cotton
23. head rest
24. hardening compound
25. arterial embalming fluid
26. cavity embalming fluid
27. embalming machine or percolator gravity injector and bulb syringe if latter used
28. sheets or covers for remains.

B. All funeral establishments shall be kept and maintained in a clean and sanitary condition and all embalming tables, hoppers, sinks, receptacles, instruments and other appliances used in embalming human remains shall be thoroughly cleansed and disinfected with a 1% solution of chlorinated soda, or other suitable and effective disinfectant immediately after the embalming of each remains.

C. Every preparation room shall be equipped with a sanitary embalming table, and such table should be provided with running

water.
D. Every preparation room should be provided with proper and convenient receptacles for refuse, bandages, cotton and other waste materials and supplies, and all such waste materials shall be properly disposed of.
E. At no time shall the operation of the establishment constitute or create a health nuisance or hazard.
Historical Note
Adopted effective June 16, 1981 (Supp. 81-3).
ARTICLE 4. CONTINUING EDUCATION
R4-12-401. Reserved

R4-12-402. Reserved
R4-12-403. Reserved
R4-12-404. Reserved
R4-12-405. Expired
Historical Note
Adopted effective June 16, 1981 (Supp. 81-3). Former Section R4-12-405 repealed, a new Section R4-12405 adopted effective September 18, 1987 (Supp. 87-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 853, effective December 31, 2001 (Supp. 02-1).
R4-12-406. Reserved
R4-12-407. Reserved
R4-12-408. Reserved
R4-12-409. Reserved
R4-12-410. Reserved
R4-12-411. Reserved
R4-12-412. Reserved
R4-12-413. Continuing Education Hours Required
A. Unless a funeral director or embalmer obtains a waiver under R4-12-414, the funeral director or embalmer shall complete 12 credit hours or more of continuing education every calendar year as follows:
1. At least three credit hours in mortuary sciences;
2. At least three credit hours in ethical considerations in business practices and state and federal laws; and
3. At least six other credit hours intended to enhance professional development or competence.
B. Unless an embalmer's assistant obtains a waiver under R4-12-414, the embalmer's assistant shall complete six credit hours or more of continuing education every calendar year as follows:
1. At least three credit hours in mortuary sciences, and
2. At least three credit hours covering compliance with state and federal laws.
C. A licensee who has been licensed for less than 12 months during a calendar year shall complete one credit hour of continuing education for each month of licensure.
D. A registrant who has been registered for less than 12 months during a calendar year shall complete one credit hour of continuing education for every two months of registration.
Historical Note
Adopted effective February 8, 1991 (Supp. 91-1). Amended by final rulemaking at 10 A.A.R. 681, effective April 3, 2004 (Supp. 04-1).
R4-12-414. Waiver of Continuing Education
A. The Board shall waive the continuing education requirements in R4-12-413 for a funeral director or an embalmer whose license or registration has been placed on inactive status or who was serving in the United States Armed Forces in time of

war.
B. The Board may waive the continuing education requirements in R4-12-413 upon request and for good cause, which includes:
1. For an embalmer's assistant, that the embalmer's assistant:
a. Was serving in the United States Armed Forces in time of war, or
b. Has not practiced as an embalmer's assistant during the year in which continuing education is required;
2. That the funeral director, embalmer, or embalmer's assistant was prevented from completing continuing education due to extreme hardship, a disability, or a mental or physical illness; or
3. That the funeral director, embalmer, or embalmer's assistant was prevented from completing continuing education because of absence from the United States.
C. A funeral director, embalmer, or embalmer's assistant who is unable to complete the continuing education required in R4-12-413 may submit, before a renewal application is due or with a renewal application, a written request to the Board for a waiver from the continuing education required in R4-12-413 that contains:
1. The name, address, and telephone number of the licensee or registrant,
2. An explanation of why the licensee was unable to meet the Board's continuing education requirements that includes one of the reasons in subsection (A) or (B);
3. Any documents that support the explanation; and
4. The signature of the licensee or registrant.
D. The Board shall send written notice of approval or denial of the request for waiver within seven days of receipt of the request.
Historical Note
Adopted effective February 8, 1991 (Supp. 91-1).
Amended by final rulemaking at 10 A.A.R. 681, effective April 3, 2004 (Supp. 04-1).
R4-12-415. Continuing Education Determinations
A. To obtain a Board determination that continuing education satisfies the requirements of A.R.S. § 32-1338 and R4-12-413, a licensee or registrant shall submit a written request to the Board before submission of a renewal application.
B. A request under subsection (A) shall contain:
1. A brief summary of the continuing education;
2. The date and place where the continuing education was provided;
3. The number of credit hours of the continuing education;
4. The name of the individual providing the continuing education, if available; and
5. The name of the organization providing the continuing education, if applicable.
C. In making the continuing education determination, the Board shall consider whether the continuing education:
1. Is designed to provide current developments, skills, and procedures related to funeral practices;
2. Is developed and provided by an individual with knowledge and experience in the subject area; and
3. Contributes directly to the professional competence of the licensee or registrant.
Historical Note
Adopted effective February 8, 1991 (Supp. 91-1).
Amended by final rulemaking at 10 A.A.R. 681, effective April 3, 2004 (Supp. 04-1).

R4-12-416. Documentation of Continuing Education
A licensee or registrant shall submit a written document of completed continuing education with a renewal application that includes:
1. The name of the licensee or registrant;
2. The title of each continuing education;

3. A brief summary of the content of each continuing education;
4. The date of completion of each continuing education;
5. The number of credit hours of each continuing education; and
6. A statement, signed and dated by the licensee or registrant, verifying that the information in the document is true and correct.
Historical Note
New Section made by final rulemaking at 10 A.A.R. 681, effective April 3, 2004 (Supp. 04-1).
ARTICLE 5. PREARRANGED FUNERAL AGREEMENTS
R4-12-501. Expired
Historical Note
Adopted effective January 1, 1985 (Supp. 85-1). Amended by adding a new paragraph (4) effective June 18, 1987 (Supp. 87-2). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 853, effective December 31, 2001 (Supp. 02-1).
R4-12-502. Expired
Historical Note
Adopted effective January 1, 1985 (Supp. 85-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 853, effective December 31, 2001 (Supp. 02-1).
R4-12-503. Expired
Historical Note
Adopted effective June 18, 1987 (Supp. 87-2). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 853, effective December 31, 2001 (Supp. 02-1).
R4-12-504. Reserved
R4-12-505. Reserved
R4-12-506. Reserved
R4-12-507. Reserved
R4-12-508. Reserved
R4-12-509. Reserved
R4-12-510. Reserved
R4-12-511. Reserved
R4-12-512. Reserved
R4-12-513. Reserved
R4-12-514. Reserved
R4-12-515. Reserved
R4-12-516. Reserved
R4-12-517. Reserved
R4-12-518. Reserved
R4-12-519. Reserved
R4-12-520. Reserved
R4-12-521. Expired
Historical Note
Adopted effective January 1, 1985 (Supp. 85-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 853, effective December 31, 2001 (Supp. 02-1).
R4-12-522. Reserved
R4-12-523. Surety bond requirements
A. A funeral establishment applying for a prearranged funeral

sales endorsement shall provide the Board with the number of prearranged funeral agreements sold during the immediately preceding calendar year and provide the applicable surety bond as follows:

1. $15,000 if the establishment sold fewer than 100 prearranged funeral agreements during the immediately preceding calendar year;
2. $30,000 if the establishment sold 100 or more, but fewer than 250 prearranged funeral agreements during the immediately preceding calendar year; or
3. $50,000 if the establishment sold 250 or more prearranged funeral agreements during the immediately preceding calendar year.

The amount of the surety bond shall be increased by $5,000 for each salesperson currently registered by the Board for the establishment.

B. The corporate surety bond provided to the Board shall contain the language specified by Appendix D (following R4-12-565).

Historical Note

Adopted effective January 1, 1985 (Supp. 85-1).

R4-12-524. Reserved

R4-12-525. Reserved

R4-12-526. Reserved

R4-12-527. Reserved

R4-12-528. Reserved

R4-12-529. Reserved

R4-12-530. Reserved

R4-12-531. Repealed

Historical Note

Adopted effective January 1, 1985 (Supp. 85-1). Section repealed by final rulemaking at 7 A.A.R. 1441, effective March 14, 2001 (Supp. 01-1).

R4-12-532. Reserved

R4-12-533. Reserved

R4-12-534. Reserved

R4-12-535. Reserved

R4-12-536. Reserved

R4-12-537. Reserved

R4-12-538. Reserved

R4-12-539. Reserved

R4-12-540. Reserved

R4-12-541. Consumer disclosures

A. The consumer notice required by A.R.S. § 32-1391.08(A) and (C) shall be conspicuously printed on either the first or signature page of the prearranged funeral agreement.

B. At the time the purchaser signs the agreement the funeral establishment shall provide a copy of the prearranged funeral agreement for retention by the purchaser.

C. At the time of the inquiry or solicitation the funeral establishment shall provide a copy of its current price list for retention by the person who inquires about or is personally solicited regarding a prearranged funeral agreement.

D. Pursuant to A.R.S. § 32-1373, each contract for prearranged funeral services also shall contain one of the following notices, as appropriate, conspicuously printed near the top of the first page:

1. THIS FUNERAL CONTRACT IS FUNDED BY INSURANCE.
2. THIS FUNERAL CONTRACT IS FUNDED BY A PREARRANGED

FUNERAL TRUST ACCOUNT.

Historical Note

Adopted effective January 1, 1985 (Supp. 85-1).
Amended by adding a new subsection (D) effective June 18, 1987 (Supp. 87-2).

R4-12-542. Reserved

R4-12-543. Reserved

R4-12-544. Reserved

R4-12-545. Deceptive, misleading or professionally negligent practices

In selling or offering to sell prearranged funerals, or in handling the trust funds or accounts of a prearranged funeral consumer, it is a deceptive, misleading or professionally negligent practice for anyone licensed under Title 32, Chapter 12, A.R.S. or his agent:

1. To misstate or omit to state any material fact upon which a prearranged funeral consumer detrimentally relies concerning the transaction or the prearranged funeral.
2. To represent or imply that the prices of funeral goods and services to be provided pursuant to a fixed price prearranged funeral agreement are guaranteed, frozen or otherwise an absolute economic certainty.
3. To guarantee or promise that the funeral establishment will be in business at any indefinite time in the future.
4. To fail to disclose to the purchaser or beneficiary within ten business days after a request, the most currently available information concerning the purchaser's principal payments, all earned interest on the principal and total service fees charged concerning that purchase.
5. To intentionally mislead or deceive by entering into a contract with a prearranged funeral purchaser, while any blank in the contract other than for the account number has not been completed.
6. To enter into a prearranged funeral agreement to provide funeral goods and services not regularly sold by the funeral establishment at the time of execution of the agreement.

Historical Note

Adopted effective January 1, 1985 (Supp. 85-1).

R4-12-546. Description of casket

A prearranged funeral agreement shall be deemed misleading unless it describes the following information concerning any casket to be provided under the agreement:

1. Specific construction and type.
2. Interior fabric.
3. Manufacturer and model number or popular name.
4. Special features, if any.
5. Casket retail price.

Historical Note

Adopted effective January 1, 1985 (Supp. 85-1).

R4-12-547. Reserved

R4-12-548. Possession of trust account passbook

With respect to individual trust accounts, the funeral establishment shall offer a prearranged funeral purchaser the option of either obtaining a copy of the financial institution passbook, certificate of deposit, or other similar documentation of the prearranged funeral trust account for his personal possession, or authorizing the funeral establishment to maintain such documentation on behalf of the purchaser. This Section does not apply to common trust accounts.

Historical Note

Adopted effective January 1, 1985 (Supp. 85-1).

R4-12-549. Reserved

R4-12-550. Reserved

R4-12-551. Certificate of entitlement

The certificate of entitlement which a funeral establishment delivers to the financial institution servicing a prearranged funeral trust account or accounts shall contain the following information:

1. Name of the funeral establishment.
2. Name and location of financial institution.
3. Prearranged funeral trust account number(s).
4. The amount of trust funds to be withdrawn as the annual service fee.
5. Certification by the funeral establishment that it is contractually entitled to an annual service fee for the preceding calendar year pursuant to the terms of the prearranged funeral agreement(s).

The certificate shall be signed and dated by the owner or responsible funeral director of the establishment and sworn to before a notary public. On receipt of an appropriately completed certificate of entitlement, the financial institution shall release a portion of the trust funds equal to the annual service fee to the funeral establishment. The portion of trust funds released to the establishment shall not exceed 10 percent of the interest which has accrued on the trust funds during the preceding calendar year.

Historical Note

Adopted effective January 1, 1985 (Supp. 85-1).

R4-12-552. Certificate of performance

A. The certificate of performance which a funeral establishment delivers to the financial institution servicing a prearranged funeral trust account after the death of the beneficiary of a prearranged funeral agreement shall contain the following information:

1. Name of the funeral establishment.
2. Name and location of financial institution and trust account number
3. Name of deceased beneficiary.
4. Certification of the total charges for the funeral goods and services provided in the funeral arrangements.
5. Certification that it provided the funeral goods and services pursuant to the prearranged funeral agreement.

B. If the certificate of performance concerns a fixed price prearranged funeral agreement, it shall contain the following additional information:

1. Certification that the establishment agreed in the prearranged funeral agreement to fix the prices of the funeral

goods and services provided under the agreement at the price levels in effect at the time of the execution of the agreement by the purchaser.

C. The certificate shall be signed and dated by the owner or responsible funeral director of the establishment and sworn to before a notary public. The certified death certificate of the deceased beneficiary shall accompany the certificate of performance when it is delivered to the financial institution. On receipt of the certified death certificate and appropriately completed certificate of performance, the financial institution shall release a portion of the trust funds equal to the establishment's charges for funeral goods and services for the beneficiary's funeral arrangements. If the certificate of performance concerns a fixed price prearranged funeral agreement, the financial institution may release an additional portion of the trust funds to the establishment equal to that portion of the total accrued interest on principal payments deposited in the trust account during the term of the prearranged funeral agreement

which the purchaser agreed to convey to the establishment.

Historical Note

Adopted effective January 1, 1985 (Supp. 85-1).

R4-12-553. Reserved

R4-12-554. Statement of accrued taxes

The statement of accrued taxes which a funeral establishment delivers to the financial institution servicing a prearranged funeral trust account or accounts shall contain the following information:

1. Name of the funeral establishment.
2. Name and location of financial institution.
3. Prearranged funeral trust account number(s).
4. Statement identifying the person by whom taxes are due and payable concerning income earned from funds deposited in the trust account(s). The statement shall describe the taxing authority to which the taxes are due, the amount of taxes due and payable concerning each trust account and the fiscal period the taxes concern. The statement shall be signed and dated by the owner or responsible funeral director and one other employee of the establishment. On receipt of an appropriately completed statement of accrued taxes, the financial institution shall release a portion of the trust funds equal to the accrued taxes, payable to the taxing authority, to the funeral establishment.

Historical Note

Adopted effective January 1, 1985 (Supp. 85-1).

R4-12-555. Reserved

R4-12-556. Notice of trust account transfer

A. If a funeral establishment directs a financial institution to transfer a common prearranged funeral trust account pursuant to A.R.S. § 32-1391.04(C), it shall provide written notice by first class mail to the last known address of each participant not less than ten business days before transfer of the account. The notice shall advise each participant that the account is being transferred and give the name and location of the new financial institution and trust account number. The notice also shall contain a conspicuous statement that the establishment will provide specific information concerning the trust account status upon request.

B. If a funeral establishment is sold, or its name or location is changed or the prearranged funeral trust account is in any way transferred to another entity, the funeral establishment shall notify the Board of the disposition of the trust account within ten business days after the change in the status of the trust account. The funeral establishment also shall provide written notice by certified mail to the last known address of each participant in the prearranged funeral trust account within thirty business days after the change in the status of the trust account. The notice shall advise each participant of the change of status of the trust account and shall contain a conspicuous statement that the establishment, or its successor in interest, will provide specific information concerning the trust account status upon request.

Historical Note

Adopted effective January 1, 1985 (Supp. 85-1).
Amended by adding a new subsection (B) effective June 18, 1987 (Supp. 87-2).

R4-12-557. Reserved

R4-12-558. Reserved

R4-12-559. Purchaser cancellation requests

The written request from a purchaser of a prearranged funeral agreement or designated person to terminate the agreement and refund the trust funds shall contain the following information:

1. Name of funeral establishment.
2. Full name of the prearranged funeral purchaser or designated person making the request.
3. Statement of purchaser or designated or legally responsible person requesting refund of the trust funds.

The cancellation request shall be signed by the purchaser, designated or legally responsible person. Within five days following receipt of a properly signed cancellation request, the financial institution shall release the trust funds, payable to the person making the cancellation request, to the establishment for refund to the requesting person.

Historical Note

Adopted effective January 1, 1985 (Supp. 85-1).

R4-12-560. Reserved

R4-12-561. Annual report format

A. The annual report concerning prearranged funeral sales and trust account activities filed by funeral establishments pursuant to A.R.S. § 32-1391.15 shall contain the information indicated by the annual report format in Appendix E (following R4-12-565). If a funeral establishment does not offer or sell prearranged funerals on or after January 1, 1985, it shall annually provide to the Board the information required by Appendix E concerning:

1. Each prearranged funeral trust account established before the effective date of this Article and in existence during any portion of the preceding calendar year and;
2. Trust account deposits, withdrawals and service fees during the preceding calendar year.

B. If a funeral establishment offers or sells prearranged funeral agreements on or after January 1, 1985, it shall annually provide to the Board the information required by Appendix E concerning:

1. Each prearranged funeral trust account established before the effective date of this Article and in existence during any portion of the preceding calendar year;
2. Each prearranged funeral agreement sold after January 1, 1985 and in existence during any portion of the preceding calendar year, and;
3. Trust account deposits, withdrawals and service fees during the preceding calendar year.

Historical Note

Adopted effective January 1, 1985 (Supp. 85-1).

R4-12-562. Reserved

R4-12-563. Reserved

R4-12-564. Reserved

R4-12-565. Records retention requirement

Each funeral establishment shall retain and make available for inspection by Board representatives true and accurate copies of the following records during the term of the prearranged funeral agreement and for three years following the death of the beneficiary or the termination of the agreement:

1. The prearranged funeral agreement.
2. Each notice of the transfer of the trust account to another financial institution, together with a record of the names and last known addresses of the purchasers and the dates on which the notice was mailed.
3. The certificate of performance from the funeral establishment stating that it provided the requested funeral goods and services which is delivered to a financial institution.
4. Each certificate from the funeral establishment concerning

entitlement to service fees concerning the trust
account.
5. Each statement of accrued taxes from the funeral establishment
concerning the trust account.
6. Each cancellation or termination request from a purchaser.
7. Detailed financial institution statements and accounting
records concerning the trust account.

Historical Note

Adopted effective January 1, 1985 (Supp. 85-1).

Appendix B. Statement of Funeral Goods and Services Selected

STATEMENT OF FUNERAL GOODS AND SERVICES SELECTED

The charges are only for those items that are used. If we are required by law to use any items, we will explain the reasons in writing.

FUNERAL OF _____

FORWARDING OF REMAINS TO ANOTHER FUNERAL HOME $_____

This charge includes removal of body, services of staff, necessary authorizations, embalming, and local transportation (but not shipping charges.)

RECEIVING OF REMAINS FROM ANOTHER FUNERAL HOME $_____

This charge includes services of staff, care of remains, and transportation to cemetery or crematory.

DIRECT CREMATION (As selected) $_____

This charge includes removal of body, necessary authorizations, services of staff, transportation to crematory, and cremation of body.

TRANSFER OF REMAINS TO FUNERAL HOME (_____ miles transported) $_____

IMMEDIATE BURIAL (As selected) $_____

This charge includes removal of body, services of staff, necessary authorizations, and local transportation to cemetery.

FUNERAL ARRANGEMENTS (Indicated services and facilities selected) $_____

Funeral Director and Staff Services _____

Embalming _____

Other preparation of body _____

Use of facilities for viewing _____

Use of facilities for funeral _____

Other use of facilities _____

AUTOMOTIVE EQUIPMENT (Indicated items selected) $_____

Hearse _____

Limousine _____

Other automobiles _____

ACKNOWLEDGMENT CARDS $_____

CASKET SELECTED $_____

VAULT OR LINER $_____

OTHER ITEMS (describe)_____ $_____

_____ $_____

CASH ADVANCE ITEMS

Organist and/or other music $_____

Hairdresser or barber $_____

Flowers $_____

Pallbearers $_____

Motorcycle escorts $_____

Clergy Honoraria $_____

Obituary Notice $_____

Death Certificate(s) $_____

Gratuities $_____

Other (describe) $_____

Total $_____

TOTAL COST FOR ARRANGEMENTS SELECTED $_____

FOR FUNERAL HOME_____ Date_____

_____

Arranged by_____ Date_____

_____

NOTICE TO PURCHASER

You may choose to purchase a casket or container for the funeral services and final disposition. However, except under certain public health circumstances
pursuant to A.R.S. § 36-136, state law does not require the purchase or use of caskets or containers.

METHOD OF PAYMENT AND INTEREST CHARGES [describe the method of payment required by the funeral establishment for the funeral services and
any interest charges.
[Statement not used as final bill]

Historical Note

Adopted effective January 1, 1985 (Supp. 85-1).

Appendix C. Expired

Historical Note

Adopted effective January 1, 1985 (Supp. 85-1).
Appendix expired under A.R.S. § 41-1056(E) at 18
A.A.R. 607, effective December 29, 2011 (Supp. 12-1).

Appendix D. Prearranged Funeral Endorsement Bond

The corporate surety bond delivered to the Board with a prearranged funeral sales endorsement application shall contain the following language:

"PREARRANGED FUNERAL ENDORSEMENT BOND
KNOW ALL MEN BY THESE PRESENTS, that we
_____
of _____ as principal and
_____, a surety company organized
and existing under the laws of the State of
_____ and authorized to do business under the
laws of the State of Arizona as surety, are held and firmly bound
unto the State of Arizona for the use and benefit of persons
injured by violations of Title 32, Chapter 12, Article 5, Arizona
Revised Statutes, in the penal sum of
_____ (_____)
lawful money of the United States of America, to be paid to the
State of Arizona for the use and benefit aforesaid, for which sum,
well and truly to be paid, we bind ourselves, our heirs, executors,
administrators, successors and assigns, jointly and severally by
these presents.
The Condition of the above obligation is such that:
WHEREAS the above named principal has applied for an
endorsement to its funeral establishment license in the State of
Arizona to sell prearranged funeral agreements in conformance
with Title 32, Chapter 12, Article 5, Arizona Revised Statutes,
and is required by the provisions of such statutes to furnish a
5724A15 page 1
bond in the sum above-named, conditioned as herein set forth.
Now, therefore, if the principal shall during the term of
this bond strictly, honestly and faithfully comply with the provisions
of Title 32, Chapter 12, Article 5, Arizona Revised Statutes
during the term of this bond and shall pay all damages, attorneys
fees and other expenses suffered by any person by reason of the
violation of any of the provisions of such statutes which concern
(1) providing contract information and consumer disclosures, (2)
receiving and placing purchaser funds in appropriate trust
accounts, (3) maintaining the security and integrity of the trust
funds until lawfully disbursed, (4) misrepresentation or deceptive
conduct in the advertising, solicitation or sale of prearranged
funeral agreements, and (5) criminal misconduct by employees
or agents of the funeral establishment concerning the prearranged
funeral agreements or trust funds, then this obligation shall be
void.
The State of Arizona may proceed against the Bond for
the benefit of any person injured by a violation of Title 32, Chapter
12, Article 5, or the person so injured may directly proceed
against the Bond in case of default by the principal.
This bond shall become effective on the _____ day

of _____, 19 ___, and shall remain in force until
cancelled by the surety. The surety may cancel this bond and be
relieved of further liability hereunder by giving thirty days written
notice to the principal and to the Board of Funeral
5724A16 page 2

Appendix D. (cont.)
Historical Note
Adopted effective January 1, 1985 (Supp. 85-1).
Directors and Embalmers of the State of Arizona. The liability of
the surety for the aggregate of any and all claims which may arise
hereunder shall in no event exceed the amount of the penal sum
of this bond.
Loss is covered under this bond only if a claim is
made hereunder not later than two years after the cancellation or
termination of the bond. If the coverage of this bond is substituted
for any prior bond provided by the principal, which prior
bond is terminated or cancelled as of the time of such substitution,
the surety agrees that this bond applies to loss which is discovered
and which would have been recoverable under such
prior bond except for the fact that the time within which to discover
loss thereunder had expired, provided:
(1) Such loss would have been covered under this
bond had this bond with its agreements, limitations and conditions
as of the time of such substitution been in force when the
acts or defaults causing such loss were committed; and
(2) Recovery under this bond on account of such
loss shall in no event exceed that amount which would have been
recoverable under this bond in the amount for which it is written
as of the time of such substitution, had this bond been in force
when such acts or defaults were committed, or the amount which
would have been recoverable under such prior bond or policy had
such prior bond or policy continued in force until the discovery
of such los, if the latter amount be smaller.
5724A17 page 3
IN WITNESS WHEREOF, the principal and surety
have hereunto set their hands and seals this _____ day of
_____, 1984.
_____
PRINCIPAL
By: _____
_____
SURETY COMPANY
Countersigned:
By: _____ By: _____
5724A18 page 4

Appendix E. Annual Report
ANNUAL REPORT
For Calendar Year Ending _____
Name of Establishment
_____
Address_____
_____
_____ Zip
_____
Owners (owning a 10 percent or greater interest in the Establishment):
Name:_____ Name:_____

Address:_____ Address:_____
_____ _____
Name:_____ Name:_____
Address:_____ Address:_____
_____ _____
Funeral Establishment License No. _____ Issued _____
AFFIDAVIT
State of _____
County _____
_____, being first duly sworn and upon [my] [our] oath, depose and state:
[I am] [We are] the owner(s) of (establishment) on behalf of which [I] [we] make this affidavit, being hereunto duly authorized. The
funeral establishment herein named has complied with title 32, Chapter 12, Article 5 of the Arizona Revised Statues and the rules adopted
pursuant to said Article. This Annual Report includes all prearranged funeral agreements sold or administered by this establishment. [I] [We]
have read this Annual Report and accompanying Schedules A, B, C, D and E and know the contents thereof, and the matters and things
therein stated are true and correct.
Subscribed and sworn to before me this _____ day of _____, 19 _____.
_____
Notary Public
5724A19 page 1

Appendix E. (cont.)
SCHEDULE A
Page _____
PREARRANGED FUNERAL SALES DURING
CALENDAR YEAR ENDING _____
Financial Institution Name _____
Address _____
Trust Account No.(s)*_____

PURCHASER NAME AND ADDRESS	SALE DATE	SALES PERSON	BENEFICIARY	TOTAL CONTRACT AMOUNT	INITIAL SERVICE FEE	INITIAL SERVICE FEE PAID	TOTAL MONIES PAID BY PURCHASER	TOTAL MONIES TO TRUST ACCOUNT	TOTAL REFUNDS MADE	BANK SERVICE CHARGES	OTHER WITHDRAWALS (EXPLAIN)**	12/31 TRUST ACCOUNT BALANCE
Page Totals												
TOTALS												

* If this schedule concerns a number of trust accounts, provide names and addresses of financial institutions
and list account numbers on separate sheet.
** If other withdrawals have occurred, explain in detail on separate sheet.

Appendix E. (cont.)
SCHEDULE B
Page _____
EXISTING PREARRANGED FUNERAL
AGREEMENTS SOLD BEFORE CALENDAR
YEAR ENDING _____
Financial Institution Name _____
Address _____
Trust Account No.(s)*_____

PURCHASER NAME AND SALE DATE	TOTAL CONTRACT AMOUNT	INITIAL SERVICE FEE	INITIAL SERVICE FEE PAID	TOTAL MONIES PAID BY PURCHASER THIS YEAR	TOTAL MONIES PAID BY PURCHASER	TOTAL MONIES TO TRUST ACCOUNT	TOTAL REFUNDS PAID	ANNUAL SERVICE FEE	TAXES PAID	BANK SERVICE CHARGES	OTHER WITHDRAWALS (EXPLAIN)**	12/31 TRUST ACCOUNT BALANCE
Page Totals												
TOTALS												

* If this schedule concerns a number of trust accounts, provide names and addresses of financial institutions and list account numbers on separate sheet.
** If other withdrawals have occurred, explain in detail on separate sheet.

Appendix E. (cont.)
SCHEDULE C
Page _____
Financial Institution Name _____
Address _____
Trust Account No.(s)*_____
SUMMARY OF TRUST ACCOUNT
TRANSACTIONS FOR CALENDAR
YEAR ENDING _____
Total trust funds in account(s) on December 31 of previous calendar year. $ _____ $ _____
Total funds received and deposited in trust account(s) during this calendar year. $ _____
Total funds withdrawn from trust account(s) during this calendar year:
1) Funeral arrangements
2) Annual service fees
3) Tax payments

4) Financial institution service charges
5) Refunds to purchasers
6) Other withdrawals**
TOTAL WITHDRAWALS
$ _____
$ _____
$ _____
$ _____
$ _____
$ _____
$ _____
Total interest paid to trust account(s) during this calendar year. $ _____
Total trust funds in account(s) on December 31 of this calendar year. $ _____
Total funds received for trust but not deposited in trust account(s) as of December 31 of this calendar year. $ _____
* If this schedule concerns a number of trust accounts, provide names and addresses of financial institutions and list account numbers on separate sheet.
** If other withdrawals have occurred, explain in detail on separate sheet.
5724A20 page 4

Appendix E. (cont.)
Historical Note
Adopted effective January 1, 1985 (Supp. 85-1).
SCHEDULE D
SALESPERSONS EMPLOYED OR
ENGAGED DURING CALENDAR
YEAR
Name Address Registration No.
_____ _____
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_____ _____
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_____ _____
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_____ _____
_____
SCHEDULE E
SALESPERSONS TERMINATED
DURING CALENDAR YEAR
Name Registration No.
_____ _____
_____ _____
_____ _____
_____ _____
_____ _____
_____ _____
_____ _____
_____ _____
_____ _____

ARTICLE 6. CREMATORY AND CREMATION REGULATION

R4-12-601. Repealed

Historical Note

Adopted effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 7 A.A.R. 1441, effective March 14, 2001 (Supp. 01-1).

R4-12-602. Repealed

Historical Note

Adopted effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 20 A.A.R. 2648, effective November 9, 2014 (Supp. 14-3).

R4-12-603. Reserved

R4-12-604. Reserved

R4-12-605. Reserved

R4-12-606. Reserved

R4-12-607. Reserved

R4-12-608. Reserved

R4-12-609. Reserved

R4-12-610. Reserved

R4-12-611. Repealed

Historical Note

Adopted effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 7 A.A.R. 1441, effective March 14, 2001 (Supp. 01-1).

R4-12-612. Crematory requirements

In addition to the requirements in A.R.S. § 32-1394, the responsible cremationist of a crematory shall ensure:

1. The crematory is maintained free from dirt and debris,
2. Equipment and supplies maintained in the crematory do not impede passage through the crematory, and
3. Human remains that are not embalmed are held in a refrigerated holding facility at the crematory or sent to a funeral establishment or another crematory for refrigeration.

Historical Note

Adopted effective July 3, 1991 (Supp. 91-3). Amended by final rulemaking at 20 A.A.R. 2648, effective November 9, 2014 (Supp. 14-3).

R4-12-613. Requirements for a funeral establishment that provides for cremation

A. A funeral establishment that owns a crematory on or off the funeral establishment's premises shall designate a responsible cremationist.

B. The responsible funeral director of a funeral establishment that provides for cremation shall ensure that:

1. The cost of cremation is included on its general price list required by A.R.S. § 32-1371;
2. A price card for cremation is placed as required by A.R.S. § 32-1372;
3. If the funeral establishment contracts with a licensed crematory to perform the cremation; the information required in A.R.S. § 32-1373(A) and (B) is provided to the purchaser of the cremation;
4. A consumer who chooses cremation is informed that human remains may be cremated in a cremation container capable of being entirely consumed or reduced to fine residue during the cremation process, such as a casket, unfinished wood box, or fiberboard container; and

5. Caskets or containers constructed of metal or of a substance that may emit harmful fumes when subjected to the cremation process are not sold or used for cremation.

Historical Note

Adopted effective July 3, 1991 (Supp. 91-3). Amended by final rulemaking at 20 A.A.R. 2648, effective November 9, 2014 (Supp. 14-3).

R4-12-614. Reserved

R4-12-615. Reserved

R4-12-616. Reserved

R4-12-617. Reserved

R4-12-618. Reserved

R4-12-619. Reserved

R4-12-620. Reserved

R4-12-621. Repealed

Historical Note

Adopted effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 20 A.A.R. 2648, effective November 9, 2014 (Supp. 14-3).

R4-12-622. Expired

Historical Note

Adopted effective July 3, 1991 (Supp. 91-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 853, effective December 31, 2001 (Supp. 02-1).

R4-12-623. Reserved

R4-12-624. Reserved

R4-12-625. Reserved

R4-12-626. Reserved

R4-12-627. Reserved

R4-12-628. Reserved

R4-12-629. Reserved

R4-12-630. Reserved

R4-12-631. Records requirements for crematories and funeral establishments that provide for cremation

A. The responsible cremationist of a crematory or funeral establishment that provides for cremation shall ensure for each cremation performed that the following records are established and maintained for five years from the date of the cremation:

1. The name of the decedent and date of death;
2. The authorization document required by A.R.S. § 32-1365.01, if applicable or a record of the oral or written consent of the authorizing agent that meets the requirements in A.R.S. § 32-1365.02; and
3. A copy of the completed disposition-transit permit that meets the requirements in A.R.S. § 36-326 and A.A.C. R9-19-302.

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.

41-1079. Information required to be provided

A. An agency that issues licenses shall provide the following information to an applicant at the time the applicant obtains an application for a license:

1. A list of all of the steps the applicant is required to take in order to obtain the license.

2. The applicable licensing time frames.

3. The name and telephone number of an agency contact person who can answer questions or provide assistance throughout the application process.

B. This section does not apply to the Arizona peace officer standards and training board established by section 41-1821.

32-1307. Powers and duties of board

A. The board shall:

1. Administer and enforce this chapter and the rules adopted pursuant to this chapter.

2. Adopt a seal.

3. Maintain a record of the name and the mailing or employer's business address of each licensee and registrant.

4. Investigate alleged violations of this chapter and the rules adopted pursuant to this chapter.

5. Adopt rules in accordance with title 41, chapter 6. Rules adopted by the board shall include provisions relating to the following:

(a) The keeping and disposition of records by licensees and registrants.

(b) Standards of practice, professional conduct, competence and consumer disclosure relating to owning or operating a funeral establishment or crematory, funeral directing, embalming and cremation.

(c) The prohibition of deceptive, misleading or professionally negligent practices in advertising, offering or selling funeral goods or services by funeral establishments, crematories, licensees and registrants and agents of funeral establishments, crematories, licensees and registrants. The rules shall specifically prohibit misrepresentation of the legal requirements concerning the preparation and interment of dead human bodies.

(d) Standard price disclosure formats and price list requirements and definitions to facilitate price comparisons by members of the public.

(e) Guidelines to enable members of the public to determine the substantial equivalency of funeral goods available for sale to the public.

(f) Administrative and investigative procedures.

(g) The efficient administration of the board's affairs and the enforcement of the provisions of this chapter.

(h) The inspection of all funeral establishments and crematories at least once every five years.

(i) Any other matters the board deems necessary to carry out the provisions of this chapter.

B. The board may:

1. Subject to title 41, chapter 4, article 4, employ investigative, professional and clerical employees as it deems necessary to carry out this chapter. Compensation of these employees shall be determined pursuant to section 38-611.

2. Appoint citizen advisory committees to make recommendations to the board concerning enforcement and the administration of this chapter.

3. In connection with investigations or administrative hearings, issue subpoenas to compel the attendance of witnesses and the production of books, papers, contracts, agreements and other documents or records in any form, administer oaths and take testimony and evidence concerning all matters within its jurisdiction. The board may pay the fees and expenses of witnesses who appear in any proceeding before the board. If a person refuses to obey a subpoena issued by the board, the board may invoke the aid of any court in this state to require the attendance and testimony of witnesses and the production of documentary evidence.

4. Contract with other state and federal agencies as it deems necessary to carry out this chapter.

5. Charge reasonable fees for the distribution of materials that the board prints or has printed at its expense and for the costs of mailing these materials.

6. Charge the reasonable costs of a fingerprint background check to an applicant for licensure or registration.

32-1309. Fees

A. The board shall establish and collect the following application fees:

1. For a funeral director license, eighty-five dollars.

2. For an embalmer license, eighty-five dollars.

3. For an embalmer's assistant registration, eighty-five dollars.

4. For an intern license, eighty-five dollars.

5. For a funeral director or embalmer license for a person who does not reside in this state, eighty-five dollars.

6. For a prearranged funeral salesperson registration, eighty-five dollars.

7. For a funeral establishment license:

(a) For a new establishment, new owner or new location, five hundred dollars.

(b) For a change of name, one hundred seventy-five dollars.

8. For a prearranged funeral sales establishment endorsement, one hundred eighty-five dollars.

9. For a crematory license:

(a) For a new crematory, new owner or new location, one hundred dollars per retort.

(b) For a change of name, one hundred seventy-five dollars.

10. For a cremationist license, eighty-five dollars.

B. The board shall establish and collect the following examination fees:

1. For the funeral director state laws and rules examination, eighty dollars.

2. For the embalmer state laws and rules examination, eighty dollars.

3. For the prearranged funeral salesperson state laws and rules examination, eighty dollars.

4. For the funeral service science section of the state equivalent examination, one hundred fifty dollars.

5. For the funeral service arts section of the state equivalent examination, one hundred fifty dollars.

C. The board shall establish and collect the following license and registration issuance fees:

1. For a funeral director license, eighty-five dollars.

2. For an embalmer license, eighty-five dollars.

3. For an embalmer's assistant registration, eighty-five dollars.

4. For an intern license, eighty-five dollars.

5. For a prearranged funeral salesperson registration, eighty-five dollars.

6. For a cremationist license, eighty-five dollars.

D. The board shall establish and collect the following renewal fees:

1. For a funeral director license, eighty-five dollars.

2. For an embalmer license, eighty-five dollars.

3. For an embalmer's assistant registration, eighty-five dollars.

4. For an intern license, eighty-five dollars.

5. For an assistant funeral director registration, eighty-five dollars.

6. For a prearranged funeral salesperson registration, eighty-five dollars.

7. For an establishment license, four dollars for each disposition performed by the establishment during the immediately preceding calendar year. For the purposes of this paragraph, a funeral establishment performs a disposition each time the establishment files a death certificate pursuant to section 36-325.

8. For a prearranged funeral sales establishment endorsement, one hundred eighty-five dollars.

9. For a crematory license, two hundred dollars per retort.

10. For a cremationist license, eighty-five dollars.

E. The board shall establish and collect the following fees:

1. For a duplicate license or registration, twenty-five dollars.

2. For a reexamination:

(a) For a state laws and rules examination, fifty dollars.

(b) For the funeral service science section or the funeral service arts section of the state equivalent examination, sixty-five dollars.

3. For late renewal of a licensee or registration, thirty-five dollars.

4. For late renewal of an establishment license or endorsement, sixty dollars.

5. For inactive licensure or registration, twenty-five dollars.

6. For reinstatement of an inactive license, fifty dollars.

7. For reinstatement of an inactive registration, one hundred thirty dollars.

8. For an interim funeral establishment permit, twenty-five dollars.

9. For filing an annual trust report, a fee of not more than two hundred dollars.

10. For filing a late or incomplete annual trust report, a penalty of not more than two hundred dollars.

F. The board may establish and collect a fee for intern trainees in an amount to be determined by the board.

32-1391.16. Annual trust report

A. On or before May 1, each funeral establishment holding a prearranged funeral sales endorsement shall file an annual report with the board concerning its prearranged funeral sales and trust account activities during the preceding calendar year.

B. The funeral establishment shall pay the annual report fee prescribed in section 32-1309 when the annual report is filed.

C. The annual report shall contain the following information sworn to by the owner or owners of the funeral establishment:

1. The names and addresses of persons who were sold prearranged funerals funded by trust by the funeral establishment during the preceding calendar year, the names of the persons who are to be the beneficiaries of the prearranged funerals and the name of the registered salesperson selling each prearranged funeral.

2. The total contract amount for each purchaser listed in paragraph 1, the total monies previously paid on each contract and the monies paid by and refunded to the purchaser on each contract during the preceding calendar year.

3. The total trust funds contained in the funeral establishment's prearranged funeral trust accounts as of the end of the preceding calendar year and the total funds received in the trust accounts during that year.

4. The total monies, if any, received from purchasers but not deposited in the trust accounts as of the end of the preceding calendar year, excluding initial service fees received by the funeral establishment.

5. The names, registration numbers and addresses of all salespersons employed or otherwise engaged by the funeral establishment during the preceding calendar year and the names and registration numbers of all salespersons terminated during that year.

6. The names and addresses of the financial institutions where the trust funds are on deposit and the account number of each account.

7. A statement of the owner of the funeral establishment that the establishment has complied with this article and rules adopted pursuant to this article.

8. Other information required by the board.

D. Each funeral establishment that does not offer or sell prearranged funerals funded by trust or hold a prearranged funeral sales endorsement shall file with the board the annual report described in subsection C of this section concerning all prearranged funeral trust accounts established before January 1, 1985 and in existence during the preceding calendar year on or before May 1. For the purposes of this subsection, "prearranged funeral trust account" includes all prearranged funeral trust accounts or funds established pursuant to laws in existence before January 1, 1985.

E. The board shall provide the department of financial institutions with a copy of each annual report filed pursuant to this section.

39-121.03. Request for copies, printouts or photographs; statement of purpose; commercial purpose as abuse of public record; determination by governor; civil penalty; definition

A. When a person requests copies, printouts or photographs of public records for a commercial purpose, the person shall provide a statement setting forth the commercial purpose for which the copies, printouts or photographs will be used. Upon being furnished the statement the custodian of such records may furnish reproductions, the charge for which shall include the following:

1. A portion of the cost to the public body for obtaining the original or copies of the documents, printouts or photographs.

2. A reasonable fee for the cost of time, materials, equipment and personnel in producing such reproduction.

3. The value of the reproduction on the commercial market as best determined by the public body.

B. If the custodian of a public record determines that the commercial purpose stated in the statement is a misuse of public records or is an abuse of the right to receive public records, the custodian may apply to the governor requesting that the governor by executive order prohibit the furnishing of copies, printouts or photographs for such commercial purpose. The governor, upon application from a custodian of public records, shall determine whether the commercial purpose is a misuse or an abuse of the public record. If the governor determines that the public record shall not be provided for such commercial purpose the governor shall issue an executive order prohibiting the providing of such public records for such commercial purpose. If no order is issued within thirty days of the date of application, the custodian of public records shall provide such copies, printouts or photographs upon being paid the fee determined pursuant to subsection A.

C. A person who obtains a public record for a commercial purpose without indicating the commercial purpose or who obtains a public record for a noncommercial purpose and uses or knowingly allows the use of such public record for a commercial purpose or who obtains a public record for a commercial purpose and uses or knowingly allows the use of such public record for a different commercial purpose or who obtains a public record from anyone other than the custodian of such records and uses it for a commercial purpose shall in addition to other penalties be liable to the state or the political subdivision from which the public record was obtained for damages in the amount of three times the amount which would have been charged for the public record had the commercial purpose been stated plus costs and reasonable attorney fees or shall be liable to the state or the political subdivision for the amount of three times the actual damages if it can be shown that the public record would not have been provided had the commercial purpose of actual use been stated at the time of obtaining the records.

D. For the purposes of this section, "commercial purpose" means the use of a public record for the purpose of sale or resale or for the purpose of producing a document containing all or part of the copy, printout or photograph for sale or the obtaining of names and addresses from public records for the purpose of solicitation or the sale of names and addresses to another for the purpose of solicitation or for any purpose in which the purchaser can reasonably anticipate the receipt of monetary gain from the direct or indirect use of the public record. Commercial purpose does not mean the use of a public record as evidence or as research for evidence in an action in any judicial or quasi-judicial body.

32-1383. Application; qualifications for licensure

C. The board or the board's designee shall inspect the premises of a funeral establishment and investigate the character and other qualifications of all applicants for licensure.

32-1367. Investigations; initial review; disciplinary proceedings; civil penalty; letters of concern; rehearings

A. The board shall conduct an investigation when it receives a written complaint that appears to show the existence of any grounds for disciplinary action under this chapter or rules adopted pursuant to this chapter.

B. The board on its own initiative may investigate any information that appears to show the existence of any grounds for disciplinary action under this chapter or rules adopted pursuant to this chapter.

C. If it appears after an initial investigation that grounds for disciplinary action may exist, the board may either request an informal interview with the licensee or registrant or may issue a notice of a formal hearing. If the initial investigation indicates that suspension other than a temporary suspension imposed pursuant to subsection D of this section or revocation of a license, registration or endorsement may be warranted, the board shall schedule a formal hearing pursuant to title 41, chapter 6, article 10.

D. After completing an informal interview, the board may take any or all of the following disciplinary actions:

1. Issue a letter of censure or reprimand.

2. Impose probationary terms as the board deems necessary to protect the public health, safety and welfare and to rehabilitate or educate the licensee or registrant. Probationary terms imposed pursuant to this paragraph may include temporary suspension of a license, registration or endorsement for a period of not more than thirty days, restriction of the licensee's or registrant's right to practice pursuant to this chapter and a requirement that restitution be made to any funeral service consumer or other person who was injured by a violation of this chapter or rules adopted pursuant to this chapter. A licensee's or registrant's failure to comply with any probationary terms imposed pursuant to this paragraph is cause for the board to consider the entire case against the licensee or registrant and any other alleged violations of this chapter at a formal hearing.

3. Impose a civil penalty of not more than one thousand dollars for each violation.

E. After completing a formal hearing, the board may take any or all of the following disciplinary actions:

1. Issue a letter of censure or reprimand.

2. Impose probationary terms as the board deems necessary to protect the public health, safety and welfare and to rehabilitate or educate the licensee or registrant. Probationary terms imposed pursuant to this paragraph may include a requirement that restitution be made to any funeral service customer or other person who was injured by a violation of this chapter or rules adopted pursuant to this chapter.

3. Impose a civil penalty not to exceed three thousand dollars per violation.

4. Suspend a license, registration or endorsement for not more than ninety days for a first offense and not more than one hundred eighty days for a second offense.

5. Revoke a license, registration or endorsement.

F. If, as a result of information ascertained during an investigation, informal interview or formal hearing, the board determines that an alleged violation of this chapter or rules adopted pursuant to this chapter is not sufficiently serious to warrant disciplinary action, the board may issue a letter of concern to the licensee or registrant. The letter of concern shall advise the licensee or registrant of the possible violation.

G. If a licensee or registrant refuses to participate in an informal interview or a formal hearing, the board may take any or all of the disciplinary actions listed in subsections D and E of this section.

H. Before the board may revoke or suspend a license, registration or endorsement, other than a temporary suspension imposed pursuant to subsection D of this section, the board shall serve notice and conduct a hearing in the manner prescribed in title 41, chapter 6, article 10.

I. After service of notice of a decision of the board suspending or revoking a license, registration or endorsement or imposing a disciplinary action on a licensee or registrant pursuant to subsection D or E of this section, a licensee may apply for a rehearing or review by filing a motion pursuant to title 41, chapter 6, article 10. The filing of a motion for a rehearing or review suspends the operation of the board's decision to impose a disciplinary action and allows the licensee or registrant to continue to practice pending a denial or granting of the petition and pending the decision of the board on rehearing if a rehearing is granted. The board also may grant a rehearing on its own motion if it finds newly discovered evidence or for any other reason that justifies a reconsideration of a matter.

J. Except as provided in section 41-1092.08, subsection H, any party who is aggrieved by a final order or decision of the board may appeal to the superior court pursuant to title 12, chapter 7, article 6.

K. All notices that the board is required to provide to any person under this chapter are fully effective by personal service or by mailing a copy of the notice by certified mail addressed to the person's last known address of record in the board's files. Notice by mail is complete at the time of its deposit in the mail.

L. In addition to the requirements of subsection K of this section, a funeral establishment or crematory shall file a notice with the board identifying the person on whom the board's notices relating to the funeral establishment or crematory shall be served.

32-1335. Out-of-state licensees

A. A person who holds an embalmer or funeral director license in good standing that was issued by the funeral services licensing authority of another jurisdiction and who desires an embalmer or funeral director license in this state shall meet the requirements and qualifications for licensure prescribed in this article.

B. Notwithstanding subsection A of this section, the board may waive the testing requirements of section 32-1322, subsection B, paragraph 1 and subsection C, paragraph 1 if the person has actively practiced embalming or funeral directing in another jurisdiction within the three years immediately preceding the date that the person applies for a license in this state and the board determines that the requirements for licensure in the other jurisdiction are equal to or more stringent than the requirements prescribed in this article.

C. A person who holds an intern license or its equivalent in good standing that was issued by the funeral services licensing authority of another jurisdiction and who desires an intern, embalmer or funeral director license in this state shall meet the requirements and qualifications for licensure prescribed in this article.

32-1384. Multiple funeral director license

A. An applicant for a license as a funeral director who is proposing to manage and supervise the operations of more than one funeral establishment shall apply on a form prescribed by the board and the application shall be accompanied by the prescribed fee for the additional establishment.

B. The board shall review the application for a multiple funeral director license, and, if it is reasonable to believe that the funeral establishments can be adequately supervised and managed by the applicant, the board shall issue the license.

C. A funeral director who holds a multiple funeral director license shall display the license at the establishment to which the license is issued. Unless otherwise stated in this article, a multiple funeral director license is renewable at the same time as the establishment license. A multiple funeral director license is not transferable without prior approval of the board.

32-1395. Application; qualifications for licensure

A. An applicant for a crematory license shall submit a completed application on a form prescribed by the board. If the applicant is a business entity, the entity shall direct a natural person who is an owner of the entity to submit its application. The application shall be subscribed under oath, shall contain the name of the responsible cremationist and shall be accompanied by the applicable fee pursuant to section 32-1309 and any additional information that the board deems necessary. A business entity that applies for a license pursuant to this article shall submit to the board with its application for licensure a copy of its partnership agreement, its articles of incorporation or organization or any other organizational documents required to be filed with the corporation commission.

B. A person who applies for a license pursuant to this article, or if the applicant is a business entity, the owners, partners, officers, directors and trust beneficiaries of the entity, shall:

1. Be of good moral character.

2. Submit a completed fingerprint card, criminal history background information and a fingerprint background check fee to the board.

C. The board or the board's designee shall inspect the premises of a crematory and investigate the character and other qualifications of all applicants for licensure pursuant to this article to determine whether the crematory and the applicants are in compliance with the requirements of this article and rules adopted by the board.

D. If the board finds that the applicant meets the criteria for licensure under this article and rules adopted by the board, the board shall issue a crematory license.

32-1330. Annual intern or embalmer's assistant report

A person who is registered as an embalmer's assistant or licensed as an intern shall submit to the board, at the time that the person applies to renew the person's registration or license, an annual report on a form prescribed by the board. The report shall be subscribed under oath by the embalmer's assistant or intern and the supervising embalmer and shall contain information documenting each embalming that the embalmer's assistant or intern assisted in or performed.

32-1327. State equivalent examination; national board examination

A. A person who desires to take either the funeral service science section or the funeral service arts section of the state equivalent examination shall submit to the board:

1. An examination application on a form prescribed by the board.

2. Documentation of a high school diploma or its equivalent.

3. Documentation of the person's graduation from an accredited or provisionally accredited school of mortuary science.

4. All applicable fees pursuant to section 32-1309.

B. The board shall schedule and administer the state equivalent examination at least once each year. The state equivalent examination shall consist of a two part written examination with at least seventy questions.

C. A person who takes both sections of the state equivalent examination or the national board examination must achieve a passing score.

D. The board shall accept a passing score that an applicant achieved on a state equivalent examination or a national board examination taken within the five years immediately preceding the date that the applicant filed a license application with the board.

32-1394.01. Application; qualifications for cremationist licensure; licensure requirement for responsible cremationists

A. An applicant for a cremationist license shall submit a completed application on a form prescribed by the board. The application shall be subscribed under oath and shall be accompanied by the applicable fee pursuant to section 32-1309 and any additional information that the board deems necessary.

B. An applicant for a cremationist license shall be of good moral character and shall submit a completed fingerprint card and the prescribed fingerprint records check fee to the board to enable the board or the department of public safety to conduct a criminal records check.

C. An applicant for a cremationist license shall meet the educational requirements as prescribed by the board in rule.

D. If the board finds that the applicant meets the criteria for cremationist licensure under this section and under rules adopted by the board, the board shall issue a cremationist license.

E. Notwithstanding any other law, a responsible cremationist is required to be licensed pursuant to this article. Any other cremationist may be licensed pursuant to this article but, if not licensed, may engage only in cremation activity that is allowed without a license.

32-1373. Statement of funeral goods and services

A. A licensee or registrant shall not enter into a contract to furnish funeral goods or services in connection with the burial or other disposition of a dead human body until the licensee or registrant has first delivered to the potential purchaser a written or printed statement of funeral goods and services that contains the following information, if this information is available at the time the contract is executed:

1. The total charge for the services of the licensee or registrant and the use of the funeral establishment, including the preparation of the body and other professional services, and the charge for the use of automotive and other necessary equipment.

2. An itemization of charges for the casket or alternative container and any outer burial container.

3. An itemization of fees or charges and the total amount of cash advances made by the licensee or registrant for transportation, flowers, cemetery or crematory charges, newspaper notices, clergy honorarium, transcripts, telegrams, long-distance telephone calls, music and any other advances authorized by the purchaser.

4. The method of payment and any interest charges.

5. An itemization of any fees or charges not included in paragraphs 1 through 4.

6. The total amount of charges itemized and included pursuant to this subsection.

7. The location where the deceased will be held, embalmed or cremated if the location is not the funeral establishment's premises.

8. A statement containing the name, address and phone number of any corporation, limited liability company, partnership or limited partnership that holds an ownership interest of ten per cent or more in the funeral establishment or crematory.

B. The statement of funeral goods and services delivered to the potential purchaser shall also contain a conspicuous statement informing the potential purchaser that a casket or outer burial container may be purchased and used, at the option of the purchaser, in connection with the funeral services and final disposition of human remains, but that, except as provided pursuant to section 36-136, the purchase or use of caskets or outer burial containers is not required by law.

C. A licensee or registrant shall not bill or cause to be billed any item that is referred to as a cash advanced item unless the net amount paid for the item or items by the funeral establishment is the same as the amount billed by the funeral establishment.

D. If the charge for any of the items prescribed in this section is not known at the time the contract is entered into, the licensee or registrant shall advise the purchaser of the charge for the item within a reasonable period after the information becomes available.

E. A funeral director shall certify a statement of funeral goods and services with the funeral director's license number and signature before conducting final services or within five days after the purchaser signs the statement, whichever is earlier.

32-1375. Price lists; telephone information

A. A licensee or registrant shall provide accurate information about the retail prices of funeral goods or services readily available for sale at the establishment at which the licensee or registrant is employed to any person inquiring about these prices by telephone.

B. If a person requests a price list by telephone, the establishment shall mail a price list to the caller and may charge a reasonable postage and handling fee of not more than two dollars.

32-1338. Continuing education

A. A person who is licensed or registered pursuant to this article shall complete continuing education designed to educate the person regarding current skills and procedures and developments in the funeral industry. The board may prescribe in its rules the number of hours of continuing education required each year, not to exceed sixteen hours, and the subject matter that shall be covered.

B. The board shall waive the continuing education requirements for persons whose licenses have been placed on inactive status and for persons who are serving in the United States armed forces in time of war. The board may waive the continuing education requirement for good cause shown as prescribed in its rules.

32-1399. Crematories; standards of practice

The board shall adopt rules that establish standards equivalent to section 32-1307, subsection A, paragraph 5 for the regulation of crematories and cremation and that include the following:

1. A crematory shall develop, implement and maintain a written procedure for the identification of human remains that ensures that remains can be identified from the time that a crematory accepts the delivery of the remains until the cremated remains are released to the authorizing agent. The identification procedures shall require the crematory to comply with the requirements of this section. The crematory shall not open a container containing human remains, except under the personal supervision of a licensed funeral director, or embalmer, or a responsible cremationist licensed pursuant to this article and trained in crematory operations to manage the daily operation of the crematory. After taking custody of human remains, a crematory shall immediately verify the identification attached to the casket or cremation container and assign an identification number. The crematory shall not accept unidentified caskets or cremation containers. The identification shall include the name and address of the deceased, the name and relationship of the authorizing agent, the name of the person or entity engaging the crematory services, a valid cremation permit issued by a government agency and a metal cremation disk containing the identification number. The disk shall be placed with the deceased during cremation.

2. If a crematory is unable to cremate the human remains immediately after taking custody, the crematory shall store the remains in a holding facility that is secure from access by anyone other than employees of the crematory and public officials in the performance of their duty and that complies with applicable public health laws, preserves the dignity of the human remains and protects the health of employees of the crematory.

3. A crematory shall not accept a casket or cremation container from which there is evidence of leakage of body fluids from the human remains and shall not hold human remains for cremation unless they are contained in an individual, closed casket or rigid cremation container of combustible material that preserves the dignity of the human remains and that protects the health of employees of the crematory. Human remains that are not embalmed shall be held by the crematory in a refrigerated holding facility or in compliance with applicable public health laws.

4. All body prostheses, bridgework or similar items removed from the cremated remains shall be disposed of by the crematory unless an alternative disposition is agreed to in the authorization to cremate.

5. After cremation, the crematory as far as practicable shall remove visible parts of the residual of the cremation process from the retort, shall not combine the cremated or processed remains with other cremated or processed remains and shall attach the identification of the cremated or processed remains to the temporary container or urn into which the remains are placed.

6. The crematory shall place cremated or processed remains in a temporary container or urn. Extra space may be filled with clean packing material that will not combine with the cremated or processed remains. The lid or top shall be securely closed. Any cremated or processed remains that do not fit in the temporary container or urn shall be returned in a separate container or, with permission of the authorizing agent, disposed of by the crematory.

7. A crematory may dispose of cremated or processed remains in any legal manner directed by a document prepared pursuant to section 32-1365.01 or agreed to by the authorizing agent. If the authorizing agent agrees to take possession and does not take possession of the remains within thirty days after cremation or on an agreed date, the crematory shall send written notice to the last known address of the authorizing agent to take possession. Ninety days after the notification is sent or delivered, the crematory may dispose of the cremated or processed remains in any legal manner.

8. Unless the deceased has prepared a document pursuant to section 32-1365.01, the crematory shall obtain an authorization to cremate from the authorizing agent that shall contain a provision holding the crematory harmless for the disposition of unclaimed cremated or processed remains.

9. All employees of the crematory who handle dead human bodies shall use universal precautions and shall otherwise exercise reasonable care to minimize the risk of transmitting any communicable disease from a dead human body.

10. Unless the deceased has prepared a document pursuant to section 32-1365.01, employees of the crematory shall not remove a dead human body from the container in which it is delivered to the crematory without the express written consent of the authorizing agent. If, after accepting a dead human body for cremation, employees of a crematory discover that a mechanical or radioactive device is implanted in the body, an embalmer licensed pursuant to article 2 of this chapter shall remove the device from the body before cremation takes place.

11. A crematory shall keep an accurate record of all cremations performed, including dispositions of cremated and processed remains, for not fewer than five years after the cremation.

GAME AND FISH COMMISSION (F-17-0204)
Title 12, Chapter 4, Article 11, Aquatic Invasive Species

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

MEETING DATE: March 7, 2017 **AGENDA ITEM: E-5**

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

FROM: Marcus McGillivray, Legal Intern

DATE : February 21, 2017

SUBJECT: **GAME AND FISH COMMISSION (F-17-0204)**
Title 12, Chapter 4, Article 11, Aquatic Invasive Species

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

This five-year-review report from the Arizona Game and Fish Commission (Commission) covers two rules in A.A.C. Title 12, Chapter 4, Article 11 relating to aquatic invasive species. The purpose of this article is to set forth boating and water-craft procedures and requirements to protect Arizona from the spread of aquatic invasive species, which can cause millions of dollars in damage to electrical and water infrastructure. The rules require water-craft owners and users, who use their vehicles and equipment in affected waterbodies, to conduct mandatory decontamination protocols to prevent the transfer of these species. These rules were last amended in January 2012.

Proposed Action

The Commission plans to amend R12-4-1102 to require a person to remove all plugs and devices, except ones that are sealed or exist for maintenance purposes only, after leaving any affected waterbody. The Commission anticipates submitting the Notice of Final Rulemaking to the Council by December 2017.

Substantive or Procedural Concerns

None.

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

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

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

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

Yes. The Commission believes the rules are effective in achieving their objectives. The Commission notes that, in the field, it is difficult for law enforcement to determine if water-craft users are in compliance with R12-4-1102; but the amendments in the proposed course of action will make it easier for law enforcement in the field to determine compliance.

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

No. The Commission has not received any written criticisms regarding these rules in the last five years.

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

Yes. The Commission cites to both general and specific statutory authority.

- A.R.S. § 17-231(A)(1): requires the Commission to adopt rules and establish services it deems necessary to carry out their provisions and purposes.
- A.R.S. § 5-311(A)(5): authorizes the Commission to make regulations for the registration and operation of watercraft.
- A.R.S. § 17-255.01: authorizes the Commission to establish and maintain an aquatic invasive species program, including, but not limited to, establishing a list of waters or locations where aquatic invasive species exist and establishing inspections of watercraft and related equipment.

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

Yes. The rules are consistent with state and federal law. In determining consistency, the Commission used A.R.S. Title 5 and 17, and A.A.C. Title 12, Chapter 4.

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

Yes. Overall, the rules are being enforced. The Commission notes, however, an issue with determining compliance with R12-4-1102(B)(2). This rule requires the removal of any plugs that prevent water drainage from watercraft being removed from affected waterbodies. Some watercraft users will remove the plug, drain the water, and replace it. This creates difficultly for law enforcement in determining compliance. The Commission's proposed rulemaking will address this compliance issue.

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

Yes. The Commission believes the rules are generally clear, concise, and understandable. The Commission notes that there is some confusion as to what "pull the plug" means. In a survey conducted by the Commission in 2015, 85% of boaters said they pulled their plugs upon exiting the water, while only 64% were observed actually pulling the plugs. This led the Commission to infer that there is confusion as to what "pulling the plug" actually means.

8. Has the agency analyzed whether:

a. The rules are more stringent than corresponding federal law?

No. There is no applicable federal law.

b. There is statutory authority to exceed the requirements of federal law?

N/A.

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

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

The rules do not require issuance of a regulatory permit, license, or agency authorization.

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

N/A.

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

The rules were adopted subsequent to the prior five-year-review report.

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

The Commission plans to amend R12-4-1102 to require a person to remove all plugs, except those that are sealed and exist for solely for maintenance purposes, and any other barriers that prevent water drainage in watercraft and equipment that leaves any affected body of water. The Commission plans to submit the Notice of Final Rulemaking by December 2017.

Conclusion

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

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

MEETING DATE: March 7, 2017 **AGENDA ITEM: E-5**

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

FROM: GRRC Economic Team

DATE : February 21, 2017

SUBJECT: **GAME AND FISH COMMISSION (F-17-0204)**
Title 12, Chapter 4, Article 11, Aquatic Invasive Species

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

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

Economic, small business, and consumer impact statements (EIS) from the most recent rulemakings were available for the Article 11 rules contained in the five-year-review report.

The rules establish definitions and prohibitions on the movement of identified aquatic invasive species, inspection requirements, and decontamination protocols. The rules create a system by which aquatic vehicles must take necessary precautions to prevent the spread of aquatic invasive species.

The Department's Aquatic Invasive Species Program has performed numerous outreach campaigns and conducted surveys on the boat ramps at various quagga infested waterbodies. Surveys indicate a gap between knowledge of required actions and the physical action of pulling a drainage plug when exiting infested waterbodies in Arizona. Statewide, in 2015, 85% of boaters surveyed verbally by Department personnel said they pull their boat's plug upon exit; however only 67% were physically observed pulling the boat's drain plug upon exiting.

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

The Department has determined that the rules in Article 11 are mostly effective and impose the least burden and costs to the regulated community. The cost to comply with these rules is minimal and necessary to protect public health and safety.

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

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

4. Conclusion

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

THE STATE OF ARIZONA
GAME AND FISH DEPARTMENT
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DIRECTOR
LARRY D. VOYLES
DEPUTY DIRECTOR
TY E. GRAY

December 2, 2016

Nicole Ong, Chairman
Governor's Regulatory Review Council
100 N 15th Ave, suite 402
Phoenix, AZ 85007

RE: Five-year Review Report for 12 A.A.C. 4, Article 11, Aquatic Invasive Species

Dear Ms Ong:

On December 2, 2016, the Arizona Game and Fish Commission adopted the enclosed five-year-review report for 12 A.A.C. 4, Article 11, Aquatic Invasive Species, for submission to the Council. The report is prepared in accordance with A.R.S. § 41-1056 and the rules and guidelines adopted by the Council. The established due date for the report is January 31, 2017.

The Commission believes the report complies with the Council's requirements as stated under RI -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:

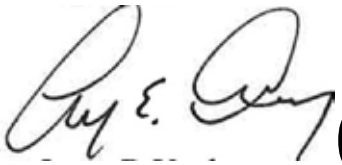
1. The Department publishes an annual directory summarizing the subject matter of all currently applicable rules and substantive policy statements;
2. The Department maintains a copy of the directory and all substantive policy statements at the Arizona Game and Fish Department Headquarters, 5000 W. Carefree 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,



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Larry D. Voyles
Director

THE STATE OF ARIZONA
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TY E. GRAY

December 2, 2016

Nicole Ong, Chairman
Governor's Regulatory Review Council
100 N 15th Ave, Suite 402
Phoenix, AZ 85007

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If you require additional information concerning the report or its contents, please contact Celeste Cook at (623) 236-7390.

Please let us know if you require anything further.

Sincerely,

Larry D.Voyles
Director

Arizona Game and Fish Commission
2017 Five-Year-Review Report

TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION
ARTICLE 11. AQUATIC INVASIVE SPECIES

Prepared for the
Governor's Regulatory Review Council

ARIZONA GAME AND FISH COMMISSION
12 A.A.C. 4, ARTICLE 11. AQUATIC INVASIVE SPECIES
2016 FIVE-YEAR REVIEW REPORT

TABLE OF CONTENTS

INTRODUCTION	FIVE-YEAR REVIEW REPORT: ARTICLE 11. AQUATIC INVASIVE SPECIES	PAGE

RULE NUMBER	TITLE	PAGE
R12-4-1101.	Definitions	4
R12-4-1102.	Aquatic Invasive Species; Prohibitions; Inspection, Decontamination Protocols	6

REPORT: ARTICLE 11. AQUATIC INVASIVE SPECIES

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 11, Aquatic Invasive Species, are scheduled to be reviewed by January 2017.

The Arizona Game and Fish Department (Department) tasked a team of employees to review the rules contained within Article 11. 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. The team took a customer-focused approach, considering each comment from a resource perspective and determining whether the request would cause undue harm to the state's wildlife or negatively affect the Department's wildlife objectives. The review team then determined whether the request was consistent with the Department's overall mission, if it could be effectively implemented given agency resources, and if it was acceptable to the public.

The Department anticipates submitting the Notice of Final Rulemaking for actions proposed in this report to the Council by December 2017 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.

R12-4-1101. 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. §§ 5-311(A)(5), 17-255.01, 17-255.02, and 17-255.03

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 11. The rule was adopted to facilitate consistent interpretation of the Commission's Article 11 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. In addition, the Department has not received any written comments from the public in regard 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 5, Title 17, and A.A.C. Title 12, Chapter 4.

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

Enforcement of the rule manifests itself through proper administration. Enforcement is directed to a rule or an order in which a definition is used. It is not the term that is cited, but the violation. To the extent that the Department is aware, there have been no problems with enforcement.

6. Clarity, conciseness, and understandability of the rule.

The rule is clear, concise, and understandable.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that

the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.

No written criticisms were received.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule appears to have resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on January 10, 2012. The rule was adopted to foster consistent interpretation of Commission rules. The Commission anticipated the regulated community and the Department would benefit from a rule that defines terms referenced throughout the Commission's Article 11 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.**

Not applicable; R12-4-1101 was adopted on January 10, 2012.

11. **A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The public benefits from a rule that defines terms referenced throughout the Commission's Article 11 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 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

R12-4-1102. AQUATIC INVASIVE SPECIES; PROHIBITIONS; INSPECTION, DECONTAMINATION PROTOCOLS

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. §§ 5-311(A)(5), 17-255.01, 17-255.02, and 17-255.03

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 eradicate, abate, or prevent the transport and spread of aquatic invasive species in and through Arizona. The rule was adopted to enable the Department to establish prohibitions on the movement of identified aquatic invasive species, inspection requirements, and decontamination protocols.

Aquatic invasive species are a threat to Arizona's water and electrical infrastructure and the public's angling and boating recreation. It is critical for anyone who owns or uses watercraft, vehicle, conveyance or equipment on Arizona's waterbodies, to understand the essential nature of the aquatic invasive species containment effort by the Department. The spread of quagga mussels and other aquatic invasive species will result in far-reaching impacts that can touch virtually every resident of Arizona. For example, quagga mussels have a negative ecological and environmental impact to Arizona waterways and water delivery systems. These mussels accumulate on underwater surfaces and impair water delivery structures and systems. They clog water intake and delivery pipes and infest hydropower infrastructure, dams, and water control structures. They adhere to watercraft bottoms, engines, docks, and pilings and can ultimately destroy beaches and alter the functioning of native aquatic ecosystems.

The unrestricted spread of quagga mussels has far-reaching financial and ecological impacts that can affect virtually every Arizona resident. These species cost millions of dollars annually to control. Congressional researchers estimated that from 1993 to 1999, zebra mussels alone cost the power industry $3.1 billion and industries, businesses, and communities more than $5 billion. California spends well over $1.5 million annually to hyperchlorinate water and remove dead mussels from water delivery systems.

The principle pathway for quagga mussel transfer between watersheds is the overland movement of boats and equipment with attached adult mussels and the movement of water itself containing juvenile mussels in undrained bilge areas, live wells, internal storage spaces, or conveyances designed to carry water. The initial movement of these mussels to the Colorado River was in all likelihood as a hitchhiker on a boat or equipment item that was moved more than 1,000 miles overland. Aquatic invasive species are currently established in a number of waterbodies: Lake Pleasant, Lake Havasu, Lake Mead, Lake Mohave, Martinez Lake, Mittry Lake, Topock Marsh, and Lake Powell; water delivery systems: parts of the Central Arizona Project aqueduct and Salt River Project Canal System; and other states and countries: Alabama, Arkansas, California, Colorado, Connecticut, Iowa, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Minnesota, Missouri, Mississippi, Nebraska, Nevada, New York, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia, Vermont, Wisconsin, West Virginia; and the Provinces of Ontario and Quebec.

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. The level of compliance is difficult to determine because some persons remove the plug or barrier and then replace it before leaving the waterbody, making it difficult for law enforcement and Department personnel to determine whether a person is in compliance with the rule before leaving a waterbody where aquatic invasive species are established or suspected. To enable an officer to determine in the field whether a person has drained their boat, the Department proposes to amend the rule to require a person to remove all plugs and devices, except those that are sealed and exist for maintenance purposes only, and any other barriers that prevent water drainage while the watercraft, vehicle, conveyance, or equipment is in transport after leaving any affected waterbody.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4.

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

Overall, the rule is being enforced, but there are issues with compliance due to the current boating culture, (similar to requiring the use of seat belts in automobiles) which will require a paradigm shift in common boating practices. Some persons do not believe they need to remove plugs and devices that prevent water from draining; others remove the plug or barrier, but then replace it before leaving the waterbody, which makes it difficult for law enforcement to determine whether a person is in compliance with the rule when they are driving away from a waterbody where aquatic invasive species are established or suspected with the plug and/or device in place. To enable an officer to immediately determine whether a person has complied with the rule, the Department proposes to amend the rule to require a person to remove all plugs and devices, except those that are sealed and exist for maintenance purposes only, and any other barriers that prevent water drainage while a watercraft, vehicle, conveyance, or equipment is in transport after leaving any affected waterbody.

6. **Clarity, conciseness, and understandability of the rule.**

In general, the rule is clear, concise, and understandable; however, the Department is aware of some confusion relating to what "pull the plug" means. The public is not certain when or where this action should occur in order to perform effective clean, drain, and dry protocols.

Over the past four years, in addition to media campaigns (newsletters, billboards, radio and televisions advertisements), the Department's Aquatic Invasive Species Program has performed numerous outreach campaigns and conducted surveys on the boat ramps at various quagga infested waterbodies (e.g., Havasu, Pleasant, and Powell). Surveys indicate a gap between knowledge of required actions and the physical action of pulling a drainage plug when exiting infested waterbodies in Arizona. Statewide, in 2013, 74% of the boaters surveyed verbally by Department personnel said they pull their boat's plug upon exit; however, only 61% were physically observed pulling the boat's drain plug upon exiting. Statewide, in 2015, 85% of boaters surveyed verbally by Department personnel said they pull their boat's plug upon exit; however only 67% were physically observed pulling the boat's drain plug upon exiting.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

No written criticisms were received.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

Overall, the rule appears to have resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on January 10, 2012. The Commission anticipated the rulemaking would benefit private consumers and public and private entities by addressing a current threat to the state's economy, ecology, and public health and safety; would have little or no financial effect on most watercraft owners and operators, but there may be increased costs to decontaminate a watercraft moored longterm in an infested waterbody ($1,500 to $2,000); and would result in increased costs to the Department and local law enforcement agencies due to the time needed to develop and provide training, conduct inspections, and the enforcement of decontamination protocols. However, the rule has resulted in the establishment of a number of small businesses that provide decontamination services to the public, which has had a positive impact on local economies.

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; R12-4-1102 was adopted on January 10, 2012.

11. **A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes the requirements necessary to eradicate, abate, or prevent the transport and spread of aquatic invasive species in and through Arizona. The Department anticipates the proposed amendments will have an insignificant impact on persons regulated by the rule. However, establishing conditions for the overland movement of watercraft, vehicles, conveyances, and equipment is crucial in helping to prevent the accidental spread of aquatic invasive species and the far-reaching financial and ecological impacts that can affect virtually every Arizona resident and water storage, treatment, and delivery provider. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

12. **A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

13. **For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. **Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to amend R12-4-1102 to require a person to remove all plugs and devices, except those that are sealed and exist for maintenance purposes only, and any other barriers that prevent water drainage while the watercraft, vehicle, conveyance, or equipment is in transport after leaving any affected waterbody.

Subject to the evaluation of the economic, small business, and consumer impact of any of the proposed amendments, the Department anticipates submitting the Notice of Final Rulemaking to the Council by December 2017.

ARTICLE 11. AQUATIC INVASIVE SPECIES

R12-4-1101. Definitions

In addition to the definitions provided under A.R.S. §§ 5-301 and 17-255, the following definitions apply to this Article, unless otherwise specified: "Aquatic invasive species" means those species listed in Director's Order 1.

"Certified agent" means a person who meets Department standards to conduct inspections authorized under A.R.S. § 17-255.01(C)(1).

"Conveyance" means a device designed to carry or transport water. Conveyance includes, but is not limited to, dip buckets, water hauling tanks, and water bladders.

"Equipment" means an item used either in or on water; or to carry water. Equipment includes, but is not limited to, trailers used to launch or retrieve watercraft, rafts, inner tubes, kick boards, anchors and anchor lines, docks, dock cables and floats, buoys, beacons, wading boots, fishing tackle, bait buckets, skin diving and scuba diving equipment, submersibles, pumps, sea planes, and heavy construction equipment used in aquatic environments.

"Operator" means a person who operates or is in actual physical control of a watercraft, vehicle, conveyance or equipment.

"Owner" means a person who claims lawful possession of a watercraft, vehicle, conveyance, or equipment.

"Person" has the same meaning as defined under A.R.S. § 1-215.

"Release" means to place, plant, or cause to be placed or planted in waters.

"Transporter" means a person responsible for the overland movement of a watercraft, vehicle, conveyance, or equipment.

"Waters" means surface water of all sources, whether perennial or intermittent, in streams, canyons, ravines, drainage systems, canals, springs, lakes, marshes, reservoirs, ponds, and other bodies or accumulations of natural, artificial, public or private waters situated wholly or partly in or bordering this state.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 196, effective January 10, 2012 (Supp. 12-1).

R12-4-1102. Aquatic Invasive Species; Prohibitions; Inspection, Decontamination Protocols A.

A person shall not, unless authorized under Article 4:

1. Possess, import, ship, or transport into or within this state an aquatic invasive species, unless authorized by the Director.
2. Sell, purchase, barter, or exchange in this state an aquatic invasive species.
3. Release an aquatic invasive species into waters or into any water treatment facility, water supply or water transportation facility, device or mechanism in this state.

B. Upon removing a watercraft, vehicle, conveyance, or equipment from any waters listed in Director's Order 2 and before leaving that location, a person shall:

1. Remove all clinging materials such as plants, animals, and mud.
2. Remove any plug or other barrier that prevents water drainage or, where none exists, take reasonable measures to drain or dry all compartments or spaces that hold water. Reasonable measures include, but are not limited to, emptying bilges, application of absorbents, or ventilation.

C. Before transporting a watercraft, vehicle, conveyance, or equipment to any waters located within or bordering this state from waters or locations where aquatic invasive species are suspected or known to be present, as listed in Director's Order 2, a person shall comply with the mandatory conditions and protocols identified in Director's Order 3 for decontamination of watercraft, vehicles, conveyances, and equipment.

D. Department employees, certified agents, and Arizona peace officers authorized under A.R.S. § 17-104 may inspect a watercraft, vehicle, conveyance, or equipment for the purposes of determining compliance with A.R.S. Title 17, Chapter 2, Article 3.1 and this Section.

ARTICLE 11. AQUATIC INVASIVE SPECIES

E. If the presence of an aquatic invasive species is documented or suspected on or in a watercraft, vehicle, conveyance, or equipment, a Department employee or any Arizona peace officer may order the person to decontaminate or cause to be decontaminated such watercraft, vehicles, conveyances, and equipment using the mandatory protocols described in Director's Order 3.

F. The following Director's Orders are available at any Department office and online at azgfd.gov:

1. Director's Order 1 – Listing of Aquatic Invasive Species for Arizona;
2. Director's Order 2 – Designation of Waters or Locations Where Listed Aquatic Invasive Species are Present; and
3. Director's Order 3 – Mandatory Conditions on the Movement of Watercraft, Vehicles, Conveyances, or Other Equipment from Listed Waters Where Aquatic Invasive Species are Present.

G. This Section does not apply to owners and operators exempt under A.R.S. § 17-255.04.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 196, effective January 10, 2012 (Supp. 12-1).

STATUTORY AUTHORITY FOR ARTICLE 11 RULEMAKING

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 which may be used in taking wildlife.
4. Be responsible for the enforcement of laws for the protection of wildlife.
5. Prescribe grades, qualifications and salary schedules for department employees.
6. Provide for the assembling and distribution of information to the public relating to wildlife and activities of the department.
7. Prescribe rules for the expenditure, by or under the control of the director, of all funds arising from appropriation, licenses, gifts or other sources.
8. Exercise such powers and duties necessary to carry out fully the provisions of this title and in general exercise powers and duties which relate to adopting and carrying out policies of the department and control of its financial affairs.
9. 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.
10. 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 ArizonaMexico 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 which, 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, 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.

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.

17-255. Definition of aquatic invasive species

In this article, unless the context otherwise requires, "aquatic invasive species":

1. Means any aquatic species that is not native to the ecosystem under consideration and whose introduction or presence in this state may cause economic or environmental harm or harm to human health.
2. Does not include:
   (a) Any nonindigenous species lawfully or historically introduced into this state for sport fishing recreation.
   (b) Any species introduced into this state by the department, by other governmental entities or by any person pursuant to this title.

17-255.01. Aquatic invasive species program; powers

A. The director may establish and maintain an aquatic invasive species program.

B. The director may issue orders:

1. Establishing a list of aquatic invasive species for this state.
2. Establishing a list of waters or locations where aquatic invasive species are present and take steps that are necessary to eradicate, abate or prevent the spread of aquatic invasive species within or from those bodies of water.
3. Establishing mandatory conditions as provided in subsection C of this section on the movement of watercraft, vehicles, conveyances or other equipment from waters or locations where aquatic invasive species are present to other waters.

C. If the presence of an aquatic invasive species is suspected or documented in this state, the director or an authorized employee or agent of the department may take one or more of the following actions to abate or eliminate the species:

1. Authorize and establish lawful inspections of watercraft, vehicles, conveyances and other equipment to locate the aquatic invasive species.
2. Order any person with an aquatic invasive species in or on the person's watercraft, vehicle, conveyance or other equipment to decontaminate the watercraft, vehicle, conveyance or equipment in a manner prescribed by rule. Notwithstanding paragraph 3 of this subsection, mandatory on-site decontamination shall not be required at a location where an on-site cleaning station charges a fee.
3. Require any person with a watercraft, vehicle, conveyance or other equipment in waters or locations where an aquatic invasive species is present to decontaminate the property before moving it to any other waters in this state or any other location in this state where aquatic invasive species could thrive.

D. An order issued under subsection B or C of 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.

17-255.02. Prohibitions

Except as authorized by the commission, a person shall not:

1. Possess, import, ship or transport into or within this state, or cause to be imported, shipped or transported into or within this state, an aquatic invasive species.
2. Notwithstanding section 17-255.04, subsection A, paragraph 4, release, place or plant, or cause to be released, placed or planted, an aquatic invasive species into waters in this state or into any water treatment facility, water supply or water transportation facility, device or mechanism in this state.
3. Notwithstanding section 17-255.04, subsection A, paragraph 4, place in any waters of this state any equipment, watercraft, vessel, vehicle or conveyance that has been in any water or location where aquatic invasive species are present within the preceding thirty days without first decontaminating the equipment, watercraft, vessel, vehicle or conveyance.
4. Sell, purchase, barter or exchange in this state an aquatic invasive species.

17-255.03. Violations; civil penalties; classification; cost recovery

A. Except as otherwise provided by this section, a person who violates this article is subject to a civil penalty of not more than five hundred dollars.

B. A person who knowingly violates section 17-255.02, paragraph 2 or 4 is guilty of a class 2 misdemeanor. In addition, the commission, or any officer charged with enforcing this article if directed by the commission, may bring a civil action in the name of this state to recover damages and costs against a person who violates section 17-255.02, paragraph 2 or 4. Damages and costs recovered pursuant to this subsection shall be deposited in the game and fish fund.

C. The court shall order a person found in violation of section 17-255.01, subsection C, paragraph 2 to pay to this state all costs not exceeding fifty dollars incurred by this state to decontaminate any watercraft, vehicle, conveyance or other equipment on which aquatic invasive species were present. Monies paid pursuant to this subsection shall be deposited in the game and fish fund.

D. This section applies regardless of whether the director establishes an aquatic invasive species program pursuant to section 17-255.01.

17-255.04. Applicability; no private right of action

A. This article does not apply to the owner or operator of:

1. Any system of canals, laterals or pipes, any related or ancillary facilities, fixed equipment and structures related to the delivery of water and any discharges from the system.
2. Any water treatment or distribution facility system, any related or ancillary facilities, fixed equipment and structures and any discharges from the system.
3. Any drainage, wastewater collection, treatment or disposal facility system, any related or ancillary facilities, fixed equipment and structures and any discharges from the system.
4. A public or private aquarium and education or research institution holding a permit pursuant to section 17-238 or 17-306.
5. Any stock ponds or livestock water facilities or distribution facilities, including fixed equipment and structures related to the delivery of water and any discharges from the system.

B. The director may consult with the entities listed in subsection A of this section to assist in the implementation of this article.

C. This article does not create any express or implied private right of action and may be enforced only by this state.

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 11. AQUATIC INVASIVE SPECIES

R12-4-406, R12-4-518, R12-4-1101, AND R12-4-1102

Economic, Small Business and Consumer Impact Statement

A. Economic, small business and consumer impact summary:

1. Identification of the proposed rule making.

"Aquatic invasive species" means any non-native species whose introduction causes or is likely to cause economic or environmental harm or harm to human health. Dreissena species (quagga and zebra mussels) pose a threat to public health and safety in Arizona because of their potential to contaminate state waterways. *Director's Order 1 - Aquatic Invasive Species Initial Listing of Aquatic Invasive Species for Arizona*, published in the Arizona Administrative Register March 12, 2010, lists both the quagga and zebra mussels as aquatic invasive species.

The unrestricted spread of quagga and zebra mussels has far-reaching financial and ecological impacts that can affect virtually every Arizona resident. These species cost millions of dollars annually to control. Congressional researchers estimated that from 1993 to 1999, zebra mussels alone cost the power industry $3.1 billion and industries, businesses, and communities more than $5 billion. The State of California spends well over $1.5 million annually to hyperchlorinate water and remove dead mussels from water delivery systems.

Quagga and zebra mussels reproduce rapidly, resulting in large populations in affected water bodies. Quagga populations represent a serious problem for water delivery systems and industrial facilities. These mussels accumulate on underwater surfaces and impair water delivery structures and systems. They clog water intake and delivery pipes and infest hydropower infrastructure, dams, and water control structures. They adhere to watercraft bottoms, engines, docks, and pilings and can ultimately destroy beaches and alter the functioning of native aquatic ecosystems.

A principal pathway for the transfer of quagga and zebra mussels between water bodies is the overland movement of watercraft. Adult mussels attach to watercraft and juvenile mussels are present in water contained in un-drained bilge areas, live wells, internal storage spaces, or conveyances. The establishment of mandatory conditions for overland movement of watercraft in this state is essential in preventing the spread of these mussels to unaffected water bodies, and the financial, economic, and ecological costs that result. Bio-fouling caused by quagga and

zebra mussels is both chronic and acute. Chronic fouling occurs when juvenile mussels attach themselves to external and internal structures, grow in place, and reduce or even cut off water flow. Acute fouling occurs when large build ups of adult mussel shells, alive or dead, detach from upstream locations and are carried by water flow into water delivery systems. The large quantities of mussel shells quickly plug small diameter pipes, fixed strainers, filters, and heat exchangers, Quagga mussel populations are currently established in a number of waterbodies, including Lake Mead, Lake Mohave, Lake Havasu, and Lake Pleasant. While zebra mussels have not yet been detected in Arizona, they pose a serious potential threat as they are currently present in California and Colorado. The establishment of decontamination procedures in rule, as specified in A.R.S. § 17-
255.01(C)(2), is necessary to fully implement this new legislation and guide the public's expectations regarding actions that may be mandatory on their part.

Title 17, Chapter 2, Article 3.1 authorizes the Director to establish mandatory conditions and protocols for the movement of watercraft to and from waters and locations within the state, and conditions for the decontamination of watercraft, vehicles, conveyances, and equipment suspected of harboring aquatic invasive species. These conditions and protocols include: removing attached mussels and other aquatic invasive species from all watercraft surfaces, motors, impellers, and equipment by scraping the mussels from the surface or spraying the surface with high-pressure heated water; removing drain plugs; removing any clinging material such as plants, animals or mud; draining water from bilges, live-wells, engine and engine cooling systems; and allowing watercraft to dry completely before launching into another waterway.

Title 17, Chapter 2, Article 3.1 exempts owners and operators of any system of canals, laterals or pipes, any related ancillary facilities, fixed equipment and structures related to the delivery of water and any discharges from such system; any water treatment or distribution facility system, any related or ancillary facilities, fixed equipment and structures related to the delivery of water and any discharges from such system; any drainage, wastewater collection, treatment or disposal facility system, any related or ancillary facilities, fixed equipment and structures, and any discharges of the system; a public or private aquarium and education or research institution holding a permit pursuant to section 17-238 or 17-306; and any stock ponds or livestock water facilities or distribution facilities, including fixed equipment and structures related to the delivery of water and any discharges from the system.

The rulemaking will benefit all residents and businesses by proactively addressing the farreaching financial and ecological impacts that these bio-fouling mussels pose to public health and safety and Arizona's waterways.

The proposed rulemaking will provide definitions for terms related to aquatic invasive species and establish prohibitions on the movement of identified aquatic invasive species, inspection requirements, and decontamination protocols.

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

Arizona's mild winters allow year round boating and fishing. Boating and other waterrelated activities increase in the spring. In 2010, approximately 136,463 watercraft were registered in Arizona. During this same period, 164,688 (Class A and Super Conservation) Arizona fishing licenses were sold. While it is not possible to quantify the number of watercraft present on Arizona waterways at any given time, it is safe to say the opportunity for the unintentional transport of these species is very high.

(b) The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed.

If nothing is done to prevent the spread of these bio-foulers, the far-reaching financial and ecological impacts can affect virtually every resident of the state.

According to the New York Invasive Species Clearinghouse, zebra mussels have caused $1 billion to $1.5 billion worth of economic harm since their introduction into North America.

Once invasive mussels are established in a waterbody, they reproduce rapidly. There is no proven method to eradicate them.

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

The Commission believes that the spread of quagga and zebra mussels can be greatly reduced by implementing a rule that provides mandatory decontamination procedures in accordance with the conditions and protocols set forth in the Director's Orders.

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

The rulemaking will benefit private consumers and public and private entities by addressing a current threat to the state's economy, ecology, and public health and safety.

The rulemaking will have little or no financial effect on most watercraft owners and operators, but there may be increased costs to decontaminate a watercraft moored long-term in an infested waterbody.

The Commission anticipates increased costs associated with implementing the proposed rules due to increased training of enforcement officers.

The Commission has determined that the benefits of the rulemaking outweigh any costs.

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: Tom McMahon, Invasive Species Coordinator
Address: Arizona Game and Fish Department, WMHB
5000 W. Carefree Highway, Phoenix, AZ 85086-5000
Telephone: (623) 236-7271
Fax: (623) 236-7366
Email: tmcmahon@azgfd.gov

B. The economic, small business and consumer impact statement:

1. Identification of the proposed rule making.

See paragraph (A)(1) above.

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

Persons who benefit:

Private persons and consumers

Utility and water delivery companies

Businesses offering decontamination products or services Persons

who bear the costs:

Private persons and consumers moving watercraft, vehicles, conveyances, or equipment overland from affected waters

Businesses that rent, transport, or sell watercraft that has been located in affected waters

3. Cost benefit analysis:

The unrestricted spread of quagga and zebra mussels has far-reaching financial impacts that can affect virtually every resident of the state. These mussels cost millions of dollars annually to control and costs are passed on to consumers and other businesses in the form of increased water, sewer, and electrical power costs.

Costs for decontaminating watercraft are estimated to range from no ‘out of pocket’ costs to approximately $2,000. A person operating watercraft for a day will simply remove the drain

plug and allow the watercraft to dry, incurring no costs. A person operating watercraft for a number of days may decontaminate the watercraft using vinegar at a cost of less than $10, along with a specified dry period. A person moving a 65 foot houseboat encrusted with quagga mussels, from an affected waterbody to any other location may spend $1,500 to $2,000 to service, clean, and decontaminate the watercraft. In comparison, an owner may spend $5,000 or more in transport costs alone in moving a houseboat from Lake Pleasant to Lake Powell; this is only the cost for overland movement of the houseboat and does not include extrication or crane costs.

Quagga mussels were first discovered in Lake Mead in 2007. Laws 2009, First Regular Session, Chapter 77, enacted the Department's Aquatic Invasive Species Program. Given the short amount of time quagga mussels have been present in Arizona, the newness of the Department's program, and the current inability to track costs incurred by various water delivery and power companies, it is not yet possible to quantify the monetary costs and benefits to Arizona residents and businesses. However, considering costs incurred by adjacent states, the benefits resulting from the proposed rulemaking far outweigh the costs resulting from the rulemaking.

(a) 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 council.

The Department and local law enforcement will incur costs related to enforcement of the inspection and decontamination order requirement. A law enforcement officer may require a person to submit to an inspection if invasive mussels are present or suspected, and, if an invasive species is present, order the person to decontaminate the watercraft, vehicle, conveyance, or equipment.

The Commission anticipates that the implementation of the rulemaking will have no measurable impact on Department operations, as the Department has been fully engaged in implementing the aquatic invasive species program since the adoption of the law in

2009. The Commission does not believe the rulemaking will require any new full-time employees.

(b) Probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rule making.

Political subdivisions will benefit from a rule designed to prevent the spread of aquatic invasive species. Political subdivisions or units of a political subdivision include, but are not limited to, municipal water delivery systems, municipal water treatment facilities, Salt River Project, Central Arizona Project, power authorities, water districts, and irrigation districts.

(c) 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.

The Department's inspection and decontamination requirements may affect businesses such as, but not limited to, marinas, liveries, transporters, businesses that lease aquatic equipment, and businesses that provide decontamination services. Costs may include decontamination fees as well as time or revenue lost while the watercraft is decontaminated. It is likely businesses will pass these costs on to the customer. However, the identified businesses ultimately benefit from the Commission's rulemaking.

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

The Commission anticipates the rulemaking will not adversely impact private and public employment.

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

(a) Identification of the small businesses subject to the proposed rule making. Small businesses include, but are not limited to, marinas, liveries, transporters, businesses that lease aquatic equipment, and businesses that provide decontamination services.

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

The Commission anticipates the rulemaking will not impact administrative costs. Other costs may include decontamination fees and time or revenue lost while the watercraft is decontaminated. It is likely that businesses will pass these costs on to the consumer.

(c) Description of the methods that the agency may use to reduce the impact on small businesses.

The Commission believes the methods provided are the least burdensome for small businesses.

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

The Commission anticipates the rulemaking will have a minimal impact on private persons and consumers. Ninety-nine percent of watercraft users are day users who use their watercraft during the weekend. These persons will be required to simply "clean, drain, and dry" their watercraft, thus incurring no additional costs. A person who owns or operates a 65 foot houseboat, moored long-term in Lake Mead, Lake Mohave, Lake Havasu, Lake Pleasant, Mittry Lake, Martinez Lake, Imperial Reservoir, Topock Marsh, or the Lower Colorado River (from Pierce Ferry Rapid through the southerly international boundary with Mexico), and being moved to any other location may be required to spend $1,500 to $2,000 to decontaminate the houseboat.

6. Statement of the probable effect on state revenues.

The Commission anticipates the rulemaking will have no effect on state revenues.

7. Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule making including the monetizing of the costs and benefits for each option and providing rationale for not using the nonselected alternatives. The Commission has determined that there are no less intrusive or less costly methods that would fulfill the requirements of A.R.S. § 17-255.01.

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 Commission believes it has sufficient data to make an accurate assessment of the probable impacts of the rulemaking.

ARTICLE 11. AQUATIC INVASIVE SPECIES

R12-4-1101. Definitions

In addition to the definitions provided under A.R.S. §§ 5-301 and 17-255, the following definitions apply to this Article, unless otherwise specified:

"Aquatic invasive species" means those species listed in Director's Order 1.

"Certified agent" means a person who meets Department standards to conduct inspections authorized under A.R.S. § 17-255.01(C)(1).

"Conveyance" means a device designed to carry or transport water. Conveyance includes, but is not limited to, dip buckets, water hauling tanks, and water bladders.

"Equipment" means an item used either in or on water; or to carry water. Equipment includes, but is not limited to, trailers used to launch or retrieve watercraft, rafts, inner tubes, kick boards, anchors and anchor lines, docks, dock cables and floats, buoys, beacons, wading boots, fishing tackle, bait buckets, skin diving and scuba diving equipment, submersibles, pumps, sea planes, and heavy construction equipment used in aquatic environments.

"Operator" means a person who operates or is in actual physical control of a watercraft, vehicle, conveyance or equipment.

"Owner" means a person who claims lawful possession of a watercraft, vehicle, conveyance, or equipment.

"Person" has the same meaning as defined under A.R.S. § 1-215.

"Release" means to place, plant, or cause to be placed or planted in waters.

"Transporter" means a person responsible for the overland movement of a watercraft, vehicle, conveyance, or equipment.

"Waters" means surface water of all sources, whether perennial or intermittent, in streams, canyons, ravines, drainage systems, canals, springs, lakes, marshes, reservoirs, ponds, and other bodies or accumulations of natural, artificial, public or private waters situated wholly or partly in or bordering this state.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 196, effective January 10, 2012 (Supp. 12-1).

R12-4-1102. Aquatic Invasive Species; Prohibitions; Inspection, Decontamination Protocols

A. A person shall not, unless authorized under Article 4:

1. Possess, import, ship, or transport into or within this state an aquatic invasive species, unless authorized by the Director.
2. Sell, purchase, barter, or exchange in this state an aquatic invasive species.
3. Release an aquatic invasive species into waters or into any water treatment facility, water supply or water transportation facility, device or mechanism in this state.

B. Upon removing a watercraft, vehicle, conveyance, or equipment from any waters listed in Director's Order 2 and before leaving that location, a person shall:

1. Remove all clinging materials such as plants, animals, and mud.
2. Remove any plug or other barrier that prevents water drainage or, where none exists, take reasonable measures to drain or dry all compartments or spaces that hold water. Reasonable measures include, but are not limited

to, emptying bilges, application of absorbents, or ventilation.
C. Before transporting a watercraft, vehicle, conveyance, or equipment to any waters located within or bordering this state from waters or locations where aquatic invasive species are suspected or known to be present, as listed in Director's Order 2, a person shall comply with the mandatory conditions and protocols identified in Director's Order 3 for decontamination of watercraft, vehicles, conveyances, and equipment.
D. Department employees, certified agents, and Arizona peace officers authorized under A.R.S. § 17-104 may inspect a watercraft, vehicle, conveyance, or equipment for the purposes of determining compliance with A.R.S. Title 17, Chapter 2, Article 3.1 and this Section.
E. If the presence of an aquatic invasive species is documented or suspected on or in a watercraft, vehicle, conveyance, or equipment, a Department employee or any Arizona peace officer may order the person to decontaminate or cause to be decontaminated such watercraft, vehicles, conveyances, and equipment using the mandatory protocols described in Director's Order 3.
F. The following Director's Orders are available at any Department office and online at azgfd.gov:
1. Director's Order 1 – Listing of Aquatic Invasive Species for Arizona;
2. Director's Order 2 – Designation of Waters or Locations Where Listed Aquatic Invasive Species are Present; and
3. Director's Order 3 – Mandatory Conditions on the Movement of Watercraft, Vehicles, Conveyances, or Other Equipment from Listed Waters Where Aquatic Invasive Species are Present.
G. This Section does not apply to owners and operators exempt under A.R.S. § 17-255.04.
Historical Note
New Section made by final rulemaking at 18 A.A.R. 196, effective January 10, 2012 (Supp. 12-1).

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.

17-255.01. Aquatic invasive species program; powers

A. The director may establish and maintain an aquatic invasive species program.

B. The director may issue orders:

1. Establishing a list of aquatic invasive species for this state.

2. Establishing a list of waters or locations where aquatic invasive species are present and take steps that are necessary to eradicate, abate or prevent the spread of aquatic invasive species within or from those bodies of water.

3. Establishing mandatory conditions as provided in subsection C of this section on the movement of watercraft, vehicles, conveyances or other equipment from waters or locations where aquatic invasive species are present to other waters.

C. If the presence of an aquatic invasive species is suspected or documented in this state, the director or an authorized employee or agent of the department may take one or more of the following actions to abate or eliminate the species:

1. Authorize and establish lawful inspections of watercraft, vehicles, conveyances and other equipment to locate the aquatic invasive species.

2. Order any person with an aquatic invasive species in or on the person's watercraft, vehicle, conveyance or other equipment to decontaminate the watercraft, vehicle, conveyance or equipment in a manner prescribed by rule. Notwithstanding paragraph 3 of this subsection, mandatory on-site decontamination shall not be required at a location where an on-site cleaning station charges a fee.

3. Require any person with a watercraft, vehicle, conveyance or other equipment in waters or locations where an aquatic invasive species is present to decontaminate the property before moving it to any other waters in this state or any other location in this state where aquatic invasive species could thrive.

D. An order issued under subsection B or C of 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.

17-255.02. Prohibitions

Except as authorized by the commission, a person shall not:

1. Possess, import, ship or transport into or within this state, or cause to be imported, shipped or transported into or within this state, an aquatic invasive species.

2. Notwithstanding section 17-255.04, subsection A, paragraph 4, release, place or plant, or cause to be released, placed or planted, an aquatic invasive species into waters in this state or into any water treatment facility, water supply or water transportation facility, device or mechanism in this state.

3. Notwithstanding section 17-255.04, subsection A, paragraph 4, place in any waters of this state any equipment, watercraft, vessel, vehicle or conveyance that has been in any water or location where aquatic invasive species are present within the preceding thirty days without first decontaminating the equipment, watercraft, vessel, vehicle or conveyance.

4. Sell, purchase, barter or exchange in this state an aquatic invasive species.

17-255.03. Violations; civil penalties; classification; cost recovery

A. Except as otherwise provided by this section, a person who violates this article is subject to a civil penalty of not more than five hundred dollars.

B. A person who knowingly violates section 17-255.02, paragraph 2 or 4 is guilty of a class 2 misdemeanor. In addition, the commission, or any officer charged with enforcing this article if directed by the commission, may bring a civil action in the name of this state to recover damages and costs against a person who violates section 17-255.02, paragraph 2 or 4. Damages and costs recovered pursuant to this subsection shall be deposited in the game and fish fund.

C. The court shall order a person found in violation of section 17-255.01, subsection C, paragraph 2 to pay to this state all costs not exceeding fifty dollars incurred by this state to decontaminate any watercraft, vehicle, conveyance or other equipment on which aquatic invasive species were present. Monies paid pursuant to this subsection shall be deposited in the game and fish fund.

D. This section applies regardless of whether the director establishes an aquatic invasive species program pursuant to section 17-255.01.

5-311. Powers and duties of the commission

A. The commission may:

5. Make regulations for the registration and operation of watercraft

GAME AND FISH COMMISSION (F-17-0205)
Title 12, Chapter 4, Article 6, Rules of Practice Before the Commission

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

MEETING DATE: March 7, 2017 **AGENDA ITEM: E-6**

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

FROM: Marcus McGillivray, Legal Intern

DATE : February 21, 2017

SUBJECT: **GAME AND FISH COMMISSION (F-17-0205)**
Title 12, Chapter 4, Article 6, Rules of Practice Before the Commission

---

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

The Arizona Game and Fish Commission (Commission) is reviewing ten rules in A.A.C. Title 12, Chapter 4, Article 6 regarding rules of practice before the commission. These rules pertain to petition and written comments on proposed rules, standards for revocation, suspension, or denial of a license, and petitions for the closure of state or federal lands to hunting, fishing, trapping, or operation of motor vehicles. The oldest rules in this article were amended in 2004.

Proposed Action

The Commission plans to submit a Notice of Final Rulemaking by June 2018 for each of the Article 6 rules.

Substantive or Procedural Concerns

None.

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

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

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

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

Yes. The Commission believes the rules are effective in achieving their objectives. The Commission does note an incident involving Tempe Town Lake, which made the Commission

aware of its lack of authority to issue an Order establishing a special season to take fish by addition methods on waters where a fish die-off is imminent. The Commission plans on submitting a rulemaking in June 2018 to resolve this matter to increase the effectiveness of this rule.

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

No. The Commission has not received any written criticisms during the last five years pertaining to these rules.

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

Yes. The Commission cites to both general and specific statutory authority. A.R.S.§ 17-231(A)(1) requires the Commission to adopt rules and establish services it deems necessary to carry out their provisions and purposes. A.R.S. § 17-231(B) authorizes the Commission to conduct investigations, inquiries, or hearings in the performance of its powers and duties, and prescribe rules for the sale, trade, importation, exportation or possession of wildlife.

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

Yes. The Commission indicates that its rules are consistent with other statutes and rules, with the following exceptions:

- R12-4-601: The Commission is proposing to amend this rule to ensure conformity with the APA and the Secretary of State's rulemaking format and style requirements to further consistency.
- R12-4-604: Under A.R.S. § 17-340(G) the Commission may use the services of the Office of Administrative Hearings (Office) to conduct hearings; that Office, however, adheres to the R2-19-205 provision on Ex Parte Communications.
- R12-4-605: A.R.S.§ 17-309 and 340 include additional violations that may result in the suspension, revocation, or denial of a license and different durations for suspension.
- R12-4-606: A.R.S. § 17-340 includes additional time-frames for suspension, revocation, or denial actions stemming from violations.

The Commission plans on making amendments to further the consistency of these rules.

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

Yes. The Commission enforces the rules as written and is not aware of any problems with the enforcement of the rules.

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

Yes. The rules are generally clear, concise, and understandable. The Commission, however, is proposing amendments to clarify terminology and remove redundant language to further enhance the clearness and conciseness of these rules.

8. Has the agency analyzed whether:

a. The rules are more stringent than corresponding federal law?

Yes. The rules are not more stringent than federal law.

b. There is statutory authority to exceed the requirements of federal law?

N/A.

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

Yes. Most rules were adopted prior to July 29, 2010, with one exception.

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

No. R12-4-611 was last adopted on January 2, 2016; this rule does not require the issuance of a regulatory permit, license, or agency authorization.

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

N/A.

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

Yes. The Commission concedes that it has not completed the course of action identified in the previous five-year-review report. The Commission attributes this to the recommended amendments likely not fitting under the specific exception criteria as prescribed by statute or Executive Order.

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

Yes. The Commission plans to submit a Notice of Final Rulemaking to the Council by June 2018. The proposed changes include:

- R12-4-601: Commission plans to increase consistency in grammar and format, add new definitions, ensure the rule is in compliance with the Secretary of State's rulemaking format and style requirements, and remove the section that states any petition will be retained for five years to be considered as a comment for the next five-year review.
- R12-4-602: Commission plans to renumber the rule and clarify that a written comment submitted by a person on behalf of a group or organization that does not contain all of the required information will be placed in the rulemaking record as the view of the singular person submitting the comment.
- R12-4-603: Commission plans to renumber the rule, transfer the definitions to Section 601, and replace the terms "Chair" with "Commission Chair."
- R12-4-604 and 606: Commission plans to renumber the rule, remove the reference to "hearing officer," and remove redundant language.
- R12-4-605: Commission plans to renumber the rule, include additional offences for which licenses may be revoked, suspended, or denied, and make wording more concise.
- R12-4-607: Commission plans to transfer definitions to Section 601, clarify that a person who fails to file a timely motion for rehearing or review is prohibited from seeking judicial review of the Commission's decision, and extend the time in which the commission may initiate a rehearing or review.
- R12-4-609: Commission plans to add the ability to hold a meeting as soon as possible to review an Order establishing a special season, allowing fish to be taken by additional methods on waters where a fish die-off is imminent.
- R12-4-610: Commission plans to state that the petitioner must use a form furnished by the Commission, and edit language to ensure consistency for all rules establishing petition requirements.
- R12-4-611: Commission plans to specify that this Section does not apply to matters relating to a license suspension or denial as R12-4-607 provides a remedy, and edit language to ensure consistency.

<u>Conclusion</u>

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

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

MEETING DATE: March 7, 2017 **AGENDA ITEM: E-6**

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

FROM: GRRC Economic Team

DATE : February 21, 2017

SUBJECT: **GAME AND FISH COMMISSION (F-17-0205)**
Title 12, Chapter 4, Article 6, Rules of Practice Before the Commission

---

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

1. Economic Impact Comparison

Economic, small business, and consumer impact statements (EIS) from the most recent rulemakings were available for the Article 6 rules contained in the five-year-review report. The rules contained in Article 6 establish the processes by which a person shall use to petition the Commission to adopt, amend, or repeal a rule or review an agency practice or policy. Since January 2010, the Commission has received six petitions requesting the Commission amend or adopt a rule.

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

The Department has determined that the rules in Article 6 are mostly effective and impose the least burden and costs to the regulated community. The cost to comply with these rules is minimal and necessary to protect public health and safety.

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

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

4. Conclusion

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

THE STATE OF ARIZONA
GAME AND FISH DEPARTMENT
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KURT R. DAVIS, PHOENIX
DIRECTOR
LARRY D. VOYLES
DEPUTY DIRECTOR
TY E. GRAY

December 2, 2016

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GRRC

Nicole Ong, Chairman
Governor's Regulatory Review Council
100 N 15 th Ave, suite 402
Phoenix, AZ 85007

RE' Five-year Review Report for 12 A.A.C. 4, Article 6, Rules of Practice Before the Commission

Dear Ms Ong:

On December 2, 2016, the Arizona Game and Fish Commission adopted the enclosed five-year-review report for 12 A.A.C. 4, Article 6, Rules of Practice Before the Commission, for submission to the Council. The report is prepared in accordance with A.R.S. § 41-1056 and the rules and guidelines adopted by the Council. The established due date for the report is March 31, 2017.

The Commission believes the report complies with the Council's requirements as stated under RI -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:

l . 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

Cover Letter: Five-year Review Report for 12 A.A.C. 4, Article 6, Rules of Practice Before the Commission

4. The Department's directory, rules, substantive policy statements, and any other material incorporated by reference in the directory, rules or substantive policy statements are open to public inspection at the Department Headquarters, 5000 W. Carefree Highway, Phoenix, AZ.

If you require additional information concerning the report or its contents, please contact Celeste Cook at (623) 236-7390.

Please let us know if you require anything further.

Sincerely,

Larry D. Voyles
Director

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TY E. GRAY

December 2, 2016

Nicole Ong, Chairman
Governor's Regulatory Review Council
100 N 15th Ave, Suite 402
Phoenix, AZ 85007

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Cover Letter: Five-year Review Report for 12 A.A.C. 4, Article 6, Rules of Practice Before the Commission

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If you require additional information concerning the report or its contents, please contact Celeste Cook at (623) 236-7390.

Please let us know if you require anything further.

Sincerely,

Larry D. Voyles
Director

Arizona Game and Fish Commission
2017 Five-Year-Review Report

TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION
ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION

Prepared for the
Governor's Regulatory Review Council

ARIZONA GAME AND FISH COMMISSION

12 A.A.C. 4, ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION

2017 FIVE-YEAR REVIEW REPORT

TABLE OF CONTENTS

INTRODUCTION	FIVE-YEAR REVIEW REPORT: ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION	PAGE 3

RULE NUMBER	TITLE	PAGE
R12-4-601.	Petition for Rule or Review of Practice or Policy	5
R12-4-602.	Written Comments on Proposed Rules	9
R12-4-603.	Oral Proceedings Before the Commission	12
R12-4-604.	Ex Parte Communication	16
R12-4-605.	Standards for Revocation, Suspension, or Denial of a License	19
R12-4-606.	Proceedings for License Revocation, Suspension, or Denial of Right to Obtain a License, and Civil Damages	23
R12-4-607.	Rehearing or Review of Commission Decisions	27
R12-4-609.	Commission Orders	30
R12-4-610.	Petitions for the Closure of State or Federal Lands to Hunting, Fishing, Trapping, or Operation of Motor Vehicles	34
R12-4-611.	Petition for Hearing Before the Commission When No Remedy is Provided in Statute, Rule, or Policy	37

REPORT: ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION

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 6, Rules of Practice Before the Commission, are scheduled to be reviewed by March 2017.

The Arizona Game and Fish Department (Department) tasked a team of employees to review the rules contained within Article 6. 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. 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.

For all rules within Article 6, the Department proposes to replace the term "individual" with "person," where applicable, to increase consistency between rules within 12 A.A.C. 4. Under A.R.S. § 1-215, "Person" includes a corporation, company, partnership, firm, association or society, as well as a natural person.

The Department anticipates requesting an exception to the rulemaking moratorium by March 2017; the Department anticipates submitting a Notice of Final Rulemaking to the Council by June 2018, provided the Commission is granted permission to pursue rulemaking or the current moratorium is not extended.

With this report, the Department 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.

In addition to the actions proposed in this report, the Department also proposes to amend all rules to ensure conformity with the Arizona Administrative Procedures Act and Secretary of State's rulemaking format and style requirements and standards, adopt a Definitions rule, and renumber the remaining rules as indicated below.

Current Article 6 Structure	**Proposed Article 6 Structure**
R12-4-601. Petition for Rule or Review of Practice or Policy	R12-4-601. Definitions
R12-4-602. Written Comments on Proposed Rules	R12-4-602. Petition for Rule or Review of Practice or Policy
R12-4-603. Oral Proceedings Before the Commission	R12-4-603. Written Comments on Proposed Rules

R12-4-604. Ex Parte Communication	R12-4-604. Oral Proceedings Before the Commission
R12-4-605. Standards for Revocation, Suspension, or Denial of a License	R12-4-605. Ex Parte Communication
R12-4-606. Proceedings for License Revocation, Suspension, or Denial of Right to Obtain a License, and Civil Damages	R12-4-606. Standards for Revocation, Suspension, or Denial of a License
R12-4-607. Rehearing or Review of Commission Decisions	R12-4-607. Proceedings for License Revocation, Suspension, or Denial of Right to Obtain a License, and Civil Damages
R12-4-608. Expired	R12-4-608. Rehearing or Review of Commission Decisions
R12-4-609. Commission Orders	R12-4-609. Commission Orders
R12-4-610. Petitions for the Closure of State or Federal Lands to Hunting, Fishing, Trapping, or Operation of Motor Vehicles	R12-4-610. Petitions for the Closure of State or Federal Lands to Hunting, Fishing, Trapping, or Operation of Motor Vehicles
R12-4-611. Petition for a Hearing Before the Commission When No Remedy is Provided in Statute, Rule, or Policy	R12-4-611. Petition for a Hearing Before the Commission When No Remedy is Provided in Statute, Rule, or Policy

R12-4-601. PETITION FOR RULE OR REVIEW OF PRACTICE OR POLICY

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)(1), 41-1003 and 41-1033

2. **Objective of the rule, including the purpose for the existence of the rule.**

   The objective of the rule is to establish the method and form a person shall use to petition the Arizona Game and Fish Commission to adopt, amend, or repeal a rule or review an agency practice or policy. Under A.R.S. § 41-1033, all state agencies are required to establish the manner and form by which a person may petition the agency to request the making of a final rule or the review of an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule. The rule was adopted to meet this statutory mandate.

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 from the public 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, Title 41, and A.A.C. Title 12, Chapter 4.

To increase consistency between Game and Fish Commission Articles, the Department also to adopt a definitions rule, transfer all definitions provided in Article 6 rules to R12-4-601, and renumber rules R12-4-601 through R12-4-607 to ensure conformity with the Arizona Administrative Procedures Act and Secretary of State's rulemaking format and style requirements and standards.

The Department also proposes to define the terms “business day”, “Commission Chair” and “respondent” to ensure the consistent interpretation of Commission rules within Article 6.
The Department also proposes to amend the rule to remove the statement that the petition shall be retained by the Department for a period of five-years and considered as a comment during the next five-year review process as this requirement is covered under R12-4-602.

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 Director's Office Rules and Risk Section, in coordination with the affected program, is responsible for facilitating the petition process. Since January 2010, the Commission has received six petitions requesting the Commission amend or adopt a rule; none have been received that request a review of an existing agency practice or substantive policy statement alleged to constitute a rule. When a petition is received 30 calendar days prior to a scheduled Commission meeting, the petition is placed on the agenda for that meeting. Petitions received less than 30 calendar days prior to a scheduled Commission meeting, are placed on the agenda of the next regularly scheduled Commission meeting. The Deputy Director or his designee assigns the petition to the appropriate program. The program evaluates the comments and suggestions provided in the petition and determines whether the suggested change meets the Department’s mission and objectives, does not place an undue burden on the regulated community, is not discriminatory, and is permitted under statute. After this evaluation, the program makes a recommendation to the Commission to either accept or deny the petition. It is important to note, regardless

of the Department's recommendation it is the Commission that makes the final decision in regards to accepting or denying a petition.

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. A person is required to submit a petition that meets specific formatting requirements. In an effort to simplify and enhance the public petition process, the Department proposes to amend the rule to require a petitioner to use a form furnished by the Department. The proposed form will streamline the process going forward, ensuring consistency with future requests.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

No written criticisms were received.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule appears to have resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on July 13, 2010. The rule was amended to reflect the Department's current mailing address to allow for a more efficient petition process. The Commission anticipated the rulemaking would benefit the Department by ensuring that petitions are mailed to the correct address, avoiding any unnecessary delays in delivery that may occur when a person mails material to the old Department address.

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 was not able to complete the course of action indicated in the previous five-year review report. G.R.R.C. approved the report at the February 7, 2012 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 2014. A rulemaking moratorium has been in effect in one form or another since January 22, 2009. While exceptions have been granted during the moratorium, the exception criteria is very specific; the Department reviewed the recommended actions included in the previous report for this rule and determined that none of the recommendations met the exception criteria prescribed by statute or Executive Order, as applicable.

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 method and form a person shall use to petition the Arizona Game and Fish Commission to adopt, amend, or repeal a rule or review an agency practice or policy. Any person may submit a petition as prescribed under this rule. The Department bears the greater burden in facilitating this public process. The public benefits from a rule that establishes the process by which they may request changes to current rule, practice, or policy. The Department benefits from a rule that complies with statutory mandates in an efficient manner. The Department attempts to obtain the missing information by contacting the person who submitted the petition, which is time consuming for Department staff. The Department proposes to amend the rule to require a petitioner to submit a standardized form furnished by the Department to ensure a petition contains the required elements. 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.

Not applicable, the last rulemaking for this rule occurred on July 13, 2010.

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 R12-4-601 by:

- Adopting a rule that provides definitions for the unique terms referenced within Article 6 to ensure compliance with the Secretary of State's rulemaking format and style requirements and standards. Whenever an agency amends an Article, agencies are encouraged to transfer all definitions to the first rule within the Article.
- Defining the terms “business day”, “Commission Chair,” "contested case," "party," and “respondent” to ensure the consistent interpretation of Commission rules within Article 6.
- Renumbering the rule.
- Increasing consistency in grammar and format for all rules that establish petition requirements.
- Stating that the petitioner must use a form furnished by the Department. This is proposed to ensure that all petitions contain the applicable information and to reduce the amount of time, spent by Department employees, in correcting petitions that do not meet the requirements established under rule. The proposed form will streamline the process going forward, ensuring consistency with future requests.
- Replacing the term "Director" with "Department" to make the rule more concise because the petition process is delegated to Department staff.
- Removing the statement that the petition shall be retained by the Department for a period of five-years and considered as a comment during the next five-year review process as this requirement is covered under R12-4-602.

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 April 2018.

R12-4-602. WRITTEN COMMENTS ON PROPOSED RULES

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)(1), 41-1003, and 41-1023

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish requirements for written comments submitted to the Department in response to a notice of proposed rulemaking. Under A.R.S. § 41-1029(B)(4), all state agencies are required to maintain all written petitions, requests, submissions, and comments received by the agency for each final rule filed with the Secretary of State's Office. The rule was adopted to meet this statutory mandate.

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 from the public 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, Title 41, 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. The Director's Office Rules and Risk Section, in coordination with the affected program, is responsible for maintaining the official rule record for each rule within 12 A.A.C. 4. Department staff are advised to forward written comments regarding Department rules to the Rules and Risk Section for inclusion in the rule record. The Department encourages persons to review proposed rulemakings and provide comments to the Department by notifying the public and interested persons by postcard, email, *e*-newsletters, and press releases. The Department maintains a list of persons who have expressed an interest in Department rules and sends an email or postcard identifying the proposed rulemaking and providing the date of the public meeting. Comments received in regards to a proposed rule are evaluated by the rulemaking team; the comments and agency responses are included in the final rulemaking. All other comments are placed in the rule record and shared with the next rule review or rulemaking team, whichever occurs first. The Department recognizes the requirements specific to comments submitted on behalf of a group or organization are difficult to enforce. The Department believes this information is necessary to determine the origin of the comment. Often, the person submitting the comment on behalf of a group or organization does not include all of the required information. The Department attempts to obtain the required information by contacting the person who submitted the comment, which is time consuming for Department staff. The Department proposes to clarify how comments submitted on behalf of a group or organization are recorded to enhance the Department’s ability to enforce the rule and reduce the impact of the rule on Department staff.

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 clarify the rule by removing unnecessary verbiage and listing requirements specific to comments submitted on behalf of a group or organization.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

   No written criticisms were received.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

   The rule appears to have resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on May 4, 2004. The rule was amended to remove the requirement that a person supply address and organizational information when submitting written comments and to ensure conformity with the Arizona Administrative Procedures Act and Secretary of State's rulemaking format and style requirements and standards. The Commission anticipated the rulemaking would benefit members of the public by removing the requirement to provide a mailing address and encourage public comments by making those individuals or groups more comfortable by not having to provide information that they may feel is too personal.

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 was not able to complete the course of action indicated in the previous five-year review report. G.R.R.C. approved the report at the February 7, 2012 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 2014. A rulemaking moratorium has been in effect in one form or another since January 22, 2009. While exceptions have been granted during the moratorium, the exception criteria is very specific; the Department reviewed the recommended actions included in the previous report for this rule and determined that none of the recommendations met the exception criteria prescribed by statute or Executive Order, as applicable.

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.**

Any person may submit written statements, arguments, data, and views on proposed rules that have been filed with the Secretary of State. The public benefits from a rule that establishes the requirements by which a person may participate in the rulemaking process. The Department benefits from a rule that complies with statutory mandates in an efficient manner. In addition, public comments aid the Department in evaluating the rules impact on persons regulated by the rule. 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.**

Not applicable, the last rulemaking for this rule occurred on July 6, 2004.

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 R12-4-602 by:

- Renumbering the rule.
- Clarifying that a written comment submitted by a person on behalf of a group or organization that does not contain all of the required information will be placed in the rulemaking record as the view of the person submitting the comment, not the group or organization.

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 June 2018.

R12-4-603. ORAL PROCEEDINGS BEFORE THE COMMISSION

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)(1), 17-231(B)(12),41-1003, 41-1092, and 41-1033

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 operational process for oral proceedings held before the Commission. Under A.R.S. § 41-1023(F), each agency may make rules for the conduct of oral rulemaking proceedings. Those rules may include provisions calculated to prevent undue repetition in the oral proceedings. The rule was adopted to establish the requirements specific to an oral proceeding held by 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 from the public 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, Title 41, 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 Director's Office Rules and Risk Section is responsible for facilitating the oral proceeding process for rulemakings when held outside of an open Commission meeting. In an effort to reduce Department costs and streamline the rulemaking process, the Department holds oral proceedings for an open rulemaking docket during Commission meetings. The Department has not held a public meeting specifically addressing an open rulemaking docket since November 2005. In addition, the public is provided an opportunity for public input. Members of the public attending in person or viewing via video teleconference may submit a request to speak to the Commission. Unless prior approval has been granted by the Chairman, comments are limited to no more than three minutes. When members of the public provide comment for an item that is not listed on the agenda, no discussion or action

will be taken by the Commission. However, at the Commission's discretion, any items requiring further discussion or action may be included on a future Commission meeting agenda.

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 further clarify the rule by replacing references to “Chair” with “Commission Chair,” listing oral proceeding authorizations and requirements, and removing "based on the amount of time available."

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.

No written criticisms were received.

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

The rule appears to have resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on May 4, 2004. The rule was amended to clarify the provisions of the rule apply to any matter or proceeding before the Commission; to define "matter or proceeding" as "any contested case, appealable agency action, rule petition, rulemaking proceeding, or any public input at a commission meeting;" establish the Director’s authority to allow a continuance of any hearing to another Commission meeting, if requested; and to ensure conformity with the Arizona Administrative Procedures Act and Secretary of State's rulemaking format and style requirements and standards. The Commission anticipated the rulemaking would benefit the general public, the Department, and the Commission by clarifying rules for oral proceedings held by the Commission and establishing guidelines for continuance of any oral proceedings before the Commission.

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 was not able to complete the course of action indicated in the previous five-year review report. G.R.R.C. approved the report at the February 7, 2012 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 2014. A rulemaking moratorium has been in effect in one form or another since January 22, 2009. While exceptions have been granted during the moratorium, the exception criteria is very specific; the Department reviewed the recommended actions included in the previous report for this rule and determined that none of the recommendations met the exception criteria prescribed by statute or Executive Order, as applicable.

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 operational process for oral proceedings held before the Commission. Under A.R.S. § 41-1023(F), each agency may make rules for the conduct of oral rulemaking proceedings. The Commission benefits from a rule that allows the Director to grant a continuance. The rule limits the Director's authority to two instances; a person may request additional continuances from the Commission after two continuances have been granted by the Director. The public benefits from a rule that establishes the process by which a person may speak to the Commission or request a continuance. The Department benefits from a rule that establishes an efficient process for conduct at any oral proceeding held by the Department. The Department bears the greater burden in facilitating this public process, much of which is mandated by A.R.S. Title 41, Chapter 6, Article 6. 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.**

Not applicable, the last rulemaking for this rule occurred on July 6, 2004.

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 R12-4-603 by:

- Renumbering the rule.
- Transferring definitions to R12-4-601.
- Replacing references to "Chair" with "Commission Chair," listing oral proceeding authorizations and requirements, and removing "based on the amount of time available" 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 June 2018.

R12-4-604. EX PARTE COMMUNICATION

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)(1), 41-1001, 41-1003, 41-1092, and 41-1033

2. **Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish communication prohibitions during the course of Commission decision processes. The rule was adopted to prevent one party from having an undue advantage by having independent access to 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 from the public in regards to this rule. The Department believes this data indicates the rule is effective.

4. **Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules, except as noted below. Statutes and rules used in determining consistency include A.R.S. Title 17, Title 41, and A.A.C. Title 12, Chapter 4.

Under A.R17-340(G), the Commission may use the services of the Office of Administrative Hearings to conduct hearings and to make recommendations to the Commission. The Office of Administrative Hearings adheres to the requirements of R2-19-105. Ex Parte Communications, not this rule. The Department proposes to remove the reference to "hearing officer" as the reference to "hearing officer" as the Administrative Hearing Office is governed by R2-19-205.

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. Persons receiving an ex parte communication are required to place the ex parte communication on the public record and provide copies of such communication to all interested parties to the proceeding. However, during this review the Department compared this rule to rules governing rehearing or review made by other self-supporting agencies: the Arizona Medical Board, State Board of Dental Examiners, and State Board of Accountancy. As a result of this comparison, the Department proposes to amend the rule to remove language referencing the service of a memorandum and copies of each response and memorandum for each oral response to any ex parte communication received by the Commissioner as these are self-imposed burdens that serve no valid purpose.

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, because only members of the Commission are truly involved in the decision-making process and all persons are subject to the rule, including Commission hearing officers, personal aides to the Commission, Department employees, and consultants, the Department proposes to remove redundant language from the rule to make the rule more concise.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.

No written criticisms were received.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule appears to have resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on May 4, 2004. The rule was amended to include a personal aide to a Commissioner as a "person outside the Commission;" expand the defintion of ex parte communication to include any communication with the Commission that is not part of the public record and for which no reasonable prior written notice has been given to all interested parties; and adding an appealable agency action as a type of proceedings for which *ex parte* communication is restricted. The Commission anticipated the rulemaking would create a direct benefit to the Department, the Commission, persons who appear before the Commission, and the integrity of the Commission hearing process.

9. **Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

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

The Department was not able to complete the course of action indicated in the previous five-year review report. G.R.R.C. approved the report at the February 7, 2012 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 2014. A rulemaking moratorium has been in effect in one form or another since January 22, 2009. While exceptions have been granted during the moratorium, the exception criteria is very specific; the Department reviewed the recommended actions included in the previous report for this rule and determined that none of the recommendations met the exception criteria prescribed by statute or Executive Order, as applicable.

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 prohibitions in place for communications during the course of Commission decision processes. The rule was adopted to prevent one party from having an undue advantage by having independent access to the Commission. This prohibition also prevents the Commission from being improperly influenced or inaccurately informed. The Department, the Commission, and persons involved in these proceedings benefit from a rule will result from a clear understanding of the prohibited conduct that comprises *ex parte* communication,

resulting in a hearing process that is consistent with Title 41. 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.

Not applicable, the last rulemaking for this rule occurred on July 6, 2004.

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 R12-4-604 by:

- Renumbering the rule.
- Transferring definitions to R12-4-601.
- Removing language regarding the service of a memorandum and copies of each response and memorandum stating the substance of each oral response to any ex parte communication received by the Commissioner as these are self-imposed burdens that serve no valid purpose.
- Removing the reference to "hearing officer" as the Administrative Hearing Office is governed by R2-19205 Ex Parte Communications.
- Removing redundant language 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 June 2018.

R12-4-605. STANDARDS FOR REVOCATION, SUSPENSION, OR DENIAL OF A 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)(1), 17-231(B)(12), 17-340, and 41-1003

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish standards for the revocation, suspension, or denial of a Departmentissued license. Under A.R.S. § 17-340, the Commission may, after a public hearing, revoke or suspend a license issued to any person under Title 17 and deny that person the right to secure another license to take or possess wildlife. Because the statute is permissive in regards to this authority, the rule was adopted to establish standards designed to ensure consistent interpretation of A.R.S. § 17-340.

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 from the public in regards to this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules, except as noted below. Statutes and rules used in determining consistency include A.R.S. Title 17, Title 41, and A.A.C. Title 12, Chapter 4.

Laws 2006, Second Regular Session, Chapter 238 amended A.R.S. §§ 17-309 and 17-340 to include additional violations that may result in the suspension, revocation, or denial of a Department-issued license and the length of time for suspension, revocation, and denial actions. The Department proposes to amend the rule to ensure consistency with the amended statutes.

The Department also proposes to amend the rule to replace references to "supports the following conclusion" with "indicates" to increase consistency between subsections.

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. Currently, the Commission considers license revocation, suspension, and denial hearings at open Commission meetings held monthly, nine or ten months out of each year, depending on the schedule approved by the Commission. The Department's Law Enforcement Branch, in coordination with the Director's Office, the Department's Attorney's General and County Attorney's Office, is responsible for is responsible for facilitating

the hearing process. On an annual basis, the Commission holds approximately 75 revocation hearings. The Commission and respondents (persons whose fishing, hunting, and trapping license are being considered for revocation) are provided with copies of the original court docket and case reports prepared by the law enforcement officers and all other pertinent materials. Each of the respondents is legally noticed for the Department hearing. It is important to note, regardless of the Department's recommendation it is the Commission that makes the final decision in regards to the revocation, suspension, or denial of Departmentissued license.

6. Clarity, conciseness, and understandability of the rule.

Overall, the rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public. However, the Department proposes to amend the rule to provide additional clarity by removing redundant language and restructuring the rule to more closely mirror A.R.S. § 17-340.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.

No written criticisms were received.

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

The rule appears to have resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on May 4, 2004. The rule was amended to make technical corrections and ensure conformity with the Arizona Administrative Procedures Act and Secretary of State's rulemaking format and style requirements and standards; correct outdated information and improve the accuracy, clarity, and understandability of the rules. The Commission anticipated the rulemaking would benefit the public, the Department, and the Commission by increasing consistency, resulting in efficient and uniform enforcement. The rulemaking clarified powers and actions that fall within the Commission’s authority. Exceeding that authority or making a mistake in the due process of a hearing could result in a reversal of a Commission action.

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 was not able to complete the course of action indicated in the previous five-year review report. G.R.R.C. approved the report at the February 7, 2012 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 2014. A rulemaking moratorium has been in effect in one form or another since January 22, 2009. While exceptions have been granted during the moratorium, the exception criteria is very specific; the Department reviewed the recommended actions included in the previous report for this rule and determined that none of the recommendations met the exception criteria prescribed by statute or Executive Order, as applicable.

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 standards for revocation, suspension, and denial of a license. The Department bears the greater burden in facilitating this public process. The Hunter Education requirement is imposed as a remedial measure to increase knowledge and prevent future violations. The public benefits from a concise and comprehensible Commission hearing process that effectively revokes, suspends, and denies a person's privilege to obtain a license when the person has demonstrated their inability to comply with, or disregard for, state wildlife rules. The public, the Department, and the Commission benefit from a rule that provides for an efficient process and uniform enforcement. Both the Department and the Commission benefit from a comprehensive and understandable hearing procedure. 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.**

Not applicable, the last rulemaking for this rule occurred on July 6, 2004.

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 R12-4-605 by:

- Renumbering the rule.
- Including additional offenses for which the Commission may revoke, suspend, or deny a license to reflect statutory amendments made to A.R.S. § 17-309(A)(1).
- Replacing references to "supports the following conclusion" with "indicates" to increase consistency between subsections.

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 June 2018.

R12-4-606. PROCEEDINGS FOR LICENSE REVOCATION, SUSPENSION, OR DENIAL OF RIGHT TO OBTAIN A LICENSE, AND CIVIL DAMAGES

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)(1), 17-231(B)(12), 17-314, 17-340, 41-1003, and 41-1023

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish the proceedings for license revocation, suspension, or denial of Department issued licenses and the assessment of civil damages. Under A.R.S. § 17-340, the Commission may, after a public hearing, revoke or suspend a license issued to any person under Title 17 and deny that person the right to secure another license to take or possess wildlife. This includes hunting and fishing licenses, special licenses issued under Article 4, and taxidermy, fur dealer, and license dealer licenses. Under A.R.S. § 17-314, the commission may bring a civil action in the name of the state against any person unlawfully taking, wounding or killing, or unlawfully in possession of certain wildlife. The rule was adopted to establish standards designed to ensure consistent interpretation of A.R.S. §§ 17-314 and 17-340.

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 from the public in regards to this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules, except as noted below. Statutes and rules used in determining consistency include A.R.S. Title 17, Title 41, and A.A.C. Title 12, Chapter 4.

Laws 2006, Second Regular Session, Chapter 238 amended A.R.S. § 17-340 to include additional time-frames for such suspension, revocation, or denial actions resulting from subsequent violations. As a result, a person's license may be revoked for five years, ten years, or permanently, depending on the number of convictions. The Department proposes to amend the rule to ensure consistency 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. Currently, the Commission considers license revocation, suspension, and denial hearings and civil proceedings at open Commission meetings held monthly, nine or ten months out of each year, depending on the schedule approved by the Commission. The Department's Law Enforcement Branch, in coordination with the Director's Office, the Department's Attorney's General and County Attorney's Office, is responsible for facilitating the proceeding process. The Commission and respondents (persons whose fishing, hunting, and trapping license are being considered for revocation) are provided with copies of the original court docket and case reports prepared by the law enforcement officers and all other pertinent materials. Each of the respondents is legally noticed for the Department hearing. It is important to note, regardless of the Department's recommendation it is the Commission that makes the final decision in regards to the revocation, suspension, or denial of Department-issued license.

6. Clarity, conciseness, and understandability of the rule.

Overall, the rule is clear, concise, and understandable. The rule is generally written in the active voice so it will be understood by the general public. However, the Department proposes to amend the rule to provide additional clarity by removing redundant language and reflecting amendments made to A.R.S. § 17-340.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted

to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.

No written criticisms were received.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule appears to have resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on May 4, 2004. The rule was amended to reflect statutory amendments made to A.R.S. §§ 17-309(A)(1) and 17-340. The Commission anticipated the rulemaking would benefit the general public, the Department, and the Arizona Game and Fish Commission by providing a comprehensive and understandable revocation hearing procedure.

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 was not able to complete the course of action indicated in the previous five-year review report. G.R.R.C. approved the report at the February 7, 2012 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 2014. A rulemaking moratorium has been in effect in one form or another since January 22, 2009. While exceptions have been granted during the moratorium, the exception criteria is very specific; the Department reviewed the recommended actions included in the previous report for this rule and determined that none of the recommendations met the exception criteria prescribed by statute or Executive Order, as applicable.

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 proceedings for license revocation, suspension, or denial of Department issued licenses and the assessment of civil damages. The civil assessment process is not intended to be punitive, but allows the Commission to recover financial damages to compensate the State for the loss of any wildlife. The Hunter Education requirement is imposed as a remedial measure to increase knowledge and prevent future violations. The public benefits from a concise and comprehensible Commission hearing process that effectively revokes, suspends, and denies a person's privilege to obtain a license when the person has demonstrated their inability to comply with, or disregard for, state wildlife rules. The public, the Department, and the Commission benefit from a rule that provides for an efficient process and uniform enforcement. Both the Department and the Commission benefit from a comprehensive and understandable hearing and civil assessment procedure. 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.

Not applicable, the last rulemaking for this rule occurred on July 6, 2004.

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 R12-4-606 by:

- Renumbering the rule.
- Updating statutory references to reflect amendments made to A.R.S. §§ 17-309(A)(1) and 17-340.
- Removing redundant language 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 June 2018.

R12-4-607. REHEARING OR REVIEW OF COMMISSION DECISIONS

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)(1), 17-231(B)(12), 41-1001, 41-1003, and 41-1092

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 rehearing or review of a Commission decision. Under A.R.S. § 41-1092.09, a party may file a motion for rehearing or review within thirty days after service of the final administrative decision. A rehearing follows a Commission decision to revoke or suspend a person's license. A review is a Commission hearing on the Department's decision to deny a license to a person. The rule was adopted to establish standards designed to ensure consistent interpretation of A.R.S. § 41-1092.09.

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 from the public 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, Title 41, 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's Law Enforcement Branch, in coordination with the Director's Office, the Department's Attorney's General and County Attorney's Office, is responsible for is responsible for facilitating the rehearing process. The Commission and respondents (persons whose fishing, hunting, and trapping license are being considered for revocation) are provided with copies of the original court docket and case reports prepared by the law enforcement officers and all other pertinent materials. Each of the respondents is legally noticed for the Department hearing. It is important to note, regardless of the Department's recommendation it is the Commission that makes the final decision in regards to the revocation, suspension, or denial of Departmentissued license. A person who fails to file a motion for rehearing or review cannot seek a judicial review by filing an appeal with the Maricopa County Superior Court. On occasion, a person fully intends to file an appeal, but unknowingly

eliminates that option by failing to file a motion for rehearing or review with the Department. The Department proposes to amend the rule to indicate a person who fails to file a timely motion for rehearing or review is prohibited from seeking a judicial review of the Commission's decision.

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, during this review the Department compared this rule to rules governing rehearing or review made by other self-supporting agencies: the Arizona Medical Board, State Board of Dental Examiners, and State Board of Accountancy. As a result of this comparison, the Department proposes to amend the rule to clarify filing time-frames, extend the time in which the Commission may initiate a rehearing or review as this is a self-imposed limitation that serves no valid purpose, and specify the time-frame in which the Commission shall hold the rehearing or review.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.

No written criticisms were received.

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

The rule appears to have resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on May 4, 2004. The rule was amended to correct outdated material and improve the accuracy, clarity, and understandability of the rules, and increase the Game and Fish Commission’s discretion in certain matters. The Commission anticipated the rulemaking would directly benefit the Department and the Commission by giving the Commission greater discretion during rehearing or review of Commission Decisions.

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 was not able to complete the course of action indicated in the previous five-year review report. G.R.R.C. approved the report at the February 7, 2012 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 2014. A rulemaking moratorium has been in effect in one form or another since January 22, 2009. While exceptions have been granted during the moratorium, the exception criteria is very specific; the Department reviewed the recommended actions included in the previous report for this rule and determined that none of the recommendations met the exception criteria prescribed by statute or Executive Order, as applicable.

11. **A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes the requirements a person involved in a contested case or appealable agency action and the Commission must follow for a rehearing or review of a Commission decision. The civil assessment process is not intended to be punitive, but allows the Commission to recover financial damages to compensate the State for the loss of any wildlife. The Hunter Education requirement is imposed as a remedial measure to increase knowledge and prevent future violations. The public benefits from a concise and comprehensible Commission rehearing or review process. The public, the Department, and the Commission benefit from a rule that provides for an efficient process and uniform enforcement, and a comprehensive and understandable rehearing and review procedure. 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.**

Not applicable, the last rulemaking for this rule occurred on July 6, 2004.

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 R12-4-607 by:

- Renumbering the rule.
- Transferring definitions to R12-4-601.
- Indicating a person who fails to file a timely motion for rehearing or review is prohibited from seeking a judicial review of the Commission's decision to increase clarity.
- Clarifying filing time-frames to make the rule more concise.
- Extending the time in which the Commission may initiate a rehearing or review as this is a self-imposed limitation that serves no valid purpose.
- Specifying the time-frame in which the Commission shall hold the rehearing or review to increase clarity.

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 June 2018.

R12-4-609. COMMISSION ORDERS

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)(1) 17, 234, and 41-1003

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish the public process for the consideration of a Commission Order. Under A.R.S. § 17-234, the Commission shall by order open, close or alter seasons and establish bag and possession limits for wildlife, but a Commission Oder to open a season shall be issued not less than ten days prior to the opening date. The rule was adopted to establish standards designed to ensure consistent interpretation of A.R.S. § 17-234.

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. However, an incident involving Tempe Town Lake gave light to the fact that the Commission does not have the authority to issue an Order establishing a special season to allow the take of fish by additional methods on waters where a fish die-off is imminent due to the 20-day notice requirement for a public meeting. To ensure the Commission is able to respond more quickly should a similar situation arises, the Department proposes to amend R12-4-609 to allow the Commission to hold a meeting to review an order establishing a special season, allowing fish to be taken by additional methods on waters where a fish die-off is imminent, as soon as possible.

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, Title 41, 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. Commission Orders establish bag limits, hunt areas, season dates, and lawful methods for the take of wildlife. In general, orders are reviewed and revised every two years, but may be revised sooner when it is determined necessary, such as in response to changes in population or wildlife health, or a natural disaster such as a wildfire. The Department's Wildlife Management Division, in coordination with the Director's Office, Law Enforcement Branch, and the Department's Attorney's General, is responsible for the Commission Order process. The Department receives comments from stakeholders, constituents, and the general public. The Department considers those comments, along with biological data gathered by Department biologists, and drafts Commission Orders. These draft orders are posted to the Department's website and presented to stakeholders, constituents, and the general public at a number of meetings held by the Department throughout the state. The Department encourages persons to review the draft orders and provide comments to the Department. After the meetings are held and the public comment period ends, The Department considers the comments and suggestions presented by stakeholders, constituents, and the general public and amends the draft orders accordingly, as appropriate. The draft orders are then presented to the Commission for review and approval.

6. **Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

No written criticisms were received.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule appears to have resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on May 4, 2004. The rule was amended to increase clarity and make the rule more concise. The Commission anticipated the rulemaking would benefit the general public by providing more information regarding Commission orders, such as when they are going to be discussed in an open meeting, and the Department by demonstrating its accessibility to the public. The Commission also anticipated the rulemaking would result in additional costs to the Department due to the resources used to distribute information regarding public meetings at which Commission orders will be discussed, but determined the benefits of the rulemaking outweighed the cost 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 was not able to complete the course of action indicated in the previous five-year review report. G.R.R.C. approved the report at the February 7, 2012 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 2014. A rulemaking moratorium has been in effect in one form or another since January 22, 2009. While exceptions have been granted during the moratorium, the exception criteria is very specific; the Department reviewed the recommended actions included in the previous report for this rule and determined that none of the recommendations met the exception criteria prescribed by statute or Executive Order, as applicable.

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 public process for the consideration of a Commission Order. Commission Orders establish bag limits, hunt areas, season dates, and lawful methods for the take of wildlife; orders are reviewed and revised every two years, but may be revised sooner when it is determined necessary. The Department encourages persons to review the orders and provide comments to the Department. The public benefits from a rule that provides information regarding Commission orders. The Department benefits from a rule that demonstrates its accessibility

to 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.

Not applicable, the last rulemaking for this rule occurred on July 6, 2004.

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 R12-4-609 to allow the Commission to hold a meeting to review an order establishing a special season, allowing fish to be taken by additional methods on waters where a fish die-off is imminent, as soon as possible.

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 June 2018.

R12-4-610. PETITIONS FOR THE CLOSURE OF STATE OR FEDERAL LANDS TO HUNTING, FISHING, TRAPPING, OR OPERATION OF MOTOR VEHICLES

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)(1), 17-304, 17-452, 41-1003, and 41-1033

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 submitting a petition for the closure of state or federal lands to hunting, fishing, trapping, or operation of motor vehicles. Under A.R.S. § 17-452, the Commission may, with the concurrence of the land management agency involved and after a public hearing, 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. The rule was adopted to meet this statutory mandate.

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 from the public 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, Title 41, 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 receives approximately five state and federal land closure petitions on an annual basis. The Department's Development Branch, in coordination with the Director's office, the Department's Attorney's General, and the applicable land management agency, is responsible for scheduling oral proceedings for state or federal land closure petitions. Within five days of receiving a petition, the petition is reviewed to ensure it meets the requirements established under R12-4-610. When a petition is received 60 calendar days prior to a scheduled Commission meeting, the petition is placed on the agenda for that meeting. Petitions received less than 60 calendar days prior to a scheduled Commission meeting, are placed on the agenda of the next regularly scheduled Commission meeting. The Department evaluates the land closure petition and considers the impact the state or federal land closure would have on the hunting and fishing community. The evaluation process includes working with the petitioner, consulting with regional staff and the land management agency's staff, conducting site inspections, and discussing possible alternatives with the petitioner. If an agreement cannot be reached, the Department makes a recommendation to the Commission to either accept or deny the petition. It is important to note, regardless of the Department's recommendation it is the Commission that makes the final decision in regards to state and federal land closures.

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, in an effort to simplify and enhance the public petition process, the Department proposes to amend the rule to require a petitioner to use a form furnished by the Department. The proposed form will streamline the process going forward, ensuring consistency with future requests.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

   No written criticisms were received.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

   The rule appears to have resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on May 4, 2004. The rule was amended to reflect the Department's current mailing address to allow for a more efficient petition process. The Commission anticipated the rulemaking would benefit the Department by ensuring that petitions are mailed to the correct address, avoiding any unnecessary delays in delivery that may occur when a person mails material to the old Department address.

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 was not able to complete the course of action indicated in the previous five-year review report. G.R.R.C. approved the report at the February 7, 2012 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 2014. A rulemaking moratorium has been in effect in one form or another since January 22, 2009. While exceptions have been granted during the moratorium, the exception criteria is very specific; the Department reviewed the recommended actions included in the previous report for

this rule and determined that none of the recommendations met the exception criteria prescribed by statute or Executive Order, as applicable.

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.**

Any person may submit a petition as prescribed under this rule. The Department bears the greater burden in facilitating this public process. Although the Department has determined that the rule imposes the least burden and cost necessary to achieve the underlying regulatory objective, in an effort to reduce the burden imposed on persons regulated by the rule, the Department is amending the rule to require a petitioner to submit a standardized form furnished 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 require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

Not applicable, the last rulemaking for this rule occurred on July 13, 2010.

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 R12-4-610 by:

- Stating that the petitioner must use a form furnished by the Department. This is proposed to ensure that all petitions contain the applicable information and to reduce the amount of time, spent by Department employees, in correcting petitions that do not meet the requirements established under rule. The proposed form will streamline the process going forward, ensuring consistency with future requests.
- Ensuring consistency in language for all rules establishing petition requirements.

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 June 2018.

R12-4-611. PETITION FOR HEARING BEFORE THE COMMISSION WHEN NO REMEDY IS PROVIDED IN STATUTE, RULE, OR POLICY

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)(1) and Title 41, Chapter 6, Article 10

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish the method and form a person shall use to petition the Arizona Game and Fish Commission when no remedy is provided in statute, rule, or policy. The rule was adopted to provide a method in which a person could petition the Commission for a resolution.

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 from the public 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, Title 41, 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 Director's Office, in coordination with Law Enforcement Branch and the Department's Attorney's General, is responsible for scheduling oral proceedings for these petitions. It is not possible to quantify the number of persons who applied for a wrong hunt or were unable to use the hunt permit-tag as many persons take no formal action; however, approximately four persons per year petition the Department for the reinstatement of bonus points. Often, because statute, rule, or policy does not address or is silent in regards to the person's issue, the Commissions

was unable to provide the remedy the person was seeking. The following are the most common scenarios encountered:

- A person applies for a tag online and is subsequently drawn, but their credit card is declined when the Department attempted to charge the card for the tag, Since the customer did not "pay" the tag fee, the Department could not issue the tag. The person would petition the Commission for a similar tag in a future hunt or the reinstatement of expended bonus points.
- A person draws a tag, but is unable to use the tag. The person would petition the Commission for a similar tag in a future hunt or the reinstatement of expended bonus points.
- A person finds an animal carcass or parts of a carcass and wants to keep it for personal or educational use.

  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. Because the wildlife was not lawfully taken by the person, the Department may seize it. The person would petition the Commission for the return of the animal carcass or parts of the carcass.

The Commission directed the Department to establish a remedy for the scenarios listed above. The Department successfully completed rulemakings designed to provide a remedy for these scenarios:

- R12-4-104 (Application Procedures for Issuance of Hunt Permit-tags by Computer Draw and Purchase of Bonus Points) was amended to allow the Department to 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.
- R12-4-118 (Hunt Permit-tag Surrender) was adopted to establish a membership program, which included the limitations and requirements for surrendering a tag and restoring the bonus points expended for the surrendered tag.
- R12-4-322 (Pickup and Possession of Wildlife Carcasses or Parts) was adopted to allow a person to pick up and possess naturally shed antlers, horns or other wildlife parts. In addition, the rule allows a person to pick up and possess a fresh wildlife carcass or its parts if, upon finding the carcass or its parts, the individual voluntarily notifies the Department of the find, a Department officer is able to observe the carcass or its parts at the site where the animal was found, and the officer can determine the animal died of natural causes.

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. A person is required to submit a petition that meets specific formatting requirements. In an effort to simplify and enhance the public petition process, the Department proposes to amend the rule to require a petitioner to use a form furnished by the Department. The proposed form will streamline the process going forward, ensuring consistency with future requests.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

   No written criticisms were received.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

   The rule was amended to prohibit a person from petitioning the Commission for reinstatement of any expended bonus points. The rulemaking became effective on January 3, 2016; the rule amendments are too recent to allow the Department to sufficiently analyze the actual economic impact. The Commission anticipated the Department would benefit due to a reduced administrative burden resulting from administering the petition process.

9. **Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

   The Department did not receive any analyses.

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

    On June 1, 2015, the Commission was given permission to pursue rulemaking to implement changes proposed in the previous five-year review report. While the Commission amended the rule in January 2016, The Department was not able to complete the course of action indicated in the previous five-year review report. G.R.R.C. approved the report at the February 7, 2012 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by June 2014. A rulemaking moratorium has been in effect in one form or another since January 22, 2009. While exceptions have been granted during the moratorium, the exception criteria is very specific; the Department reviewed the recommended actions included in the previous report for this rule and determined that none of the recommendations met the exception criteria prescribed by statute or Executive Order, as applicable.

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.

Any person may submit a petition when no remedy is provided in statute, rule, or policy. The Department bears the greater burden in facilitating this public process. Although the Department has determined that the rule imposes the least burden and cost necessary to achieve the underlying regulatory objective, in an effort to reduce the burden imposed on persons regulated by the rule, the Department is amending the rule to require a petitioner to submit a standardized form furnished by the Department. The Department anticipates the form will ensure all required elements are supplied by the petitioner, thus making the process more efficient. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

The Department proposes to amend R12-4-611 by:

- Stating that the petitioner must use a form furnished by the Department. This is proposed to ensure that all petitions contain the applicable information and to reduce the amount of time, spent by Department employees, in correcting petitions that do not meet the requirements established under rule. The proposed form will streamline the process going forward, ensuring consistency with future requests.
- Ensuring consistency in language for all rules establishing petition requirements.
- Specifying this Section does not apply to matters relating to a license suspension or denial as R12-4-607 provides a remedy.

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 June 2018.

ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION

R12-4-601. Petition for Rule or Review of Practice or Policy

A. Any individual, including any organization or agency, requesting that the Commission make, amend, or repeal a rule, shall submit a petition as prescribed under this Section.

B. Any individual, including any organization or agency, requesting that the Commission review an existing Department practice or substantive policy that the petitioner alleges to constitute a rule under A.R.S. § 41-1033, as defined under A.R.S. § 41-1001, shall submit a petition as prescribed under this Section.

C. A petitioner shall not address more than one rule, practice, or substantive policy in the petition.

D. If the Commission has considered and denied a petition, and a petitioner submits a petition within the next year that addresses the same substantive issue, the petitioner shall provide a written statement that contains any reason not previously considered by the Commission in making a decision.

E. A petitioner shall submit an original and one copy of a petition to the Arizona Game and Fish Department, Director's Office, 5000 W. Carefree Highway, Phoenix, AZ 85086. The Commission shall render a decision on the petition as required under A.R.S. § 41-1033.

F. Within five working days after a petition is submitted, the Director shall determine whether the petition complies with this Section.

1. If the petition complies with this Section, the Director shall place the petition on a Commission open meeting agenda. The petitioner may present oral testimony at that meeting, as established under R12-4-603.
2. If a petition does not comply with subsections (G) through (L) of this Section, the Director shall return a copy of the petition as filed to the petitioner and indicate in writing why the petition does not comply with this Section. The Director shall not place the petition on a Commission agenda. The Department shall maintain the original petition on file for five years and consider the petition as a comment during the five-year review process.

G. Petitions shall be typewritten, computer or word processor printed, or legibly handwritten, and double-spaced, on 8 1/2" x 11" paper; or typewritten, computer or word processor printed, or legibly handwritten on a form provided by the Department. The title shall be centered at the top of the first page and appear as "Petition to the Arizona Game and Fish Commission." The petition shall include the items listed in subsections (H) through (L). The items in the petition shall be presented in the order in which they are listed in this Section.

H. The title of Part 1 shall be "Identification of Petitioner." The title shall be centered at the top of the first page of this part. Part 1 shall contain:

1. If the petitioner is a private individual, the name, mailing address, and telephone number of the petitioner;
2. If the petitioner is a private group or organization, the name and address of the group or organization; the name, mailing address, and telephone number of an individual who is designated as the representative or official contact for the petitioner; the total number of individuals, and the number of Arizona residents represented by the petitioner; or the names and addresses of all individuals represented by the petitioner; or
3. If the petitioner is a public agency, the name and address of the agency and the name, title, and telephone number of the agency's representative.

I. The title of Part 2 shall be "Request for Rule" or "Request for Review," as applicable. The title shall be centered at the top of the first page of this part. Part 2 shall contain:

1. If the petition is for a new rule, a statement to this effect, followed by the heading and specific language of the proposed rule;
2. If the request is for amendment of a current rule, a statement to this effect, followed by the *Arizona Administrative Code* number of the current rule proposed for amendment, the heading of the rule, the specific, clearly readable language of the rule, indicating language to be deleted with strikeouts, and language to be added with underlining;
3. If the request is for repeal of a current rule, a statement to this effect, followed by the *Arizona Administrative Code* number of the rule proposed for repeal and the heading of the rule; or
4. If the request is for review of an existing agency practice or substantive policy statement that the petitioner alleges qualifies as a rule, as defined under A.R.S. § 41-1001, a statement to this effect, followed by the practice or policy number, if any, the practice or policy heading, if any, or a brief description of the practice or policy subject matter.

J. The title of Part 3 shall be "Reason for the Petition." The title shall be centered at the top of the first page of this part. Part 3 shall contain:

1. The reason the petitioner believes rulemaking or review of a practice or policy is necessary;
2. Any statistical data or other justification supporting rulemaking or review of the practice or policy, with clear reference to any exhibits that are attached to or included with the petition;
3. An identification of any individuals or special interest groups the petitioner believes would be impacted by the rule or a review of the practice or policy, and how they would be impacted; and
4. If the petitioner is a public agency, a summary of issues raised in any public meeting or hearing regarding the petition, or any written comments offered by the public.

K. The title of Part 4 shall be "Statutory Authority." The title shall be centered at the top of the first page of this part. In Part 4, the petitioner shall identify any statute that authorizes the Commission to make the rule, if known, or cite A.R.S. § 41-1033 if the petition relates to review of an existing practice or substantive policy statement.

L. The title of Part 5 shall be "Date and Signature." The title shall be centered at the top of the first page of this part. Part 5 shall contain:

1. An original signature of the representative or official contact, if the petitioner is a private group or organization or private individual named under subsection (H)(1) or (2); or
2. If the petitioner is a public agency, the signature of the agency head or the agency head's designee; and
3. The month, day, and year that the petition is signed.

Historical Note

Adopted effective December 22, 1987 (Supp. 87-4). Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2). Amended by final rulemaking at 16 A.A.R. 1465, effective July 13, 2010 (Supp. 10-3).

R12-4-602. Written Comments on Proposed Rules

Any individual may submit written statements, arguments, data, and views on proposed rules that have been filed with the Secretary of State under A.R.S. § 41-1022. An individual who submits written comments to the Commission may voluntarily provide their name and mailing address. To be placed into the rulemaking record and considered by the Commission for a final decision, the individual submitting the written comments shall ensure that they:

1. Are received before or on the closing date for written comments, as published by the Secretary of State in the Arizona Administrative Register;
2. Indicate, if expressed on behalf of a group or organization, whether the views expressed are the official position of the group or organization, the number of individuals represented are represented, types of membership available, and number of Arizona residents in each membership category; and
3. Are submitted to the employee designated by the Department to receive written comments, as published in the Arizona Administrative Register.

Historical Note

Adopted effective December 22, 1987 (Supp. 87-4). Amended by final rulemaking at 10 A.A.R.

2245, effective July 6, 2004 (Supp. 04-2).

R12-4-603. Oral Proceedings Before the Commission

A. For the purposes of this Section, "matter" or "proceeding" means any contested case, appealable agency action, rule or review petition hearing, rulemaking proceeding, or any public input at a Commission meeting.

B. The Commission may allow an oral proceeding on any matter. At an oral proceeding:

1. The Chair is responsible for conducting the proceeding. If an individual wants to speak, the individual shall first request and be granted permission by the Chair.
2. Depending on the nature of the proceeding, the Chair may administer an oath to a witness before receiving testimony.
3. The Chair may order the removal of any individual who is disrupting the proceeding.
4. Based on the amount of time available, the Chair may limit the number of presentations or the time for testimony regarding a particular issue and shall prohibit irrelevant or immaterial testimony.
5. Technical rules of evidence do not apply to an oral proceeding, and no informality in any proceeding or in the manner of taking testimony invalidates any order, decision, or rule made by the Commission.

C. The Commission authorizes the Director to designate a hearing officer for oral proceedings to take public input on proposed rulemaking. The hearing officer has the same authority as the Chair in conducting oral proceedings, as provided in this Section.

D. The Commission authorizes the Director to continue a scheduled proceeding to a later Commission meeting. To request a continuance, a petitioner shall:

1. Deliver the request to the Director no later than 24 hours before the scheduled proceeding;
2. Demonstrate that the proceeding has not been continued more than twice; and
3. Demonstrate good cause for the continuance.

Historical Note

Adopted effective December 22, 1987 (Supp. 87-4). Amended effective November 10, 1997 (Supp. 97-4). Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2).

R12-4-604. Ex Parte Communication

A. For purposes of this Section:

1. "Individual outside the Commission" means any individual other than a Commissioner, personal aide to a Commissioner, Department employee, consultant of the Commission, or an attorney representing the Commission.
2. "Ex parte communication" means any oral or written communication with the Commission that is not part of the public record and for which no reasonable prior written notice has been given to all interested parties.

B. In any contested case (as defined in A.R.S. § 41-1001) or proceeding or appealable agency action (as defined in A.R.S. § 41-1092) before the Commission, except to the extent required for disposition of ex parte matters as authorized by law or these rules of procedure, the following prohibitions apply to ex parte communication:

1. An interested individual outside the Commission shall not make or knowingly cause to be made to any Commissioner, Commission hearing officer, personal aide to a Commissioner, Department employee, or consultant who is or may reasonably be expected to be involved in the decisionmaking process of the proceeding, an ex parte communication relevant to the merits of the proceeding;
2. A Commissioner, Commission hearing officer, personal aide to a Commissioner, Department employee, or consultant who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall not make or knowingly cause to be made to any interested person outside the Commission an ex parte communication relevant to the merits of the proceeding.

C. A Commissioner, Commission hearing officer, personal aide to a Commissioner, Department employee, or consultant who is or may be reasonably expected to be involved in the decisional process of the proceeding, who receives, makes, or knowingly causes to be made a communication prohibited by subsection (B)(1) or (B)(2) of this Section, shall place on the public record of the proceeding and serve on all interested parties to the proceeding:

1. A copy of each written communication;
2. A memorandum stating the substance of each oral communication; and
3. A copy of each response and memorandum stating the substance of each oral response to any communication governed by subsections (C)(1) and (C)(2).

D. Upon receipt of a communication made or knowingly caused to be made by a party in violation of this Section, the Commission or its hearing officer, to the extent consistent with equity and fairness, may require the party to show cause why the claim or interest in proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected because of the violation.

E. The provisions of this Section apply from the date that a notice of hearing for a contested case is served, a notice of appealable agency action is served, or a request for hearing is filed, whichever comes first,

unless the person responsible for the communication has knowledge that a proceeding will be noticed, in which case the prohibitions apply from the date that the individual acquired the knowledge.

Historical Note

Adopted effective December 22, 1987 (Supp. 87-4). Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2).

R12-4-605. Standards for Revocation, Suspension, or Denial of a License

A. Under A.R.S. § 17-340, the Commission shall hold a hearing and may revoke, suspend, or deny any hunting, fishing, or trapping license for an individual who has been convicted of any of the following offenses:

1. Killing or wounding a big game animal during a closed season or possessing a big game animal taken during a closed season. Conviction for possession of a road-kill animal or an animal that was engaged in depredation is not considered "possessing during a closed season" for the purposes of this subsection.
2. Destroying, injuring, or molesting livestock, or damaging or destroying personal property, notices or signboards, other improvements, or growing crops while hunting, fishing, or trapping.
3. Careless use of a firearm while hunting, fishing, or trapping that results in the injury or death of any person, if the act of discharging the firearm was deliberate.
4. Applying for or obtaining a license or permit by fraud or misrepresentation in violation of A.R.S. § 17-341.
5. Entering upon a game refuge or other area closed to hunting, trapping or fishing and taking, driving, or attempting to drive wildlife from the area in violation of A.R.S. §§ 17-303 and 17-304. 6. Unlawfully posting state or federal lands in violation of A.R.S. § 17-304(B).

B. Under A.R.S. § 17-340, the Commission shall hold a hearing and may revoke, suspend, or deny any hunting fishing, or trapping license if the Department recommends revocation, suspension, or denial of the license for an individual convicted of any of the following offenses:

1. Unlawfully taking or possessing big game, if sufficient evidence, which may or may not have been introduced in the court proceeding, supports any of the following conclusions: a. The big game was taken without a valid license or permit.
   b. The unlawful taking was willful and deliberate.
   c. The person in unlawful possession aided the unlawful taking or was, or should have been, aware that the taking was unlawful.

2. Unlawfully taking or possessing small game or fish, if sufficient evidence, which may or may not have been introduced in the court proceeding, supports any of the following conclusions: a. The taking was willful and deliberate.
   b. The possession was in excess of the lawful possession limit plus the daily bag limit.
3. Unlawfully taking wildlife species if sufficient evidence, which may or may not have been introduced in the court proceeding, indicates that the act of taking was willful and deliberate and showed disregard for state wildlife laws.
4. Littering a public hunting or fishing area while taking wildlife, if sufficient evidence, which may or may not have been introduced in the court proceeding, indicates that an individual littered the area, the amount of litter discarded was unreasonably large, and that the individual convicted made no reasonable effort to dispose of the litter in a lawful manner.
5. Careless use of a firearm while hunting, fishing, or trapping that resulted in injury or death to any person, if the act of discharging the firearm was not deliberate, but sufficient evidence, which may or may not have been introduced in the court proceeding, indicates that the careless use demonstrated wanton disregard for the safety of human life or property.
6. Any violation for which a license can be revoked under A.R.S. § 17-340, if the person has been convicted of a revocable offense within the past three years.
7. Violation of A.R.S. § 17-306 for unlawful possession of wildlife.

C. Under A.R.S. §§ 17-238, 17-362, 17-363, 17-364, and 17-340, if the Department has made a recommendation to the Commission for license revocation, the Commission shall hold a hearing and may revoke any fur dealer, guide, taxidermy, or special license (as defined in R12-4-401) in any case where license revocation is authorized by law.

Historical Note

Adopted effective December 22, 1987 (Supp. 87-4). Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2).

R12-4-606. Proceedings for License Revocation, Suspension, or Denial of Right to Obtain a License, and Civil Damages

A. The Director may commence a proceeding for the Commission to revoke, suspend or deny a license under A.R.S. §§ 17-238, 17-340, 17-362, 17-363, 17-364, R12-4-105, and R12-4-605. The Director may also commence a proceeding for civil damages under A.R.S. § 17-314.

B. The Commission shall conduct a hearing concerning revocation, suspension, or denial of the right to obtain a license in accordance with the Administrative Procedure Act, A.R.S. Title 41, Chapter 6,

Article 10. A respondent shall limit testimony to facts that show why the license should not be revoked or denied. Because the Commission does not have the authority to consider or change the conviction, a respondent is not permitted to raise this issue in the proceeding. The Commission shall permit a respondent to offer testimony or evidence relevant to the Commission's decision to order recovery of civil damages or wildlife parts.

C. If a respondent does not appear for a hearing on the date scheduled, at the time and location noticed, no further opportunity to be heard is provided, unless rehearing or review is granted under R12-4-607. If the respondent does not wish to attend the hearing, the respondent may submit written testimony to the Department before the hearing date designated in the Notice of Hearing required by A.R.S. § 17340(D). The Commission shall ensure that written testimony received at the time of the hearing is read into the record at the hearing.

D. The Commission shall base its decision on the officer's case report, a summary prepared by the Department, a certified copy of the court record, and any testimony presented at the hearing. With the notice of hearing required by A.R.S. § 17-340(D), the Department shall supply the respondent with a copy of each document provided to the Commission for use in reaching a decision.

E. Any party may apply to the Commission for issuance of a subpoena to compel the appearance of any witness or the production of documents at any hearing or deposition. Not later than 10 calendar days before the hearing or deposition, the party shall file a written application that provides the name and address of the witness, the subject matter of the expected testimony, the documents sought to be produced, and the date, time, and place of the hearing or deposition. The Commission chair has the authority to issue the subpoenas.

1. A party shall have a subpoena served as prescribed in the Arizona Rules of Civil Procedure, Rule 45. An employee of the Department may serve a subpoena at the request of the Commission chair.
2. A party may request that a subpoena be amended at any time before the deadline provided in this Section for filing the application. The party shall have the amended subpoena served as provided in subsection (E)(1).

F. A license revoked by the Commission is suspended on the date of the hearing and revoked upon issuance of the findings of fact, conclusions of law, and order. If a respondent appeals the Commission's order revoking a license, the license is revoked after all appeals have been completed. A denial of the right to obtain a license is effective for a period not to exceed five years, as determined by the Commission, beginning on the date of the hearing.

G. A license suspended by the Commission is suspended on the date of the hearing, and suspended upon issuance of the findings of fact, conclusions of law, and order. If a respondent appeals the Commission's

order suspending a license, the license is suspended after all appeals have been completed. Under A.R.S. § 17-340(A), a suspension of a license is effective for a period not to exceed five years, as determined by the Commission, beginning on the date of the hearing.

Historical Note

Adopted effective December 22, 1987 (Supp. 87-4). Amended effective November 10, 1997 (Supp. 97-4). Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2).

R12-4-607. Rehearing or Review of Commission Decisions A.

For purposes of this Section the following terms apply:

1. "Contested case" and "party" are defined as provided in A.R.S. § 41-1001;
2. "Appealable agency action" is defined as provided in A.R.S. § 41-1092(3).

B. Except as provided in subsection (G), any party in a contested case or appealable agency action before the Commission may file a motion for rehearing or review within 30 calendar days after service of the final administrative decision. For purposes of this subsection a decision is served when personally delivered or mailed by certified mail to the party's last known residence or place of business. The party shall attach a supporting memorandum, specifying the grounds for the motion.

C. A party may amend a motion for rehearing or review at any time before the Commission rules upon the motion. An opposing party has 15 calendar days after service to respond to the motion or the amended motion. The Commission has the authority to require that the parties file written briefs on any issue raised in a motion or response, and allow for oral argument.

D. The Commission has the authority to grant rehearing or review for any of the following causes materially affecting the moving party's rights:

1. Irregularity in the proceedings of the Commission, or any order or abuse of discretion that deprived the moving party of a fair hearing;
2. Misconduct of the Commission, its staff, an administrative law judge, or the prevailing party;
3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the original hearing;
5. Excessive or insufficient penalties;
6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceeding; or
7. That the findings of fact or decision is not justified by the evidence or is contrary to law.

E. The Commission 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 subsection (D). The Commission's order modifying a decision or granting a rehearing shall specify the grounds for the order, and any rehearing shall cover only those specified matters.

F. Not later than 15 calendar days, after a decision, the Commission may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Commission may grant a motion for rehearing or review for a reason not stated in the motion.

G. When a motion for rehearing or review is based upon affidavits, the party shall serve the affidavits with the motion. An opposing party may, within 10 calendar days after service, serve opposing affidavits. The Commission may extend this period for no more than 20 calendar days for good cause shown or by written stipulation of the parties. The Commission has the authority to permit reply affidavits.

Historical Note

Adopted effective June 13, 1977 (Supp. 77-3). Former Section R12-4-14 renumbered as Section R124-115 without change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-115 renumbered without change as Section R12-4-607 effective December 22, 1987 (Supp. 87-4). Amended effective November 10, 1997 (Supp. 97-4). Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2).

R12-4-608. Expired Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective May 27, 1992 (Supp. 92-1). Amended 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 expired under A.R.S. § 41-1056(E) at 8 A.A.R. 853, effective January 31, 2002 (Supp. 02-1).

R12-4-609. Commission Orders

A. Except as provided in subsection (B):

1. At least 20 calendar days before a meeting where the Commission will consider a Commission Order, the Department shall ensure that a public meeting notice and agenda for the public meeting is posted in accordance with A.R.S. § 38-431.02. The Department shall also issue a public notice of the recommended Commission Order to print and electronic media at least 20 calendar days before the meeting.

2. The Department shall ensure that the public meeting notice and agenda contains the date, time, and location of the Commission meeting where the Commission Order will be considered and a statement that the public may attend and present written comments at or before the meeting.
3. The Department shall also ensure that the public meeting notice and agenda states that a copy of the proposed Commission Order is available for public inspection at the Department offices in Phoenix, Pinetop, Flagstaff, Kingman, Yuma, Tucson, and Mesa 10 calendar days before the meeting. The Commission may make changes to the recommended Commission Order at the Commission meeting.

B. The requirements of subsection (A) do not apply to Commission orders establishing:

1. Supplemental hunts as prescribed in R12-4-115, and
2. Special seasons for individuals that possess special license tags issued under A.R.S. § 17-346 and R12-4-120.

C. The Department shall publish the content of all Commission orders and make them available to the public without charge.

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 November 10, 1997 (Supp. 97-4). 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. 2245, effective July 6, 2004 (Supp. 04-2).

R12-4-610. Petitions for the Closure of State or Federal Lands to Hunting, Fishing, Trapping, or Operation of Motor Vehicles

A. An individual or agency requesting that the Commission consider closing state or federal land to hunting, fishing, or trapping as provided under A.R.S. § 17-304(B) or R12-4-110; or closing roads or trails on state lands as provided under R12-4-110, shall submit a petition as prescribed in this Section before the Commission will consider the request.

B. A petition shall not address more than one contiguous closure request.

C. Once the Commission has considered and denied a petition, an individual who subsequently submits a petition that addresses the same contiguous closure request shall provide a written statement that contains any reason not previously considered by the Commission in making a decision.

D. A petitioner shall submit an original and one copy of the petition to the Director of the Arizona Game and Fish Department, Director's Office, 5000 W. Carefree Highway, Phoenix, AZ 85086, not less than

60 calendar days before a scheduled Commission meeting to be placed on the agenda for that meeting. If the Commission receives a petition after that time it will be considered at the next regularly-scheduled open meeting. At any time, the petitioner may withdraw the petition or request delay to a later regularly-scheduled open meeting.

E. Within 15 business days after the petition is filed, the Department shall determine whether the petition complies with the requirements established under A.R.S. § 17-452, R12-4-110, and this Section. Once the Department determines that the petition meets these requirements, and if the petitioner has not agreed to an alternative solution or withdrawn the petition, the Department, in accordance with the schedule in subsection (D), shall place the petition on the agenda for the

Commission's next open meeting and provide written notice to the petitioner of the date that the Commission will consider the petition.

1. The petitioner may present oral testimony in support of the petition at the Commission meeting, in accordance with the provisions established under R12-4-603.
2. If a petition does not meet the requirements prescribed under A.R.S. § 17-452, R12-4-110, and this Section, the Department shall return one copy of the petition as filed to the petitioner with the reasons why the petition does not meet the requirements, and not place the petition on a Commission agenda.
3. If the Department returns a petition to a petitioner for a reason that cannot be corrected, the Department shall serve on the petitioner a notice of appealable agency action under A.R.S. § 411092.03.

F. The petitioner shall submit a petition that:

1. Is typewritten, computer or word processor printed, or legibly handwritten, and double-spaced, on 8 1/2" x 11" paper;
2. Has a concise map that shows the specific location of the proposed closure;
3. Has the title "Petition for the Closure of Hunting, Fishing, or Trapping Privileges on Public Land" or "Petition for the Closure of Public Lands to the Operation of Motor Vehicles" at the top of the first page;
4. Is in four parts, with titles designating each part as prescribed in this subsection;
5. Has a "Part 1" with the title "Identification of Petitioner" and contains the following information, if applicable:
    a. If the petitioner is the leaseholder of the area proposed for closure, the name, lease number, mailing address, and home telephone number of the petitioner;

b. If the petitioner is anyone other than the leaseholder, the name, mailing address, and telephone number of the leaseholder; the name, mailing address, and telephone number of the petitioner; and the name of each group or organization or organizations that the petitioner represents; or

c. If the petitioner is a public agency, the name and address of the agency and the name, title, and telephone number of the agency's representative regarding the petition.

6. Has a "Part 2" with the title "Request for Closure" and contains all of the following information, if applicable:

a. The type of closure requested: either a hunting, fishing, or trapping closure, or closure to the operation of motor vehicles;

b. A complete legal description of the area to be closed;

c. The name or identifying number of any road and the portion of the road affected by the closure; and

d. The dates proposed for the closure:

i. If the closure is to the operation of motor vehicles, the actual time period of the closure (up to five years), and whether or not the closure is seasonal; or ii. If the closure is for hunting, fishing, or trapping, whether or not the request is for a permanent closure or for some other period of time.

7. Has a "Part 3" with the title "Reason for Closure" and contains all of the following information, if applicable:

a. Each reason why the closure should be considered under R12-4-110, A.R.S. § 17-304(B), or A.R.S. § 17-452(A);

b. Any data or other justification supporting the reasons for the closure with clear reference to any exhibits that may be attached to the petition;

c. Each individual or segment of the public the petitioner believes will be impacted by the closure, including any other valid licensees, lessees, or permittees that will or may be affected, and how they will be impacted, including both positive and negative impacts;

d. If the petitioner is a public agency, a summary of issues raised in any public hearing or public meeting regarding the petition and a copy of each written comment or document of concurrence authorized under A.R.S. § 17-452(A), received by the petitioning agency; and

e. A proposed alternate access route, under R12-4-110.

8. Has a "Part 4" with the title "Dates and Signatures" and contains the following:

a. The original signature of the private party or the official contact named under subsection (F)(5)(a) or (b) of this Section, or, if the petitioner is a public agency, the signature of the agency head or the agency head's designee; and

b. The month, day, and year when the petition was signed.

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 by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2). Amended by final rulemaking at 16 A.A.R. 1465, effective July 13, 2010 (Supp. 10-3).

R12-4-611. Petition for Hearing Before the Commission When No Remedy is Provided in Statute, Rule, or Policy

A. If no administrative remedy exists in statute, rule or policy, an aggrieved individual may request a hearing before the Commission by following the provisions of this Section.

B. Any individual who requests a hearing under this Section shall submit a petition as prescribed in this Section before the request for a hearing will be considered by the Commission.

C. A petitioner shall submit an original and one copy of a petition to the Arizona Game and Fish Department, Director's Office, 5000 W. Carefree Highway, Phoenix, AZ 85086.

D. The petitioner shall ensure that the petition is typewritten, computer or word processor printed, or legibly handwritten, and double-spaced on 8 1/2" x 11" paper. The petitioner shall place the title "Petition for Hearing by the Arizona Game and Fish Commission" at the top of the first page. The petition shall include the items listed in subsections (E) through (H). The petitioner shall present the items in the petition in the order in which they are listed in this Section.

E. The petitioner shall ensure that the title of Part 1 is "Identification of Petitioner" and that Part 1 includes the following information, as applicable:

1. If the petitioner is a private person, the name, mailing address, telephone number, and e-mail address (if available) of the petitioner;
2. If the petitioner is a private group or organization, the name and address of the organization; the name, mailing address, telephone number, and e-mail address (if available) of one person who is designated as the official contact for the group or organization; the number of individuals or members represented by the private group or organization, and the number of these individuals or

members who are Arizona residents. If the petitioner prefers, the petitioner may provide the names and addresses of all members; or

3. If the petitioner is a public agency, the name and address of the agency and the name, title, telephone number, and e-mail address (if available) of the agency's representative.

F. The petitioner shall ensure that the title of Part 2 is "Statement of Facts and Issues." Part 2 shall contain a description of the issue to be resolved, and a statement of the facts relevant to resolving the issue.

G. The petitioner shall ensure that the title of Part 3 is "Petitioner's Proposed Remedy." Part 3 shall contain a full and detailed explanation of the specific remedy the petitioner is seeking from the Commission.

H. The petitioner shall ensure that the title of Part 4 is "Date and Signatures." Part 4 shall contain:

1. The original signature of the private party or the official contact named in the petition, or, if the petitioner is a public agency, the signature of the agency head or the agency head's designee; and
2. The month, day, and year that the petition is signed.

I. If a petition does not comply with this Section, the Director shall return the petition and indicate why the petition is deficient.

J. After the Director receives a petition that complies with this Section, the Director shall place the petition on the agenda of a regularly scheduled Commission meeting.

K. If the Commission votes to deny a petition, the Department shall not accept a subsequent petition on the same matter, unless the petitioner presents new evidence or reasons for considering the subsequent petition.

L. This Section does not apply to the following:

1. A matter related to a license revocation or civil assessment;
2. An unsuccessful hunt permit-tag computer draw application, where there was no error on the part of the Department; or
3. The reinstatement of a bonus point, except as authorized under R12-4-107(M).

Historical Note

New Section made by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2). Amended by final rulemaking at 16 A.A.R. 1465, effective July 13, 2010 (Supp. 10-3). Amended by final rulemaking at 21 A.A.R. 3025, effective January 3, 2016.

ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION
STATUTORY AUTHORITY

17-231. General powers and duties of the commission A.

The commission shall:

1. Adopt rules and establish services it deems necessary to carry out the provisions and purposes of this title.
2 Establish broad policies and long-range programs for the management, preservation and harvest of wildlife.
3. Establish hunting, trapping and fishing rules and prescribe the manner and methods that may be used in taking wildlife, but the commission shall not limit or restrict the magazine capacity of any authorized firearm.
4. Be responsible for the enforcement of laws for the protection of wildlife.
5. Provide for the assembling and distribution of information to the public relating to wildlife and activities of the department.
6. Prescribe rules for the expenditure, by or under the control of the director, of all funds arising from appropriation, licenses, gifts or other sources.
7. Exercise such powers and duties necessary to carry out fully the provisions of this title and in general exercise powers and duties that relate to adopting and carrying out policies of the department and control of its financial affairs.
8. Prescribe procedures for use of department personnel, facilities, equipment, supplies and other resources in assisting search or rescue operations on request of the director of the division of emergency management.
9. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region. B. The commission may:

1. Conduct investigations, inquiries or hearings in the performance of its powers and duties.
2. Establish game management units or refuges for the preservation and management of wildlife.
3. Construct and operate game farms, fish hatcheries, fishing lakes or other facilities for or relating to the preservation or propagation of wildlife.
4. Expend funds to provide training in the safe handling and use of firearms and safe hunting practices.
5. Remove or permit to be removed from public or private waters fish which hinder or prevent propagation of game or food fish and dispose of such fish in such manner as it may designate.
6. Purchase, sell or barter wildlife for the purpose of stocking public or private lands and waters and take at any time in any manner wildlife for research, propagation and restocking purposes or for use at a game farm or fish hatchery and declare wildlife salable when in the public interest or the interest of conservation.
7. Enter into agreements with the federal government, with other states or political subdivisions of the state and with private organizations for the construction and operation of facilities and for management studies, measures or procedures for or relating to the preservation and propagation of wildlife and expend funds for carrying out such agreements.
8. Prescribe rules for the sale, trade, importation, exportation or possession of wildlife.

9. Expend monies for the purpose of producing publications relating to wildlife and activities of the department for sale to the public and establish the price to be paid for annual subscriptions and single copies of such publications. All monies received from the sale of such publications shall be deposited in the game and fish publications revolving fund.
10. Contract with any person or entity to design and produce artwork on terms that, in the commission's judgment, will produce an original and valuable work of art relating to wildlife or wildlife habitat.
11. Sell or distribute the artwork authorized under paragraph 10 of this subsection on such terms and for such price as it deems acceptable.
12. Consider the adverse and beneficial short-term and long-term economic impacts on resource dependent communities, small businesses and the state of Arizona, of policies and programs for the management, preservation and harvest of wildlife by holding a public hearing to receive and consider written comments and public testimony from interested persons.
13. Adopt rules relating to range operations at public shooting ranges operated by and under the jurisdiction of the commission, including the hours of operation, the fees for the use of the range, the regulation of groups and events, the operation of related range facilities, the type of firearms and ammunition that may be used at the range, the safe handling of firearms at the range, the required safety equipment for a person using the range, the sale of firearms, ammunition and shooting supplies at the range, and the authority of range officers to enforce these rules, to remove violators from the premises and to refuse entry for repeat violations.
14. Solicit and accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title.

C. The commission shall confer and coordinate with the director of water resources with respect to the commission's activities, plans and negotiations relating to water development and use, restoration projects under the restoration acts pursuant to chapter 4, article 1 of this title, where water development and use are involved, the abatement of pollution injurious to wildlife and in the formulation of fish and wildlife aspects of the director of water resources' plans to develop and utilize water resources of the state and shall have jurisdiction over fish and wildlife resources and fish and wildlife activities of projects constructed for the state under or pursuant to the jurisdiction of the director of water resources.

D. The commission may enter into one or more agreements with a multi-county water conservation district and other parties for participation in the lower Colorado river multispecies conservation program under section 483713.03, including the collection and payment of any monies authorized by law for the purposes of the lower Colorado river multispecies conservation program.

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.

ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION
STATUTORY AUTHORITY

17-303. Taking or driving wildlife from closed areas

It is unlawful for any person, except by commission order, to enter upon a game refuge or other area closed to hunting, trapping or fishing and take, drive or attempt to drive wildlife from such areas.

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. Barters, sells or offers for sale any big game or parts of big game taken unlawfully.
2. Barters, sells or offers for sale any wildlife or parts of wildlife unlawfully taken during a closed season.
3. Barters, 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 liability for illegally taking or wounding wildlife; recovery of damages

ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION
STATUTORY AUTHORITY

A. The commission or any officer charged with enforcement of the laws relating to game and fish, if so directed by the commission, may bring a civil action in the name of the state against any person unlawfully taking, wounding or killing, or unlawfully in possession of, any of the following wildlife, or part thereof, and seek to recover the following minimum sums as damage:

1. For each turkey or javelina……. $500.00
2. For each bear, mountain lion, 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. No verdict or judgment recovered by the state in such action shall be for less than the sum fixed in this section. The minimum sum that the commission may seek to recover as damages from a person pursuant to this section may be doubled for a second verdict or judgment and tripled for a third verdict or judgment. The action for damages may be joined with an action for possession, and recovery had for the possession as well as the damages.

C. The pendency or determination of an action for damages or payment of 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.

17-316. Interference with rights of hunters; classification; civil action; exceptions

A. It is a class 2 misdemeanor for a person while in a hunting area to intentionally interfere with, prevent or disrupt the lawful taking of wildlife by:

1. Harassing, driving or disturbing any wildlife.
2. Blocking, obstructing or impeding, or attempting to block, obstruct or impede, a person lawfully taking wildlife.
3. Erecting a barrier without the consent of the landowner or lessee with the intent to deny ingress to or egress from areas where wildlife may be lawfully taken.
4. Making or attempting to make physical contact, without permission, with a person lawfully taking wildlife.
5. Engaging in, or attempting to engage in, theft, vandalism or destruction of real or personal property.
6. Disturbing or altering, or attempting to disturb or alter, the condition or authorized placement of real or personal property intended for use in the lawful taking of wildlife.
7. Making or attempting to make loud noises or gestures, set out or attempt to set out animal baits, scents or lures or human scent, use any other natural or artificial visual, aural, olfactory or physical stimuli, or engage in or attempt to engage in any other similar action or activity, in order to disturb, alarm, drive, attract or affect the behavior of wildlife or disturb, alarm, disrupt or annoy a person lawfully taking wildlife.
8. Interjecting oneself into the line of fire of a person lawfully taking wildlife.

B. It is a class 3 misdemeanor for a person to enter or remain on a designated hunting area on any public or private lands or waters or state lands including state trust lands with the intent to interfere with, prevent or disrupt the lawful taking of wildlife.

C. The commission or any person properly licensed to take wildlife who is directly affected by a violation of this section may bring an action to restrain conduct declared unlawful in this section and to recover damages.

D. A peace officer who reasonably believes that a person has violated this section may order the person to desist or to leave the area or arrest such person upon refusal to desist or leave. E. The conduct declared unlawful in this section does not:

1. Include any incidental interference arising from lawful activity by public land users, including ranchers, miners or recreationists.
2. Apply to landowners, permittees, lessees or their agents or contractors engaged in animal husbandry practices or agricultural operations.

17-340. Revocation, suspension and denial of privilege of taking wildlife; 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 has 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 a 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 a 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 a person's privilege to take wildlife permanently.

C. A person who is assessed civil damages under section 17-314 shall not apply for or obtain a license during the pendency of an action for damages, while measures are pursued to collect damages or prior to the full payment of damages.

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.

17-341. Violation; classification

A. 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 a license or permit so obtained is void and of no effect from the date of issuance thereof.

B. Any person who violates this section is guilty of a class 2 misdemeanor.

17-361. Trappers; licensing; restrictions; duties; reports

A. The holder of a trapping license, may trap predatory, nongame, and fur-bearing mammals under such restrictions as the commission may specify.

B. All traps shall be plainly identified with the name, address, or registered number of the owner, and such markings of identification shall be filed with the department. All traps in use shall be inspected daily.

C. It shall be unlawful for a person to disturb the trap of another unless authorized to do so by the owner.

D. Pursuant to rules and regulations of the commission, each trapping licensee shall, on dates designated by the commission, submit on forms provided by the department, a legible report of the number of each kind of predatory, nongame and fur-bearing mammal taken and the names and addresses of the persons to whom they were shipped or sold or the wildlife management units where the animals were taken.

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.

17-363. License to practice taxidermy

A. No person shall engage in the business of a taxidermist for hire until such person has procured a license which may be granted to any person at the discretion of the commission.

B. A taxidermist shall keep a register, and exhibit it upon request of authorized representatives of the game and fish department and the United States fish and wildlife service, of the names and addresses of persons who furnish raw and unmounted specimens, the taker's tag or license number, the date and number of each species of wildlife received, and shall by the tenth day of October, January, April and July, file a legible report in English with the department of such entries except names and addresses on forms provided therefor.

17-364. Fur dealer's license; records; reports

A. No person shall engage in the business of buying for resale any specimen of predatory, nongame and furbearing mammals taken within this state without obtaining a fur dealer's license.

B. A fur dealer shall keep a record of the date, number and species of all pelts or furs received, the name and addresses of the persons from whom such pelts or furs were received and the names and addresses of the persons to whom such pelts or furs were shipped or sold.

C. Fur dealers shall by the tenth day of October, January, April and July file a legible report with the department of all such records required by paragraph B on forms provided by the department.

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.

41-1003. Required rulemaking

Each agency shall make rules of practice setting forth the nature and requirements of all formal procedures available to the public.

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 rulemaking 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 rulemaking, 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 rulemaking, 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 rulemaking proceedings. Those rules may include provisions calculated to prevent undue repetition in the oral proceedings.

41-1029. Agency rule making record

A. An agency shall maintain an official rule making record for each rule it proposes by publication in the register of a notice of proposed rulemaking and each final rule filed in the office of the secretary of state. The record and matter incorporated by reference must be available for public inspection. B. The agency rule making record shall contain all of the following:

1. A copy of the notice initially filed in the office of the secretary of state.
2. Copies of all publications in the register with respect to the rule or the proceeding on which the rule is based.
3. Copies of any portions of the agency's rule making docket containing entries relating to the rule or the proceeding on which the rule is based.
4. All written petitions, requests, submissions and comments received by the agency and all other written materials considered or prepared by the agency in connection with the rule or the proceeding on which the rule is based.
5. Any official transcript of oral presentations made in the proceeding on which the rule is based, or if not transcribed, any tape recording or stenographic record of those presentations, and any memorandum prepared by a presiding official summarizing the contents of those presentations.
6. A copy of all materials submitted to the council, including the economic, small business and consumer impact statement and the minutes of the council meeting at which the rule was reviewed.
7. A copy of the final rule and preamble.
8. Information requested regarding the experience, technical competence, specialized knowledge and judgment of an agency if the agency relies on section 41-1024, subsection D in the making of a rule and a request is made.

C. On judicial review, the record required by this section constitutes the official agency rule making record with respect to a rule. Except as provided in section 41-1036 or otherwise required by a provision of law, the agency rule making record need not constitute the exclusive basis for agency action on that rule or for judicial review of that rule.

41-1033. Petition for a rule or review of a practice or policy

ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION
STATUTORY AUTHORITY

A. Any person, in a manner and form prescribed by the agency, may petition an agency 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. The petition shall clearly state the rule, agency practice or substantive policy statement which the person wishes the agency to make or review. Within sixty days after submission of a petition, the agency shall either deny the petition in writing, stating its reasons for denial, initiate rulemaking proceedings in accordance with this chapter or, if otherwise lawful, make a rule.

B. A person may appeal to the council the agency's final decision within thirty days after the agency gives written notice pursuant to subsection A of this section. The appeal shall be limited to whether an 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.

C. If the council receives information indicating that an existing agency practice or substantive policy statement may constitute a rule and at least four council members request the chairperson that the matter be heard in a public meeting:

1. Within ninety days of receipt of the fourth council member request, the council shall determine if the agency practice or substantive policy statement constitutes a rule.
2. Within ten days of receipt of the fourth council member request, the council shall notify the agency that the matter has been or will be placed on an agenda.
3. Within thirty days of receiving notice from the council, the agency shall submit a statement that addresses whether the existing agency practice or substantive policy statement constitutes a rule.

D. For the purposes of subsection C of this section, the council meeting shall not be held until the expiration of the agency response period prescribed in subsection C, paragraph 3 of this subsection.

E. An agency practice or substantive policy statement 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 statement constitutes a rule, the practice or statement shall be considered void.

F. 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.

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.

41-1092.02. Appealable agency actions; application of procedural rules; exemption from article

A. This article applies to all contested cases as defined in section 41-1001 and all appealable agency actions, except contested cases with or appealable agency actions of:

1. The state department of corrections.
2. The board of executive clemency.
3. The industrial commission of Arizona.
4. The Arizona corporation commission.
5. The Arizona board of regents and institutions under its jurisdiction.
6. The state personnel board.

7. The department of juvenile corrections.
8. The department of transportation.
9. The department of economic security except as provided in section 46-458.
10. The department of revenue regarding:
    (a) Income tax or withholding tax.
    (b) Any tax issue related to information associated with the reporting of income tax or withholding tax unless the taxpayer requests in writing that this article apply and waives confidentiality under title 42, chapter 2, article 1.
11. The board of tax appeals.
12. The state board of equalization.
13. The state board of education, but only in connection with contested cases and appealable agency actions related to applications for issuance or renewal of a certificate and discipline of certificate holders pursuant to sections 15-203, 15-534, 15-534.01, 15-535, 15-545 and 15-550.
14. The board of fingerprinting.
15. The department of child safety except as provided in sections 8-506.01 and 8-811.

B. Unless waived by all parties, an administrative law judge shall conduct all hearings under this article, and the procedural rules set forth in this article and rules made by the director apply. C. Except as provided in subsection A of this section:

1. A contested case heard by the office of administrative hearings regarding taxes administered under title 42 shall be subject to the provisions under section 42-1251.
2. A final decision of the office of administrative hearings regarding taxes administered under title 42 may be appealed by either party to the director of the department of revenue, or a taxpayer may file and appeal directly to the board of tax appeals pursuant to section 42-1253.

D. Except as provided in subsections A, B, E, F and G of this section and notwithstanding any other administrative proceeding or judicial review process established in statute or administrative rule, this article applies to all appealable agency actions and to all contested cases.

E. Except for a contested case or an appealable agency action regarding unclaimed property, sections 41-1092.03, 41-1092.08 and 41-1092.09 do not apply to the department of revenue. F. The board of appeals established by section 37-213 is exempt from:

1. The time frames for hearings and decisions provided in section 41-1092.05, subsection A, section 411092.08 and section 41-1092.09.
2. The requirement in section 41-1092.06, subsection A to hold an informal settlement conference at the appellant's request if the sole subject of an appeal pursuant to section 37-215 is the estimate of value reported in an appraisal of lands or improvements.

G. Auction protest procedures pursuant to title 37, chapter 2, article 4.1 are exempt from this article.

ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION
STATUTORY AUTHORITY

41-1092.03. Notice of appealable agency action or contested case; hearing; informal settlement conference; applicability

A. Except as provided in subsection D of this section, an agency shall serve notice of an appealable agency action or contested case pursuant to section 41-1092.04. The notice shall:
   1. Identify the statute or rule that is alleged to have been violated or on which the action is based.
   2. Identify with reasonable particularity the nature of any alleged violation, including, if applicable, the conduct or activity constituting the violation.
   3. Include a description of the party's right to request a hearing on the appealable agency action or contested case.
   4. Include a description of the party's right to request an informal settlement conference pursuant to section 41-1092.06.

B. A party may obtain a hearing on an appealable agency action or contested case by filing a notice of appeal or request for a hearing with the agency within thirty days after receiving the notice prescribed in subsection A of this section. The notice of appeal or request for a hearing may be filed by a party whose legal rights, duties or privileges were determined by the appealable agency action or contested case. A notice of appeal or request for a hearing also may be filed by a party who will be adversely affected by the appealable agency action or contested case and who exercised any right provided by law to comment on the action being appealed or contested, provided that the grounds for the notice of appeal or request for a hearing are limited to issues raised in that party's comments. The notice of appeal or request for a hearing shall identify the party, the party's address, the agency and the action being appealed or contested and shall contain a concise statement of the reasons for the appeal or request for a hearing. The agency shall notify the office of the appeal or request for a hearing and the office shall schedule an appeal or contested case hearing pursuant to section 41-1092.05, except as provided in section 41-1092.01, subsection F.

C. If good cause is shown an agency head may accept an appeal or request for a hearing that is not filed in a timely manner.

D. This section does not apply to a contested case if the agency:
   1. Initiates the contested case hearing pursuant to law other than this chapter and not in response to a request by another party.
   2. Is not required by law, other than this chapter, to provide an opportunity for an administrative hearing before taking action that determines the legal rights, duties or privileges of an applicant for a license.

41-1092.04. Service of documents

Unless otherwise provided in this article, every notice or decision under this article shall be served by personal delivery or certified mail, return receipt requested, or by any other method reasonably calculated to effect actual notice on the agency and every other party to the action to the party's last address of record with the agency. Each party shall inform the agency and the office of any change of address within five days of the change.

41-1092.05. Scheduling of hearings; prehearing conferences A. Except as provided in subsections B and C, hearings for:

1. Appealable agency actions shall be held within sixty days after the notice of appeal is filed.
2. Contested cases shall be held within sixty days after the agency's request for a hearing.

B. Hearings for appealable agency actions of or contested cases with self-supporting regulatory boards that meet quarterly or less frequently shall be held at the next meeting of the board after the board receives the written decision of an administrative law judge or the issuance of the notice of hearing, except that:

1. If the decision of the administrative law judge is received or the notice of hearing is issued within thirty days before the board meets, the hearing shall be held at the following meeting of the board.
2. If good cause is shown, the hearing may be held at a later meeting of the board.

C. The date scheduled for the hearing may be advanced or delayed on the agreement of the parties or on a showing of good cause.

D. The agency shall prepare and serve a notice of hearing on all parties to the appeal or contested case at least thirty days before the hearing. The notice shall include:

1. A statement of the time, place and nature of the hearing.
2. A statement of the legal authority and jurisdiction under which the hearing is to be held.
3. A reference to the particular sections of the statutes and rules involved.
4. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. After the initial notice and on application, a more definite and detailed statement shall be furnished.

E. Notwithstanding subsection D, a hearing shall be expedited as provided by law or upon a showing of extraordinary circumstances or the possibility of irreparable harm if the parties to the appeal or contested case have actual notice of the hearing date. Any party to the appeal or contested case may file a motion with the director asserting the party's right to an expedited hearing. The right to an expedited hearing shall be listed on any abatement order. The Arizona health care cost containment system administration may file a motion with every member grievance and eligibility appeal that cites federal law and that requests that a hearing be set within thirty days after the motion is filed. F. Prehearing conferences may be held to:

1. Clarify or limit procedural, legal or factual issues.
2. Consider amendments to any pleadings.
3. Identify and exchange lists of witnesses and exhibits intended to be introduced at the hearing.
4. Obtain stipulations or rulings regarding testimony, exhibits, facts or law.
5. Schedule deadlines, hearing dates and locations if not previously set.
6. Allow the parties opportunity to discuss settlement.

41-1092.06. Appeals of agency actions and contested cases; informal settlement conferences; applicability

A. If requested by the appellant of an appealable agency action or the respondent in a contested case, the agency shall hold an informal settlement conference within fifteen days after receiving the request. A request for an informal settlement conference shall be in writing and shall be filed with the agency no later than twenty days before the hearing. If an informal settlement conference is requested, the agency shall notify the office of the request and the outcome of the conference, except as provided in section 41-1092.01, subsection F. The request for an informal settlement conference does not toll the sixty day period in which the administrative hearing is to be held pursuant to section 41-1092.05.

B. If an informal settlement conference is held, a person with the authority to act on behalf of the agency must represent the agency at the conference. The agency representative shall notify the appellant in writing that statements, either written or oral, made by the appellant at the conference, including a written document, created or expressed solely for the purpose of settlement negotiations are inadmissible in any subsequent administrative hearing. The parties participating in the settlement conference shall waive their right to object to the participation of the agency representative in the final administrative decision.

41-1092.07. Hearings

A. A party to a contested case or appealable agency action may file a nonperemptory motion with the director to disqualify an office administrative law judge from conducting a hearing for bias, prejudice, personal interest or lack of technical expertise necessary for a hearing.

B. The parties to a contested case or appealable agency action have the right to be represented by counsel or to proceed without counsel, to submit evidence and to cross-examine witnesses.

C. The administrative law judge may issue subpoenas to compel the attendance of witnesses and the production of documents. The subpoenas shall be served and, on application to the superior court, enforced in the manner provided by law for the service and enforcement of subpoenas in civil matters. The administrative law judge may administer oaths and affirmations to witnesses.

D. All parties shall have the opportunity to respond and present evidence and argument on all relevant issues. All relevant evidence is admissible, but the administrative law judge may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues or by considerations of undue delay, waste of time or needless presentation of cumulative evidence. The administrative law judge shall exercise reasonable control over the manner and order of cross-examining witnesses and presenting evidence to make the cross-examination and presentation effective for ascertaining the truth, avoiding needless consumption of time and protecting witnesses from harassment or undue embarrassment.

E. All hearings shall be recorded. The administrative law judge shall secure either a court reporter or an electronic means of producing a clear and accurate record of the proceeding at the agency's expense. Any party that requests a transcript of the proceeding shall pay the costs of the transcript to the court reporter or other transcriber.

F. Unless otherwise provided by law, the following apply:

1. A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Neither the manner of conducting the hearing nor the failure to adhere to the rules of evidence required in judicial proceedings is grounds for reversing any administrative decision or order if the evidence supporting the decision or order is substantial, reliable and probative.
2. Copies of documentary evidence may be received in the discretion of the administrative law judge. On request, parties shall be given an opportunity to compare the copy with the original.
3. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence and specialized knowledge may be used in the evaluation of the evidence.
4. On application of a party or the agency and for use as evidence, the administrative law judge may permit a deposition to be taken, in the manner and on the terms designated by the administrative law judge, of a witness who cannot be subpoenaed or who is unable to attend the hearing. Subpoenas for the production of documents may be ordered by the administrative law judge if the party seeking the discovery demonstrates that the party has reasonable need of the materials being sought. All provisions of law compelling a person under subpoena to testify are applicable. Fees for attendance as a witness shall be the same as for a witness in court, unless otherwise provided by law or agency rule. Notwithstanding section 12-2212, subpoenas, depositions or other discovery shall not be permitted except as provided by this paragraph or subsection C of this section.
5. Informal disposition may be made by stipulation, agreed settlement, consent order or default.
6. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.
7. A final administrative decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. G. Except as otherwise provided by law:
1. At a hearing on an agency's denial of a license or permit or a denial of an application or request for modification of a license or permit, the applicant has the burden of persuasion.
2. At a hearing on an agency action to suspend, revoke, terminate or modify on its own initiative material conditions of a license or permit, the agency has the burden of persuasion.
3. At a hearing on an agency's imposition of fees or penalties or any agency compliance order, the agency has the burden of persuasion.
4. At a hearing held pursuant to title 41, chapter 23 or 24, the appellant or claimant has the burden of persuasion.

H. Subsection G of this section does not affect the law governing burden of persuasion in an agency denial of, or refusal to issue, a license renewal.

41-1092.08. Final administrative decisions; review

A. The administrative law judge of the office shall issue a written decision within twenty days after the hearing is concluded. The written decision shall contain a concise explanation of the reasons supporting the decision. The administrative law judge shall serve a copy of the decision on the agency. Upon request of the agency, the office shall also transmit to the agency the record of the hearing as described in section 12-904, except as provided in section 41-1092.01, subsection F.

B. Within thirty days after the date the office sends a copy of the administrative law judge's decision to the head of the agency, executive director, board or commission, the head of the agency, executive director, board or commission may review the decision and accept, reject or modify it. If the head of the agency, executive director, board or commission declines to review the administrative law judge's decision, the agency shall serve a copy of the decision on all parties. If the head of the agency, executive director, board or commission rejects or modifies the decision the agency head, executive director, board or commission must file with the office, except as provided in section 41-1092.01, subsection F, and serve on all parties a copy of the administrative law judge's decision with the rejection or modification and a written justification setting forth the reasons for the rejection or modification.

C. A board or commission whose members are appointed by the governor may review the decision of the agency head, as provided by law, and make the final administrative decision.

D. Except as otherwise provided in this subsection, if the head of the agency or a board or commission does not accept, reject or modify the administrative law judge's decision within thirty days after the date the office sends a copy of the administrative law judge's decision to the head of the agency, executive director, board or commission, as evidenced by receipt of such action by the office by the thirtieth day the office shall certify the administrative law judge's decision as the final administrative decision. If the board or commission meets monthly or less frequently, if the office sends the administrative law judge's decision at least thirty days before the next meeting of the board or commission and if the board or commission does not accept, reject or modify the administrative law judge's decision at the next meeting of the board or commission, as evidenced by receipt of such action by the office within five days after the meeting the office shall certify the administrative law judge's decision as the final administrative decision.

E. For the purposes of subsections B and D of this section, a copy of the administrative law judge's decision is sent on personal delivery of the decision or five days after the decision is mailed to the head of the agency, executive director, board or commission.

F. The decision of the agency head is the final administrative decision unless either:

1. The agency head, executive director, board or commission does not review the administrative law judge's decision pursuant to subsection B of this section or does not reject or modify the administrative law judge's decision as provided in subsection D of this section, in which case the administrative law judge's decision is the final administrative decision.
2. The decision of the agency head is subject to review pursuant to subsection C of this section.

G. If a board or commission whose members are appointed by the governor makes the final administrative decision as an administrative law judge or upon review of the decision of the agency head, the decision is not subject to review by the head of the agency.

H. A party may appeal a final administrative decision pursuant to title 12, chapter 7, article 6, except as provided in section 41-1092.09, subsection B and except that if a party has not requested a hearing upon receipt of a notice of appealable agency action pursuant to section 41-1092.03, the appealable agency action is not subject to judicial review.

I. This section does not apply to the Arizona peace officer standards and training board established by section 411821.

41-1092.09. Rehearing or review

A. Except as provided in subsection B of this section:

1. A party may file a motion for rehearing or review within thirty days after service of the final administrative decision.
2. The opposing party may file a response to the motion for rehearing within fifteen days after the date the motion for rehearing is filed.
3. After a hearing has been held and a final administrative decision has been entered pursuant to section 411092.08, a party is not required to file a motion for rehearing or review of the decision in order to exhaust the party's administrative remedies.

B. A party to an appealable agency action of or contested case with a self-supporting regulatory board shall exhaust the party's administrative remedies by filing a motion for rehearing or review within thirty days after the service of the administrative decision that is subject to rehearing or review in order to be eligible for judicial review pursuant to title 12, chapter 7, article 6. The board shall notify the parties in the administrative decision that is subject to rehearing or review that a failure to file a motion for rehearing or review within thirty days after service of the decision has the effect of prohibiting the parties from seeking judicial review of the board's decision.

C. Service is complete on personal service or five days after the date that the final administrative decision is mailed to the party's last known address.

D. Except as provided in this subsection, the agency head, executive director, board or commission shall rule on the motion within fifteen days after the response to the motion is filed or, if a response is not filed, within five days of the expiration of the response period. A self-supporting regulatory board shall rule on the motion within fifteen days after the response to the motion is filed or at the board's next meeting after the motion is received, whichever is later.

41-1092.10. Compulsory testimony; privilege against self-incrimination

A. A person may not refuse to attend and testify or produce evidence sought by an agency in an action, proceeding or investigation instituted by or before the agency on the ground that the testimony or evidence, documentary or

otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture unless it constitutes the compelled testimony or the private papers of the person that would be privileged evidence either pursuant to the fifth amendment of the Constitution of the United States or article II, section 10, Constitution of Arizona, and the person claims the privilege before the production of the testimony or papers.

B. If a person asserts the privilege against self-incrimination and the agency seeks to compel production of the testimony or documents sought, the office or agency as provided in section 41-1092.01, subsection F may issue, with the prior written approval of the attorney general, a written order compelling the testimony or production of documents in proceedings and investigations before the office or agency as provided in section 41-1092.01, subsection F or apply to the appropriate court for such an order in other actions or proceedings.

C. Evidence produced pursuant to subsection B of this section is not admissible in evidence or usable in any manner in a criminal prosecution, except for perjury, false swearing, tampering with physical evidence or any other offense committed in connection with the appearance made pursuant to this section against the person testifying or the person producing the person's private papers.

41-1092.11. Licenses; renewal; revocation; suspension; annulment; withdrawal

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

B. Revocation, suspension, annulment or withdrawal of any license is not lawful unless, before the action, the agency provides the licensee with notice and an opportunity for a hearing in accordance with this article. If the agency finds that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, the agency may order summary suspension of a license pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

41-1092.12. Private right of action; recovery of costs and fees; definitions

A. If an agency takes an action against a party that is arbitrary, capricious or not in accordance with law, the action is an appealable agency action if all of the following apply:

1. Within ten days after the action that is arbitrary, capricious or not in accordance with law, the party notifies the director of the agency in writing of the party's intent to file a claim pursuant to this section. This notice shall include a description of the action the party claims to be arbitrary, capricious or not in accordance with law and reasons why the action is arbitrary, capricious or not in accordance with law.
2. The agency continues the action that is arbitrary, capricious or not in accordance with law more than ten days after the agency receives the notice.
3. The action is not excluded from the definition of appealable agency action as defined in section 41-1092.

B. This section only applies if an administrative remedy or an administrative or a judicial appeal of final agency action is not otherwise provided by law.

C. If the party prevails, the agency shall pay reasonable costs and fees to the party from any monies appropriated to the agency and available for that purpose or from other operating monies of the agency. If the agency fails or refuses to pay the award within fifteen days after the demand, and if no further review or appeal of the award is pending, the prevailing party may file a claim with the department of administration. The department of administration shall pay the claim within thirty days in the same manner as an uninsured property loss under title 41, chapter 3.1, article 1, except that the agency is responsible for the total amount awarded and shall pay it from its operating monies. If the agency had appropriated monies available for paying the award at the time it failed or refused to pay, the legislature shall reduce the agency's operating appropriation for the following fiscal year by the amount of the award and shall appropriate that amount to the department of administration as reimbursement for the loss.

D. If the administrative law judge determines that the appealable agency action is frivolous, the administrative law judge may require the party to pay reasonable costs and fees to the agency in responding to the appeal filed before the office of administrative hearings. E. For the purposes of this section:

1. "Action against the party" means any of the following that results in the expenditure of costs and fees:
   (a) A decision.
   (b) An inspection.
   (c) An investigation.
   (d) The entry of private property.
2. "Agency" means the department of environmental quality established pursuant to title 49, chapter 1, article 1.
3. "Costs and fees" means reasonable attorney and professional fees.
4. "Party" means an individual, partnership, corporation, association and public or private organization at whom the action was directed and who has expended costs and fees as a result of the action against the party.

ARIZONA GAME AND FISH COMMISSION

Adopted March 14, 2004

Preliminary Economic, Small Business, and Consumer Impact Summary and Statement

A.A.C. R12-4-601. Petition for rule

A. Economic, small business and consumer impact summary.

1. Identification of the proposed rulemaking.

The proposed rulemaking primarily involves technical corrections and drafting style changes identified in the 2001 5-Year Rules Review of Article 6. These changes are designed to correct outdated material and improve the accuracy, clarity, and understandability of the rules. The Department intends to amend the rule as follows:

- A new subsection (B) will be amended to establish guidelines for an individual, including any organization or agency, to request that the Commission review an existing agency practice or substantive policy statement that the petitioner alleges qualifies as a rule, as defined in A.R.S. § 411001. The petitioner may request a review of a practice or policy under A.R.S. § 41-1033. Associated amendments to make the rule consistent with the new subsection will be made throughout this rule. The heading will also be amended to reflect the change in content of the rule.
- The rule will be amended to change the mailing address for the Arizona Game and Fish Department in subsection (E) from 2222 W. Greenway to 2221 W. Greenway Rd.
- The Department will no longer require a petitioner to submit a petition to the Commission before a prescribed number of days in subsection (E), but will instead refer to the requirements for considering a petition under A.R.S. § 41-1033.
- Subsection (G) prescribes that petitions be submitted typewritten and double-spaced on 8 1/2" x 11" paper, or typewritten on a form provided by the Department. This subsection will be revised to allow for the submission of typewritten, computer or word processor printed, or legibly handwritten petitions as well.
- Subsections (G) through (L) will be revised where appropriate to make the petition process and information requirements more customer friendly.
- To avoid confusion for the public, subsection (I)(2) and (3) will be revised to clarify that the A.A.C. number is the number of the rule.
- Subsection (L)(2) will be amended to authorize a public agency to submit a petition signed by the agency head's designee if the agency head is unavailable.
- Existing subsection (L) has been found to be inconsistent with the objective of the rule. R12-4-601 prescribes the petition process for requesting rule changes, while existing subsection (L) addresses the separate issue of road or area closures. The provisions of subsection (L) would be more logically addressed in R12-4-610, thus the Department will delete subsection (L) from R12-4-601 and move its provisions to R12-4-610.

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

The proposed rulemaking will benefit individuals that petition the Arizona Game and Fish Commission for adoption, amendment, or repeal of a rule or an agency practice or policy that they allege qualifies as a rule; the Department; and political subdivisions of this state that submit petitions for the same reason. The proposed rulemaking will create no additional costs to businesses, nor will it impact public or private employment. The proposed rulemaking will result in no impact to state revenues. The Department has determined there are no alternative means to achieve the objectives of the proposed rulemaking.

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

Mark Naugle, Rules and Risk Manager
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B. Economic, small business and consumer impact statement.

1. Identification of proposed rulemaking.

The proposed rulemaking primarily involves technical corrections and drafting style changes identified in the 2001 5-Year Rules Review of Article 6. These changes are designed to correct outdated material and improve the accuracy, clarity, and understandability of the rules. The Department intends to amend the rule as follows:

- A new subsection (B) will be amended to establish guidelines for an individual, including any organization or agency, to request that the Commission review an existing agency practice or substantive policy statement that the petitioner alleges qualifies as a rule, as defined in A.R.S. § 411001. The petitioner may request a review of a practice or policy under A.R.S. § 41-1033. Associated amendments to make the rule consistent with the new subsection will be made throughout this rule. The heading will also be amended to reflect the change in content of the rule.
- The rule will be amended to change the mailing address for the Arizona Game and Fish Department in subsection (E) from 2222 W. Greenway to 2221 W. Greenway Rd.
- The Department will no longer require a petitioner to submit a petition to the Commission before a prescribed number of days in subsection (E), but will instead refer to the requirements for considering a petition under A.R.S. § 41-1033.
- Subsection (G) prescribes that petitions be submitted typewritten and double-spaced on 8 1/2" x 11" paper, or typewritten on a form provided by the Department. This subsection will be revised to allow for the submission of typewritten, computer or word processor printed, or legibly handwritten petitions as well.
- Subsections (G) through (L) will be revised where appropriate to make the petition process and information requirements more customer friendly.
- To avoid confusion for the public, subsection (I)(2) and (3) will be revised to clarify that the A.A.C. number is the number of the rule.
- Subsection (L)(2) will be amended to authorize a public agency to submit a petition signed by the agency head's designee if the agency head is unavailable.
- Existing subsection (L) has been found to be inconsistent with the objective of the rule. R12-4-601 prescribes the petition process for requesting rule changes, while existing subsection (L) addresses the separate issue of road or area closures. The provisions of subsection (L) would be more logically

addressed in R12-4-610, thus the Department will delete subsection (L) from R12-4-601 and move its provisions to R12-4-610.

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

The proposed rulemaking will create a direct benefit to individuals, including organizations or agencies that petition the Arizona Game and Fish Commission to make changes to its applicable rules in the Arizona Administrative Code. The proposed amendments to subsection (G) through (L) will make the petition process more understandable and accessible to the public. These amendments will result in an increase in the number of qualified petitions submitted, and reduce the number of petitions rejected and returned to the original petitioner due to improper completion. The Department receives on average eight petitions for rule changes per year. However, in the past two years, only two have been adequately completed to be reviewed by the Commission. By clarifying the rules regulating submission of petitions for rule or policy, the Commission will be able to review more petitions. Proposed amendments to include a new subsection (B) will also make Department rules consistent with Title 41, and allow the Commission to review petitions for changes to Department policy or practice that the petitioner alleges qualify as rule. The Department will also accept computer or word processor printed and legibly handwritten petitions for rule, instead of those that are exclusively typewritten.

Except for those costs associated with the rulemaking itself, the proposed rulemaking will result in no added cost. Therefore, the Department holds that the benefits of the proposed rulemaking outweigh the costs.

3. Cost benefit analysis:

(a) Probable costs and benefits to the Arizona Game and Fish Department and other agencies directly affected by the implementation and enforcement of the proposed rulemaking.

The proposed rulemaking demonstrates the Department's accessibility to the public and agencies that wish to affect Department policy. Except for those costs associated with the rulemaking itself, the proposed rulemaking will result in no added cost to the Arizona Game and Fish Department, or to other agencies directly affected by the implementation and enforcement of the proposed rulemaking.

(b) Probable costs and benefits to political subdivisions of this state directly affected by implementation and enforcement of the proposed rulemaking.

The proposed amendments to subsection (G) through (L) will make the petition process more understandable and accessible to the public. These amendments will result in an increase in the number of qualified petitions submitted, and reduce the number of petitions rejected and returned to the original petitioner due to improper completion. The Department receives on average eight petitions for rule changes per year. However, in the past two years, only two have been adequately completed to be reviewed by the Commission. By clarifying the rules regulating submission of petitions for rule or policy, the Commission will be able to review more petitions. Proposed amendments to include a new subsection (B) will also make Department rules consistent with Title 41, and allow the Commission to review petitions for changes to Department policy or practice that the petitioner alleges qualify as rule. The Department will also accept computer or word processor printed and legibly handwritten petitions for rule, instead of those that are exclusively typewritten.

(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.

Except for those costs associated with the rulemaking itself, the proposed rulemaking will result in no added costs to businesses, nor revenues or payroll expenditures of employers of this state directly affected by implementation and enforcement of the proposed rulemaking; nor will it result in any added costs to the political subdivisions of this state directly affected by implementation and enforcement of the proposed rulemaking.

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

The proposed rulemaking will create no impact to private or public employment in businesses, agencies or political subdivisions of this state.

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 proposed rulemaking will not impact small businesses directly subject to the proposed rulemaking.

(b) The administrative and other costs required for compliance with the proposed rulemaking.

The proposed rulemaking will not result in any additional costs for compliance for small businesses.

(c) A description of the methods that the agency may use to reduce the impact on small businesses:

(i) Establishing less costly compliance requirements in the proposed rulemaking for small businesses.

The proposed rulemaking will result in no additional compliance requirements for small businesses.

(ii) Establishing less costly schedules or less stringent deadlines for compliance in the proposed rulemaking.

The proposed rulemaking will result in no additional schedules or deadlines for small businesses.

(iii) Exempting small businesses from any or all requirements of the proposed rulemaking.

The proposed rulemaking will not impact small businesses directly subject to the proposed rulemaking.

(d) The probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.

The proposed amendments to subsection (G) through (L) will make the petition process more understandable and accessible to the public. These amendments will result in an increase in the number of qualified petitions submitted, and reduce the number of petitions rejected and returned to the original petitioner due to improper completion. The Department receives on average eight petitions for rule changes per year. However, in the past two years, only two have been adequately completed to be reviewed by the Commission. By clarifying the rules regulating submission of petitions for rule or policy, the Commission will be able to review more petitions. Proposed

amendments to include a new subsection (B) will also make Department rules consistent with Title 41, and allow the Commission to review petitions for changes to Department policy or practice that the petitioner alleges qualify as rule. The Department will also accept computer or word processor printed and legibly handwritten petitions for rule, instead of those that are exclusively typewritten.

6. A statement of the probable effect on state revenues.

There is no anticipated impact on state revenues as a result of this proposed rulemaking.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

The proposed rulemaking primarily involves technical corrections and drafting style changes identified in the 2001 5-Year Rules Review of Article 6. These changes are designed to correct outdated material and improve the accuracy, clarity, and understandability of the rules. There are no less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

A.A.C. R12-4-602. Written comment on proposed rules
A.A.C. R12-4-609. Commission Orders

A. Economic, small business and consumer impact summary.

1. Identification of the proposed rulemaking.

The proposed rulemaking primarily involves technical corrections and drafting style changes identified in the 2001 5-Year Rules Review of Article 6. These changes are designed to correct outdated material and improve the accuracy, clarity, and understandability of the rules. The Department intends to amend the rule as follows:

R12-4-602. Written comment on proposed rules

The rule currently requires that all written comments include the address of the sender and the identification of any group or organization that he or she represents. These provisions have been found to be inconsistent with what the authorizing and implementing statutes require, and it is the view of the Department that requiring this information has the potential to limit the number of comments the Agency receives on a proposed rule change. The Department's desire is to encourage comments from the public on proposed rulemaking, and it therefore will amend the opening paragrah of the rule to make it voluntary for a person to supply address and organizational information when making written comments. The Department will also amend the rule to make it consistent with current APA guideliens for rulemaking langauge and style.

R12-4-609. Commission Orders

- The provisions of subsection (A)(1) have been found to be unclear and too limited in scope, and the Department intends to initiate rulemaking to amend subsection (A)(1) as follows:

  1. At least 20 calendar days ~~prior to~~ before a meeting where the Commission will consider a Commission ~~order~~ Order, the Department shall ensure that a public meeting notice and agenda for the public meeting is posted in accordance with A.R.S. § 38-431.02. The Department shall also issue a public ~~announcement~~ notice of the ~~proposed~~ recommended Commission ~~order~~ Order to print and ~~electronics~~ electronic media ~~in accordance with~~ ~~A.R.S. § 38-431.02~~ at least 20 calendar days before the meeting.

- The provisions of subsection (A)(2) have been found to be unclear and the Department intends to initiate rulemaking to amend subsection (A)(2) as follows:

  2. The Department ~~announcement~~ shall ensure that the public meeting notice and agenda contains ~~contain~~ the date, time, and location of the Commission meeting where ~~these recommendations~~ the Commission Order will be considered and a statement that the public may attend and present written comments at or before the ~~hearing~~ meeting.

- The provisions of subsection (A)(3) have been found to be unclear, and the Department intends to initiate rulemaking to amend subsection (A)(3) as follows:

  3. The Department ~~announcement~~ shall ~~also state~~ also ensure that the public meeting notice and agenda states that ~~copies~~ a copy of the proposed Commission Order is ~~orders will be~~ available for public inspection at the Department offices in Phoenix, Pinetop, Flagstaff, Kingman, Yuma, Tucson, and Mesa 10 calendar days ~~prior to~~ before the meeting. The Commission may make changes to the recommended Commission Order at the Commission meeting.

- The Department also intends to amend the rule to make it consistent with current APA guidelines for rulemaking language and style.

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

The proposed rulemaking will benefit members of the public that choose to submit written comments to the Department by removing the requirement to provide a mailing address when submitting comment. This will encourage public comments by making those individuals or groups more comfortable by not having to provide information that they may feel is too personal. The general public will also benefit by receiving more information regarding Commission orders when they are going to be discussed in an open meeting, which will facilitate more input. The rulemaking will also benefit the Department by demonstrating its accessibility to the public. The proposed amendments to offer more information regarding Department action, and require less from the public shows the Department's desire to be more open to the public. The rulemaking will result in additional costs to the Department measured in the resources used to distribute information regarding public meetings at which Commission orders will be discussed. The proposed rulemaking will not create any impact to political subdivisions, businesses, or private or public employment. The proposed rulemaking will have no effect on state revenues. The Department has determined that there are no alternative methods of achieving the objective of the proposed rulemaking.

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

Mark Naugle, Rules and Risk Manager
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B. Economic, small business and consumer impact statement.

1. Identification of proposed rulemaking.

The proposed rulemaking primarily involves technical corrections and drafting style changes identified in the 2001 5-Year Rules Review of Article 6. These changes are designed to correct outdated material and improve the accuracy, clarity, and understandability of the rules. The Department intends to amend the rule as follows:

R12-4-602. Written comment on proposed rules

The rule currently requires that all written comments include the address of the sender and the identification of any group or organization that he or she represents. These provisions have been found to be inconsistent with what the authorizing and implementing statutes require, and it is the view of the Department that requiring this information has the potential to limit the number of comments the Agency receives on a proposed rule change. The Department's desire is to encourage comments from the public on proposed rulemaking, and it therefore will amend the opening paragrah of the rule to make it voluntary for a person to supply address and organizational information when making written comments. The Department will also amend the rule to make it consistent with current APA guideliens for rulemaking langauge and style.

R12-4-609. Commission Orders

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  1. At least 20 calendar days ~~prior to~~ before a meeting where the Commission will consider a Commission ~~order~~ Order, the Department shall ensure that a public meeting notice and agenda for the public meeting is posted in accordance with A.R.S. § 38-431.02. The Department shall also issue a public ~~announcement~~ notice of the ~~proposed~~ recommended Commission ~~order~~ Order to print and ~~electronics~~ electronic media ~~in accordance with~~ ~~A.R.S. § 38-431.02~~ at least 20 calendar days before the meeting.

- The provisions of subsection (A)(2) have been found to be unclear and the Department intends to initiate rulemaking to amend subsection (A)(2) as follows:

  2. The Department ~~announcement~~ shall ensure that the public meeting notice and agenda contains ~~contain~~ the date, time, and location of the Commission meeting where ~~these~~ ~~recommendations~~ the Commission Order will be considered and a statement that the public may attend and present written comments at or before the ~~hearing~~ meeting.

- The provisions of subsection (A)(3) have been found to be unclear, and the Department intends to initiate rulemaking to amend subsection (A)(3) as follows:

  3. The Department ~~announcement~~ shall ~~also state~~ also ensure that the public meeting notice and agenda states that ~~copies~~ a copy of the proposed Commission Order is ~~orders will be~~ available for public inspection at the Department offices in Phoenix, Pinetop, Flagstaff, Kingman, Yuma, Tucson, and Mesa 10 calendar days ~~prior to~~ before the meeting. The Commission may make changes to the recommended Commission Order at the Commission meeting.

- The Department also intends to amend the rule to make it consistent with current APA guidelines for rulemaking language and style.

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

The proposed rulemaking will directly benefit the general public. The removal of the requirement to report a mailing address for all individuals or groups that submit a comment will make those with a comment feel more comfortable when they submit them. In addition, the proposed amendment to require the Department to distribute information about open meetings when Commission orders will be discussed will give individuals and agencies awareness and time necessary to become informed and comment if they so choose.

The Department will also benefit from the rulemaking by amending its rules to be more consistent with its authorizing statutes. The proposed amendments also demonstrate the Department's accessibility to the public by prescribing fewer requirements for comment submission. The proposed rulemaking will however create an additional cost to the agency in meeting its requirements to distribute more information further when informing the public of open meetings where Commission orders will be discussed. The Department is unable to determine an exact amount for the costs of distribution; however, internal financial projections indicate that the total cost of using additional resources, such as the agency website, will not substantially increase current costs for information distribution. Currently, the Department's budget for information and education is approximately $5 million. Costs would be measured in increased workload in document preparation for additional forms of media.

Other than costs previously stated, there are no additional costs associated with the proposed rulemaking. The Department has determined that the benefits of the proposed rulemaking outweigh the costs.

3. Cost benefit analysis:

(a) Probable costs and benefits to the Arizona Game and Fish Department and other agencies directly affected by the implementation and enforcement of the proposed rulemaking.

The Department will benefit from the rulemaking by amending its rules to be more consistent with its authorizing statutes. The proposed amendments also demonstrate the Department's accessibility to the public by prescribing fewer requirements for comment submission. The proposed rulemaking will however create an additional cost to the agency in meeting its requirements to distribute more information further when informing the public of open meetings where Commission orders will be discussed. The Department is unable to determine an exact amount for the costs of distribution; however, internal financial projections indicate that the total cost of using additional resources, such as the agency website, will not substantially increase current costs for information distribution. Currently, the Department's budget for information and education is approximately $5 million. Costs would be measured in increased workload in document preparation for additional forms of media.

(b) Probable costs and benefits to political subdivisions of this state directly affected by implementation and enforcement of the proposed rulemaking.

Except for those costs associated with the rulemaking itself, the proposed rulemaking will result in no added costs to the political subdivisions of this state directly affected by 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.

Except for those costs associated with the rulemaking itself, the proposed rulemaking will result in no added costs to businesses, nor revenues or payroll expenditures of employers of this state directly affected by implementation and enforcement of the proposed rulemaking.

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

The proposed rulemaking will create no impact to private or public employment in businesses, agencies or political subdivisions of this state.

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 proposed rulemaking will not impact small businesses directly subject to the proposed rulemaking.

(b) The administrative and other costs required for compliance with the proposed rulemaking.

The proposed rulemaking will not result in any additional costs for compliance for small businesses.

(c) A description of the methods that the agency may use to reduce the impact on small businesses:

(i) Establishing less costly compliance requirements in the proposed rulemaking for small businesses.

The proposed rulemaking will result in no additional compliance requirements for small businesses.

(ii) Establishing less costly schedules or less stringent deadlines for compliance in the proposed rulemaking.

The proposed rulemaking will result in no additional schedules or deadlines for small businesses.

(iii) Exempting small businesses from any or all requirements of the proposed rulemaking.

The proposed rulemaking will not impact small businesses directly subject to the proposed rulemaking.

(d) The probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.

The proposed rulemaking will directly benefit the general public. The removal of the requirement to report a mailing address for all individuals or groups that submit a comment will make those with a comment feel more comfortable when they submit them. In addition, the proposed amendment to require the Department to distribute information about open meetings when Commission orders will be discussed will give individuals and agencies awareness and time necessary to become informed and comment if they so choose.

6. A statement of the probable effect on state revenues.

There is no anticipated impact on state revenues as a result of this proposed rulemaking.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

The proposed rulemaking primarily involves technical corrections and drafting style changes identified in the 2001 5-Year Rules Review of Article 6. These changes are designed to correct outdated material and improve the accuracy, clarity, and understandability of the rules. There are no less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

R12-4-603. Oral proceedings before the Commission

A. Economic, small business and consumer impact summary.

1. Identification of the proposed rulemaking.

The Department intends to amend the rule in accordance with the five-year rules review report submitted to the Council in 2001. In addition, the Department has determined during subsequent review that there is a need to promulgate further amendments in order to make the rule more practical and effective. The proposed rulemaking will primarily clarify the provisions of the rule, and establish the Director's authority to allow a continuance, if requested, of any hearings to another Commission meeting. The rule will be amended as follows:

- The Department will amend the rule to clarify that the provisions of the rule apply to any matter or proceeding before the Commission. A new subsection (A) will be added to define "matter" or "proceeding" as "any contested case, appealable agency action, rule or review petition hearing, rulemaking proceeding, or any public input at a Commission meeting."

- A new subsection (D) will be added as follows:

D. <u>The Commission authorizes the Director to continue a scheduled proceeding to a later Commission meeting. To request a continuance, a petitioner shall:</u>
   1. <u>Deliver the request to the Director no later than 24 hours before the scheduled proceeding;</u>
   2. <u>Demonstrate that the proceeding has not been continued more than twice; and 3. Demonstrate good cause for the continuance.</u>

- The rule language will also be revised where necessary to make it consistent with the current requirements for rulemaking language and style.

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

The proposed rulemaking will benefit the general public, the Department, and the Arizona Game and Fish Commission by clarifying rules for oral proceedings put out by the Commission, and establishing guidelines for continuance of any oral proceedings before the Commission. The proposed rulemaking will not impact political subdivisions of this state, businesses, nor private or public employment. The proposed rulemaking will not affect state revenues. The Department has determined that there are no alternative means to achieve the objectives of the proposed rulemaking.

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

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B. Economic, small business and consumer impact statement.

1. Identification of proposed rulemaking.

The Department intends to amend the rule in accordance with the five-year rules review report submitted to the Council in 2001. In addition, the Department has determined during subsequent review that there is a need to promulgate further amendments in order to make the rule more practical and effective. The proposed rulemaking will primarily clarify the provisions of the rule, and establish the Director's authority to allow a continuance, if requested, of any hearings to another Commission meeting. The rule will be amended as follows:

- The Department will amend the rule to clarify that the provisions of the rule apply to any matter or proceeding before the Commission. A new subsection (A) will be added to define "matter" or "proceeding" as "any contested case, appealable agency action, rule or review petition hearing, rulemaking proceeding, or any public input at a Commission meeting."

- A new subsection (D) will be added as follows:

D. The Commission authorizes the Director to continue a scheduled proceeding to a later Commission meeting. To request a continuance, a petitioner shall:
   1. Deliver the request to the Director no later than 24 hours before the scheduled proceeding;
   2. Demonstrate that the proceeding has not been continued more than twice; and 3. Demonstrate good cause for the continuance.

- The rule language will also be revised where necessary to make it consistent with the current requirements for rulemaking language and style.

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

The proposed rulemaking will benefit the general public by clarifying rules for oral proceedings put out by the Commission, and establishing guidelines for continuance of any oral proceedings before the Commission. Those that take issue with Commission actions will have more venues for giving comments on public policy to the Commission, should a continuance be requested. Currently, the Commission holds oral proceedings monthly ten times a year.

The proposed rulemaking will also benefit the Department and the Commission. Both entities will receive non-monetary benefits by demonstrating their continued accessibility to the public. Also, Department personnel will not have to compress all activities for oral proceedings into one meeting, and can instead work more readily with the public over time.

3. Cost benefit analysis:

(a) Probable costs and benefits to the Arizona Game and Fish Department and other agencies directly affected by the implementation and enforcement of the proposed rulemaking.

The proposed rulemaking will benefit the Department and the Commission. Both entities will receive non-monetary benefits by demonstrating their continued accessibility to the public. Also,

Department personnel will not have to compress all activities for oral proceedings into one meeting, and can instead work more readily with the public over time.

(b) Probable costs and benefits to political subdivisions of this state directly affected by implementation and enforcement of the proposed rulemaking.

Except for those costs associated with the rulemaking itself, the proposed rulemaking will result in no added costs to the political subdivisions of this state directly affected by 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.

Except for those costs associated with the rulemaking itself, the proposed rulemaking will result in no added costs to businesses, nor revenues or payroll expenditures of employers of this state directly affected by implementation and enforcement of the proposed rulemaking.

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

The proposed rulemaking will create no impact to private or public employment in businesses, agencies or political subdivisions of this state.

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 proposed rulemaking will not impact small businesses directly subject to the proposed rulemaking.

(b) The administrative and other costs required for compliance with the proposed rulemaking.

The proposed rulemaking will not result in any additional costs for compliance for small businesses.

(c) A description of the methods that the agency may use to reduce the impact on small businesses:

(i) Establishing less costly compliance requirements in the proposed rulemaking for small businesses.

The proposed rulemaking will result in no additional compliance requirements for small businesses.

(ii) Establishing less costly schedules or less stringent deadlines for compliance in the proposed rulemaking.

The proposed rulemaking will result in no additional schedules or deadlines for small businesses.

(iii) Exempting small businesses from any or all requirements of the proposed rulemaking.

The proposed rulemaking will not impact small businesses directly subject to the proposed rulemaking.

(d) The probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.

The proposed rulemaking will benefit the general public by clarifying rules for oral proceedings put out by the Commission, and establishing guidelines for continuance of any oral proceedings before the Commission. Those that take issue with Commission actions will have more venues for giving comments on public policy to the Commission, should a continuance be requested.

6. A statement of the probable effect on state revenues.

There is no anticipated impact on state revenues as a result of this proposed rulemaking.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

The proposed rulemaking primarily involves technical corrections and drafting style changes identified in the 2001 5-Year Rules Review of Article 6. These changes are designed to correct outdated material and improve the accuracy, clarity, and understandability of the rules. There are no less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

A.A.C. R12-4-604. *Ex parte* Communication

A. Economic, small business and consumer impact summary.

1. Identification of the proposed rulemaking.

The proposed rulemaking primarily involves technical corrections and drafting style changes identified in the 2001 5-Year Rules Review of Article 6. These changes are designed to correct outdated material and improve the accuracy, clarity, and understandability of the rules. The Department intends to amend the rule as follows:

Subsection (A)(1) will be amended to include a personal aide to a Commissioner as a “person outside the Commission”, and to make it consistent with the rest of the rule.

Subsection (A)(2) has been found to be unclear, confusing, and too limited in scope. In addition to simplifying and clarifying the definition for *ex parte* communication, the definition will be expanded to include any communication with the Commission that is not part of the public record and for which no reasonable prior written notice has been given to all interested parties.

Subsection (B) has been found to be unclear, confusing, and too limited in scope. In addition to simplifying and clarifying the provisions of subsection (B), appealable agency action, as defined in A.R.S. § 41-1092, will be added to the types of proceedings for which *ex parte* communication is restricted.

Subsections (C), (D), and (E) have been found to be unclear and confusing, and the Department will amend the rule to clarify and simplify these provisions of the rule.

The phrase "to the extent consistent with the interests of justice..." in subsection (D) has been found to be vague, and the Department will amend the rule to revise this phrase to read, "to the extent consistent with equity and fairness."

The rule language will also be revised where necessary to make it consistent with the current requirements for rulemaking language and style.

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

Although the proposed rulemaking will create a direct benefit to the Department, the Game and Fish Commission, and individuals that appear before the Commission, the proposed rulemaking will most directly benefit the integrity of the Commission hearing process. The proposed rulemaking will create

no additional costs for political subdivisions of this state, or businesses, and will not impact public nor private employment. The proposed rulemaking will not affect state revenues. The Department has determined that there are no alternative methods to achieve the objectives of the proposed rulemaking.

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

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B. Economic, small business and consumer impact statement.

1. Identification of proposed rulemaking.

The proposed rulemaking primarily involves technical corrections and drafting style changes identified in the 2001 5-Year Rules Review of Article 6. These changes are designed to correct outdated material and improve the accuracy, clarity, and understandability of the rules. The Department intends to amend the rule as follows:

- Subsection (A)(1) will be amended to include a personal aide to a Commissioner as a “person outside the Commission”, and to make it consistent with the rest of the rule.
- Subsection (A)(2) has been found to be unclear, confusing, and too limited in scope. In addition to simplifying and clarifying the definition for *ex parte* communication, the definition will be expanded to include any communication with the Commission that is not part of the public record and for which no reasonable prior written notice has been given to all interested parties.
- Subsection (B) has been found to be unclear, confusing, and too limited in scope. In addition to simplifying and clarifying the provisions of subsection (B), appealable agency action, as defined in A.R.S. § 41-1092, will be added to the types of proceedings for which *ex parte* communication is restricted.
- Subsections (C), (D), and (E) have been found to be unclear and confusing, and the Department will amend the rule to clarify and simplify these provisions of the rule.
- The phrase "to the extent consistent with the interests of justice..." in subsection (D) has been found to be vague, and the Department will amend the rule to revise this phrase to read, "to the extent consistent with equity and fairness."
- The rule language will also be revised where necessary to make it consistent with the current requirements for rulemaking language and style.

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

Although the proposed rulemaking will create a direct benefit to the Department, the Game and Fish Commission, and individuals that appear before the Commission, the proposed rulemaking will most directly benefit the integrity of the Commission hearing process. The objective of the rule is to identify prohibited conduct in a contested matter or proceeding before the Commission, and to set forth consequences for violating the rule. The benefits to the Department, the Commission and to individuals that appear before them during these proceedings will result from a clear understanding of what

comprises *ex parte* communication, and a more fluid hearing process that is consistent with Title 41. Currently, the Commission meets monthly ten times a year.

Except for those costs associated with the rulemaking itself, the proposed rulemaking will result in no added cost. Therefore, the Department holds that the benefits of the proposed rulemaking outweigh the costs.

3. Cost benefit analysis:

(a) Probable costs and benefits to the Arizona Game and Fish Department and other agencies directly affected by the implementation and enforcement of the proposed rulemaking.

The benefits to the Department and the Game and Fish Commission and to individuals that appear before them during these proceedings will result from a clear understanding of what comprises *ex parte* communication, and a more fluid hearing process that is consistent with Title 41. Except for those costs associated with the rulemaking itself, the proposed rulemaking will result in no added cost to the Arizona Game and Fish Department, or to other agencies directly affected by the implementation and enforcement of the proposed rulemaking.

(b) Probable costs and benefits to political subdivisions of this state directly affected by implementation and enforcement of the proposed rulemaking.

Except for those costs associated with the rulemaking itself, the proposed rulemaking will result in no added costs to the political subdivisions of this state directly affected by 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.

Except for those costs associated with the rulemaking itself, the proposed rulemaking will result in no added costs to businesses, nor revenues or payroll expenditures of employers of this state directly affected by implementation and enforcement of the proposed rulemaking. Except for those costs associated with the rulemaking itself, the proposed rulemaking will result in no added costs to the political subdivisions of this state directly affected by implementation and enforcement of the proposed rulemaking.

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

The proposed rulemaking will create no impact to private or public employment in businesses, agencies or political subdivisions of this state.

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 proposed rulemaking will not impact small businesses directly subject to the proposed rulemaking.

(b) The administrative and other costs required for compliance with the proposed rulemaking.

The proposed rulemaking will not result in any additional costs for compliance for small businesses.

(c) A description of the methods that the agency may use to reduce the impact on small businesses:

(i) Establishing less costly compliance requirements in the proposed rulemaking for small businesses.

The proposed rulemaking will result in no additional compliance requirements for small businesses.

(ii) Establishing less costly schedules or less stringent deadlines for compliance in the proposed rulemaking.

The proposed rulemaking will result in no additional schedules or deadlines for small businesses.

(iii) Exempting small businesses from any or all requirements of the proposed rulemaking.

The proposed rulemaking will not impact small businesses directly subject to the proposed rulemaking.

(d) The probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.

Although the proposed rulemaking will create a direct benefit to the Department, the Game and Fish Commission, and individuals that appear before the Commission, the proposed rulemaking will most directly benefit the integrity of the Commission hearing process. The objective of the rule is to identify prohibited conduct in a contested matter or proceeding before the Commission, and to set forth consequences for violating the rule. The benefits to the Department, the Commission and to individuals that appear before them during these proceedings will result from a clear understanding of what comprises *ex parte* communication, and a more fluid hearing process that is consistent with Title 41.

Except for those costs associated with the rulemaking itself, the proposed rulemaking will result in no added cost. Therefore, the Department holds that the benefits of the proposed rulemaking outweigh the costs.

6. A statement of the probable effect on state revenues.

There is no anticipated impact on state revenues as a result of this proposed rulemaking.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

The proposed rulemaking primarily involves technical corrections and drafting style changes identified in the 2001 5-Year Rules Review of Article 6. These changes are designed to correct outdated material and improve the accuracy, clarity, and understandability of the rules. There are no less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

A.A.C. R12-4-605. Standards for Revocation and Denial of Right to Obtain License

A. Economic, small business and consumer impact summary.

1. Identification of the proposed rulemaking.

The proposed rulemaking primarily involves technical corrections and drafting style changes identified in the 2001 5-Year Rules Review of Article 6. In addition, the Department has determined during subsequent

review that there is a need to promulgate further amendments in order to make the rule more practical and effective. These changes are designed to correct outdated material and improve the accuracy, clarity, and understandability of the rules. The Department intends to amend the rule as follows:

- The heading of the rule has been found to be inaccurate and the Department will amend the rule to revise it to read "Standards for ~~revocation and denial of right to obtain license~~ Revocation, Suspension, or Denial of a License"
- A.R.S. § 17-340(A)(6) allows for the revocation or suspension of hunting, fishing and trapping licenses for a violation of A.R.S. §§ 17-303 or 17-304. These statutes deal with trespassing on game refuges or other public and private areas closed to hunting, trapping, or fishing. R12-4-605 currently does not reference violations of these statutes as offenses for which the Commission shall hold hearings where it may revoke or suspend hunting, fishing and trapping licenses, and the rule will be amended to add these types of violations to the list of revocable offenses.
- Subsection (A)(2) currently prescribes that the Commission shall hold a hearing and may revoke or suspend all or any of the hunting, fishing and trapping licenses of any person, when that person has been convicted of destroying, injuring, or molesting livestock, growing crops, personal property, notices or signboards, or other improvements while hunting, fishing or trapping. The "growing crops" portion of this subsection is unclear and inconsistent with A.R.S. § 17-340(A)(3), which specifies that damaging or destroying growing crops is a revocable offense. The Department will amend the rule to make it clear that damaging or destroying growing crops is a revocable offense.
- Subsection (A) has been found to be unclear and inconsistent with the intent of the rule. The Department will amend the rule to revise subsection (A) as follows:

A. ~~Pursuant to~~ Under A.R.S. §§ 17-340 ~~and 17-362~~, the Commission shall hold a hearing and may revoke, ~~or~~ suspend, or deny ~~all or~~ any ~~of the~~ hunting, fishing, or ~~and~~ trapping license ~~licenses of any person when that person~~ for an individual who has been convicted of any of the following offenses:

1. Killing or wounding a big game animal during a closed season or possessing a big game animal taken during a closed season. Conviction for possession of a road-kill ~~animals or animals causing~~ animal or an animal that was engaged in depredation ~~shall not be~~ is not considered "possessing during a closed season" ~~relevant to~~ for the purposes of this subsection.
2. Destroying, injuring, or molesting livestock, ~~growing crops,~~ or damaging or destroying personal property, notices or signboards, ~~or~~ other improvements, or growing crops while hunting, fishing, or trapping.
3. Careless use of ~~firearms~~ a firearm while hunting, fishing, or trapping ~~which has resulted~~ that results in the injury or death ~~to~~ of any person, ~~when~~ if the act of discharging the firearm was deliberate.
4. Applying for or obtaining a license or permit by fraud or misrepresentation in violation of A.R.S. § 17-341.
5. Entering upon a game refuge or other area closed to hunting, trapping or fishing and taking, driving, or attempting to drive wildlife from the area in violation of A.R.S. §§ 17-303 and 17-304.
6. Unlawfully posting state or federal lands in violation of A.R.S. § 17-304(B).

- The term “convincing” when referring to evidence has been found to be too limited in scope in subsection (B). The Department will amend the rule to replace the term with the more apt

“sufficient”.

- Subsection (B) has been found to be unclear and inconsistent with the intent of the rule. The Department will amend the rule to revise subsection (B) as follows:

B. ~~Pursuant to A.R.S. § 17-340, the Commission may hold a hearing and may revoke or suspend all or any of the hunting, fishing and trapping licenses of any person when that person has been convicted of any of the following offenses:~~ Under A.R.S. § 17-340, the Commission shall hold a hearing and may revoke, suspend, or deny any hunting, fishing, or trapping license if the Department recommends revocation, suspension, or denial of the license for an individual convicted of any of the following offenses:

- A portion of subsection (B)(1)(b) has been found to be unclear and redundant, and the Department will amend the rule to revise subsection (B)(1)(b) as follows: "The unlawful taking was willful and deliberate ~~and not accidental~~."
- Subsection (B)(3) has been found to be unclear, and the Department will amend the rule to revise subsection (B)(3) as follows:

3. Unlawfully taking ~~other~~ wildlife species~~, when there is convincing~~ if sufficient evidence, which may or may not have been introduced in the court proceeding, indicates that the act of taking was willful and deliberate and showed disregard for ~~the~~ state wildlife laws.

☐ Subsection (B)(4) has been found to be inconsistent with A.R.S. § 17-340(A)(4), and the Department will amend the rule to revise subsection (B)(4) as follows:

4. Littering a public hunting or fishing area while taking wildlife, ~~when there is convincing~~ if sufficient evidence, which may or may not have been introduced in the court proceeding ~~that the amount of litter was substantial~~, indicates that an individual littered the area, the amount of litter discarded was unreasonably large, and that the ~~person~~ individual convicted made no reasonable effort to dispose of the litter in a lawful manner.

☐ Subsection (B)(6) has been found to be unclear, and the Department will amend the rule to revise subsection (B)(6) as follows:

6. Any ~~other~~ violation for which a license can be revoked ~~pursuant to~~ under A.R.S. § 17-340, ~~when that~~ if the person has been convicted of ~~other~~ a revocable ~~offenses~~ offense within the past three years~~, and that person's actions show disregard for the state's wildlife laws~~.

☐ The Department will add a new subsection (7) as follows:

7. Violations of A.R.S. §§ 17-306 for unlawful possession of wildlife.

☐ Subsection (C) has been found to be unclear and inconsistent with the intent of the rule. The Department will amend the rule to revise subsection (C) as follows:

C. ~~The~~ Under A.R.S. §§ 17-238, 17-362, 17-363, 17-364, and 17-340, if the Department has made a recommendation to the Commission for license revocation, the Commission ~~may~~

shall hold a hearing and may revoke ~~or suspend all or~~ any ~~of the hunting, fishing and trapping licenses of~~ ~~any person~~ fur-dealer, guide, taxidermy, or special license (as defined in R12-4-401) in any ~~other~~ case where license revocation is authorized by law.

☐ The rule will be amended as necessary to make it consistent with the current requirements for rulemaking language and style.

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

The proposed rulemaking will benefit the general public, the Department and the Arizona Game and Fish Commission. The proposed rulemaking will not create any additional costs for other political subdivisions of this state, nor businesses. The proposed rulemaking will not impact private or public employment. The proposed rulemaking will not affect state revenues. The Department has determined there are no alternative means to achieve the objectives of the proposed rulemaking.

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

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B. Economic, small business and consumer impact statement.

1. Identification of proposed rulemaking.

The proposed rulemaking primarily involves technical corrections and drafting style changes identified in the 2001 5-Year Rules Review of Article 6. In addition, the Department has determined during subsequent review that there is a need to promulgate further amendments in order to make the rule more practical and effective. These changes are designed to correct outdated material and improve the accuracy, clarity, and understandability of the rules. The Department intends to amend the rule as follows:

- The heading of the rule has been found to be inaccurate and the Department will amend the rule to revise it to read "Standards for ~~revocation and denial of right to obtain license~~ Revocation, Suspension, or Denial of a License"
- A.R.S. § 17-340(A)(6) allows for the revocation or suspension of hunting, fishing and trapping licenses for a violation of A.R.S. §§ 17-303 or 17-304. These statutes deal with trespassing on game refuges or other public and private areas closed to hunting, trapping, or fishing. R12-4-605 does not reference violations of these statutes as offenses for which the Commission shall hold hearings where it may revoke or suspend hunting, fishing and trapping licenses, and the rule will be amended to add these types of violations to the list of revocable offenses.
- Subsection (A)(2) currently prescribes that the Commission shall hold a hearing and may revoke or suspend all or any of the hunting, fishing and trapping licenses of any person, when that person has been convicted of destroying, injuring, or molesting livestock, growing crops, personal property, notices or signboards, or other improvements while hunting, fishing or trapping. The "growing crops" portion of this subsection is unclear and inconsistent with A.R.S. § 17-340(A)(3), which specifies that damaging or destroying growing crops is a revocable offense. The Department will amend the rule to make it clear that damaging or destroying growing crops is a revocable offense.

- Subsection (A) has been found to be unclear and inconsistent with the intent of the rule. The Department will amend the rule to revise subsection (A) as follows:

A. ~~Pursuant to~~ Under A.R.S. §§ 17-340 ~~and 17-362~~, the Commission shall hold a hearing and may revoke, ~~or~~ suspend, or deny ~~all or~~ any ~~of the~~ hunting, fishing, or ~~and~~ trapping license ~~licenses of any person when that person~~ for an individual who has been convicted of any of the following offenses:

1. Killing or wounding a big game animal during a closed season or possessing a big game animal taken during a closed season. Conviction for possession of a road-kill ~~animals or animals causing~~ animal or an animal that was engaged in depredation ~~shall not be~~ is not considered "possessing during a closed season" ~~relevant to~~ for the purposes of this subsection.
2. Destroying, injuring, or molesting livestock, ~~growing crops,~~ or damaging or destroying personal property, notices or signboards, ~~or~~ other improvements, or growing crops while hunting, fishing, or trapping.
3. Careless use of ~~firearms~~ a firearm while hunting, fishing, or trapping ~~which has resulted~~ that results in the injury or death ~~to~~ of any person, ~~when~~ if the act of discharging the firearm was deliberate.
4. Applying for or obtaining a license or permit by fraud or misrepresentation in violation of A.R.S. § 17-341.
5. Entering upon a game refuge or other area closed to hunting, trapping or fishing and taking, driving, or attempting to drive wildlife from the area in violation of A.R.S. §§ 17-303 and 17-304.
6. Unlawfully posting state or federal lands in violation of A.R.S. § 17-304(B).

- The term “convincing” when referring to evidence has been found to be too limited in scope in subsection (B). The Department will amend the rule to replace the term with the more apt “sufficient”.
- Subsection (B) has been found to be unclear and inconsistent with the intent of the rule. The Department will amend the rule to revise subsection (B) as follows:

B. ~~Pursuant to A.R.S. § 17-340, the Commission may hold a hearing and may revoke or suspend all or any of the hunting, fishing and trapping licenses of any person when that person has been convicted of any of the following offenses:~~ Under A.R.S. § 17-340, the Commission shall hold a hearing and may revoke, suspend, or deny any hunting, fishing, or trapping license if the Department recommends revocation, suspension, or denial of the license for an individual convicted of any of the following offenses:

- A portion of subsection (B)(1)(b) has been found to be unclear and redundant, and the Department will amend the rule to revise subsection (B)(1)(b) as follows: "The unlawful taking was willful and deliberate ~~and not accidental~~."
- Subsection (B)(3) has been found to be unclear, and the Department will amend the rule to revise subsection (B)(3) as follows:

3. Unlawfully taking ~~other~~ wildlife species~~, when there is convincing~~ if sufficient evidence, which may or may not have been introduced in the court proceeding, indicates that the act of taking was willful and deliberate and showed disregard for ~~the~~ state wildlife laws.

- Subsection (B)(4) has been found to be inconsistent with A.R.S. § 17-340(A)(4), and the Department will amend the rule to revise subsection (B)(4) as follows:

4. Littering a public hunting or fishing area while taking wildlife, ~~when there is convincing~~ if sufficient evidence, which may or may not have been introduced in the court proceeding ~~that the amount of litter was substantial~~, indicates that an individual littered the area, the amount of litter discarded was unreasonably large, and that the ~~person~~ individual convicted made no reasonable effort to dispose of the litter in a lawful manner.

- Subsection (B)(6) has been found to be unclear, and the Department will amend the rule to revise subsection (B)(6) as follows:

6. Any ~~other~~ violation for which a license can be revoked ~~pursuant to~~ under A.R.S. § 17-340, ~~when that~~ if the person has been convicted of ~~other~~ a revocable ~~offenses~~ offense within the past three years~~, and that person's actions show disregard for the state's wildlife laws~~.

a. The Department will add a new subsection (7) as follows:

7. Violations of A.R.S. §§ 17-306 for unlawful possession of wildlife.

- Subsection (C) has been found to be unclear and inconsistent with the intent of the rule. The Department will amend the rule to revise subsection (C) as follows:

C. ~~The~~ Under A.R.S. §§ 17-238, 17-362, 17-363, 17-364, and 17-340, if the Department has made a recommendation to the Commission for license revocation, the Commission ~~may~~ shall hold a hearing and may revoke ~~or suspend all or~~ any ~~of the hunting, fishing and trapping licenses of any person~~ fur-dealer, guide, taxidermy, or special license (as defined in R12-4-401) in any ~~other~~ case where license revocation is authorized by law.

☐ The rule will be amended as necessary to make it consistent with the current requirements for rulemaking language and style.

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

The proposed rulemaking will directly benefit the general public, the Department and the Arizona Game and Fish Commission. The public will benefit from clarified and definitive Commission hearing rules that effectively revoke the hunting, fishing and guide licenses of individuals that have demonstrated the inability to comply with state wildlife rules.

Amendments to clarify the rule and make it consistent with other statutes and rules of this state will benefit the Department and the Commission by advancing the objective of the rule. In order to manage the number of cases that the Commission hears, R12-4-601 clarifies what violations under A.R.S. § 17340; for which the Commission may revoke or suspend hunting, fishing, or trapping licenses; the Commission will hear. Proposed amendments to the rule add violations for which the Commission would like to hear a case. This could result in an increase in the number of cases that the Commission hears annually. However, the Commission has been hearing cases for the violation of the wildlife laws that the proposed amendments add. Therefore, the Department has determined that the proposed amendments will not measurably increase the number of cases that the Commission hears. Annually, the Commission suspends, revokes or denies between 50 to 100 licenses per year.

Except for those costs associated with the rulemaking itself, the proposed rulemaking will result in no added cost. Therefore, the Department holds that the benefits of the proposed rulemaking outweigh the costs.

3. Cost benefit analysis:

(a) Probable costs and benefits to the Arizona Game and Fish Department and other agencies directly affected by the implementation and enforcement of the proposed rulemaking.

Amendments to clarify the rule and make it consistent with other statutes and rules of this state will benefit the Department and the Commission by advancing the objective of the rule. In order to manage the number of cases that the Commission hears, R12-4-601 clarifies what violations under A.R.S. § 17-340; for which the Commission may revoke or suspend hunting, fishing, or trapping licenses; the Commission will hear. Proposed amendments to the rule add violations for which the Commission would like to hear a case. This could result in an increase in the number of cases that the Commission hears annually. However, the Commission has been hearing cases for the violation of the wildlife laws that the proposed amendments add. Therefore, the Department has determined that the proposed amendments will not measurably increase the number of cases that the Commission hears. Annually, the Commission suspends, revokes or denies between 50 to 100 licenses per year.

(b) Probable costs and benefits to political subdivisions of this state directly affected by implementation and enforcement of the proposed rulemaking.

Except for those costs associated with the rulemaking itself, the proposed rulemaking will result in no added costs to the political subdivisions of this state directly affected by 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.

Except for those costs associated with the rulemaking itself, the proposed rulemaking will result in no added costs to businesses, nor revenues or payroll expenditures of employers of this state directly affected by implementation and enforcement of the proposed rulemaking.

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

The proposed rulemaking will create no impact to private or public employment in businesses, agencies or political subdivisions of this state.

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 proposed rulemaking will not impact small businesses directly subject to the proposed rulemaking.

(b) The administrative and other costs required for compliance with the proposed rulemaking.

The proposed rulemaking will not result in any additional costs for compliance for small businesses.

(c) A description of the methods that the agency may use to reduce the impact on small businesses:

(i) Establishing less costly compliance requirements in the proposed rulemaking for small businesses.

The proposed rulemaking will result in no additional compliance requirements for small businesses.

(ii) Establishing less costly schedules or less stringent deadlines for compliance in the proposed rulemaking.

The proposed rulemaking will result in no additional schedules or deadlines for small businesses.

(iii) Exempting small businesses from any or all requirements of the proposed rulemaking.

The proposed rulemaking will not impact small businesses directly subject to the proposed rulemaking.

(d) The probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.

The proposed rulemaking will directly benefit the general public, the Department and the Arizona Game and Fish Commission. The public will benefit from clarified and definitive Commission hearing rules that effectively revoke the hunting, fishing and guide licenses of individuals that have demonstrated the inability to comply with State wildlife rules.

6. A statement of the probable effect on state revenues.

There is no anticipated impact on state revenues as a result of this proposed rulemaking.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

The proposed rulemaking primarily involves technical corrections and drafting style changes identified in the 2001 5-Year Rules Review of Article 6. In addition, the Department has determined during subsequent review that there is a need to promulgate further amendments in order to make the rule more practical and effective. These changes are designed to correct outdated material and improve the accuracy, clarity, and understandability of the rules. There are no less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

A.A.C. R12-4-606. Proceedings for License Revocation, Denial of Right to Obtain License, and Civil Damages

A. Economic, small business and consumer impact summary.

1. Identification of the proposed rulemaking.

The proposed rulemaking primarily involves technical corrections and drafting style changes identified in the 2001 5-Year Rules Review of Article 6. These changes are designed to correct outdated material and improve the accuracy, clarity, and understandability of the rules. The Department intends to amend the rule as follows:

- The authorizing statutes of this rule also refer to suspension of a license. Therefore, amendments will be made throughout this Section to establish guidelines for the suspension of licenses.
- R12-4-606(A) currently states that the Director may commence proceedings for the Commission to revoke or deny the right to obtain a license under A.R.S § 17-340 and in R12-4-605. The Director may also commence proceedings for civil damages under A.R.S. § 17-314. Under R12-4-605, however, this authority is expressly given to the Commission and not the Director. R12-4-606 has

therefore been found to be inconsistent with R12-4-605. The rule is also too limited in scope, in that it does not refer to all statutes under which a license may be revoked or denied. The Department's rulemaking will revise subsection (A) to correct the problem.

- Subsection (B) currently states in part that the respondents in a hearing concerning license revocation, or denial of right to obtain a license shall limit their testimony to any facts that show why the license should not be revoked or denied. Guilt or innocence of the violation charged shall not be an issue in the proceeding. The phrase "guilt or innocence of the violation" has been found to be vague, and the Department will amend the rule to revise this subsection to make it clear that what is intended is that the Commission does not have the authority to consider or change the court conviction.

- Subsection (B) also currently states in part that the Commission shall conduct hearings concerning license revocations or denial of the right to obtain a license in accordance with the Administrative Procedure Act, A.R.S. § 41-1061 *et seq*. The reference to A.R.S. § 41-1061 has been found to be incorrect, and the Department will amend the rule to change the reference to A.R.S. Title 41, Chapter 6, Article 10.

- Subsection (C) currently states in part that the respondent waives the right to be heard if the respondent is not present at the hearing on the date, time, and location noticed, and no further opportunity to be heard will be provided except under R12-4-607. For clarification purposes, the Department will amend the rule to specify that the "notice" is the Notice of Hearing required by A.R.S. § 17-340(D)

- Subsection (D) currently states in part that the Department shall supply the respondent with a copy of all documents used by the Commission in reaching its decision. This statement has been found to be vague and the Department will amend the rule to make the following clarifications:

  ~~The~~ With the notice of hearing required by A.R.S. § 17-340(D), the Department shall supply the respondent with a copy of ~~all documents used by~~ each document provided to the Commission for use in reaching ~~its~~ a decision.

- Subsection (E) currently allows for any party in a case before the Commission to apply to the Commission for the issuance of subpoenas, and the rule states in part that the Commission chair may issue the subpoenas. This statement has been found to be vague and the Department will amend the rule to make the following clarification:

  E. Any party may apply to the Commission for issuance of a subpoena to compel the appearance of any witness or the production of documents at any hearing or deposition. Not later than 10 calendar days before the hearing or deposition, the party shall file a written application ~~setting forth~~ that provides the name and address of the witness, the subject matter of the expected testimony, the documents sought to be produced, and the date, time, and place of the hearing or deposition. The Commission chair ~~may~~ has the authority to issue the subpoenas.

- Subsection (E)(1) currently states in part that a party shall serve a subpoena as in the Arizona Rules of Civil Procedure, Rules 4 and 5. In addition to the inconsistency issue addressed in Part 4 of this report, this statement has been found to be vague, and the Department will amend the rule to make the following clarification:

  A party shall ~~serve~~ have a subpoena served as prescribed in the Arizona Rules of Civil Procedure, ~~Rules 4 and 5~~ Rule 45.

- Subsection (E)(1) currently cross-references the Arizona Rules of Civil Procedure, Rules 4 and 5. This cross-reference has been found to be incorrect, and the Department will amend the rule to change the reference to the Arizona Rules of Civil Procedure, Rule 45.

- The rule language will also be revised where necessary to make it consistent with the current requirements for rulemaking language and style.

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

The proposed rulemaking will directly benefit the general public, the Department and the Arizona Game and Fish Commission as these rules are made more consistent for efficiency and uniform enforcement. The proposed rulemaking will not create any additional costs for political subdivisions of this state, nor for businesses. The proposed rulemaking will not impact private or public employment. The proposed rulemaking will not affect state revenues. The Department has determined that there are no alternative methods of achieving the objectives of the proposed rulemaking.

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

Mark Naugle, Rules and Risk Manager
Arizona Game and Fish Department
2221 West Greenway Road
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(602) 789-3289

B. Economic, small business and consumer impact statement.

1. Identification of proposed rulemaking.

The proposed rulemaking primarily involves technical corrections and drafting style changes identified in the 2001 5-Year Rules Review of Article 6. These changes are designed to correct outdated material and improve the accuracy, clarity, and understandability of the rules. The Department intends to amend the rule as follows:

- The authorizing statutes of this rule also refer to suspension of a license. Therefore, amendments will be made throughout this Section to establish guidelines for the suspension of licenses.
- R12-4-606(A) currently states that the Director may commence proceedings for the Commission to revoke or deny the right to obtain a license under A.R.S § 17-340 and in R12-4-605. The Director may also commence proceedings for civil damages under A.R.S. § 17-314. Under R12-4-605, however, this authority is expressly given to the Commission and not the Director. R12-4-606 has therefore been found to be inconsistent with R12-4-605. The rule is also too limited in scope, in that it does not refer to all statutes under which a license may be revoked or denied. The Department's rulemaking will revise subsection (A) to correct the problem.
- Subsection (B) currently states in part that the respondents in a hearing concerning license revocation, or denial of right to obtain a license shall limit their testimony to any facts that show why the license should not be revoked or denied. Guilt or innocence of the violation charged shall not be an issue in the proceeding. The phrase "guilt or innocence of the violation" has been found to be vague, and the Department will amend the rule to revise this subsection to make it clear that what is intended is that the Commission does not have the authority to consider or change the court conviction.
- Subsection (B) also currently states in part that the Commission shall conduct hearings concerning license revocations or denial of the right to obtain a license in accordance with the Administrative Procedure Act, A.R.S. § 41-1061 *et seq*. The reference to A.R.S. § 41-1061 has been found to be incorrect, and the Department will amend the rule to change the reference to A.R.S. Title 41, Chapter 6, Article 10.

- Subsection (C) currently states in part that the respondent waives the right to be heard if the respondent is not present at the hearing on the date, time, and location noticed, and no further opportunity to be heard will be provided except under R12-4-607. For clarification purposes, the Department will amend the rule to specify that the "notice" is the Notice of Hearing required by A.R.S. § 17-340(D)
- Subsection (D) currently states in part that the Department shall supply the respondent with a copy of all documents used by the Commission in reaching its decision. This statement has been found to be vague and the Department will amend the rule to make the following clarifications:

  ~~The~~ With the notice of hearing required by A.R.S. § 17-340(D), the Department shall supply the respondent with a copy of ~~all documents used by~~ each document provided to the Commission for use in reaching ~~its~~ a decision.

- Subsection (E) currently allows for any party in a case before the Commission to apply to the Commission for the issuance of subpoenas, and the rule states in part that the Commission chair may issue the subpoenas. This statement has been found to be vague and the Department will amend the rule to make the following clarification:

  E. Any party may apply to the Commission for issuance of a subpoena to compel the appearance of any witness or the production of documents at any hearing or deposition. Not later than 10 calendar days before the hearing or deposition, the party shall file a written application ~~setting forth~~ that provides the name and address of the witness, the subject matter of the expected testimony, the documents sought to be produced, and the date, time, and place of the hearing or deposition. The Commission chair ~~may~~ has the authority to issue the subpoenas.

Subsection (E)(1) currently states in part that a party shall serve a subpoena as in the Arizona Rules of Civil Procedure, Rules 4 and 5. In addition to the inconsistency issue addressed in Part 4 of this report, this statement has been found to be vague, and the Department will amend the rule to make the following clarification:

A party shall ~~serve~~ have a subpoena served as prescribed in the Arizona Rules of Civil Procedure, ~~Rules 4 and 5~~ Rule 45.

- Subsection (E)(1) currently cross-references the Arizona Rules of Civil Procedure, Rules 4 and 5. This cross-reference has been found to be incorrect, and the Department will amend the rule to change the reference to the Arizona Rules of Civil Procedure, Rule 45.
- The rule language will also be revised where necessary to make it consistent with the current requirements for rulemaking language and style.

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

The proposed rulemaking will directly benefit the general public, the Department and the Arizona Game and Fish Commission as these rules are made more consistent for efficiency and uniform enforcement. The public will benefit from a clearly defined and comprehensible Commission hearing process that effectively revokes the privilege to obtain a hunting, fishing, or guide license of individuals that have demonstrated the inability to comply with state wildlife rules. Currently, the Commission considers license revocation, suspension, and denial at their regular meetings held monthly for ten months out of the year.

Both the Department and the Commission benefit from a comprehensive and understandable revocation hearing procedure that will improve the efficiency and completeness of the hearing process. Also, the proposed rulemaking clarifies powers and actions that fall within Commission's authority. Exceeding that authority or making a mistake in the due process of a hearing could result in a reversal of a Commission action. Thus, the proposed rulemaking will reduce the likelihood of such an error occurring.

Except for those costs associated with the rulemaking itself, the proposed rulemaking will result in no added cost. Therefore, the Department holds that the benefits of the proposed rulemaking outweigh the costs.

3. Cost benefit analysis:

(a) Probable costs and benefits to the Arizona Game and Fish Department and other agencies directly affected by the implementation and enforcement of the proposed rulemaking.

Both the Department and the Commission benefit from a comprehensive and understandable revocation hearing procedure that will improve the efficiency and completeness of the hearing process. Also, the proposed rulemaking clarifies powers and actions that fall within Commission's authority. Exceeding that authority or making a mistake in the due process of a hearing could result in an overturn of a Commission action. Thus, the proposed rulemaking will reduce the likelihood of such an error occurring. Except for those costs associated with the rulemaking itself, the proposed rulemaking will result in no added cost to the Arizona Game and Fish Department, or to other agencies directly affected by the implementation and enforcement of the proposed rulemaking.

(b) Probable costs and benefits to political subdivisions of this state directly affected by implementation and enforcement of the proposed rulemaking.

Except for those costs associated with the rulemaking itself, the proposed rulemaking will result in no added costs to the political subdivisions of this state directly affected by 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.

Except for those costs associated with the rulemaking itself, the proposed rulemaking will result in no added costs to businesses, nor revenues or payroll expenditures of employers of this state directly affected by implementation and enforcement of the proposed rulemaking. Except for those costs associated with the rulemaking itself, the proposed rulemaking will result in no added costs to the political subdivisions of this state directly affected by implementation and enforcement of the proposed rulemaking.

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

The proposed rulemaking will create no impact to private or public employment in businesses, agencies or political subdivisions of this state.

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 proposed rulemaking will not impact small businesses directly subject to the proposed rulemaking.

(b) The administrative and other costs required for compliance with the proposed rulemaking.

The proposed rulemaking will not result in any additional costs for compliance for small businesses.

(c) A description of the methods that the agency may use to reduce the impact on small businesses:

(i) Establishing less costly compliance requirements in the proposed rulemaking for small businesses.

The proposed rulemaking will result in no additional compliance requirements for small businesses.

(ii) Establishing less costly schedules or less stringent deadlines for compliance in the proposed rulemaking.

The proposed rulemaking will result in no additional schedules or deadlines for small businesses.

(iii) Exempting small businesses from any or all requirements of the proposed rulemaking.

The proposed rulemaking will not impact small businesses directly subject to the proposed rulemaking.

(d) The probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.

The proposed rulemaking will directly benefit the general public, the Department and the Arizona Game and Fish Commission as these rules are made more consistent for efficiency and uniform enforcement. The public will benefit from a clearly defined and comprehensible Commission hearing process that effectively revokes the privilege to obtain a hunting, fishing, or guide license of individuals that have demonstrated the inability to comply with state wildlife rules.

6. A statement of the probable effect on state revenues.

There is no anticipated impact on state revenues as a result of this proposed rulemaking.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

The proposed rulemaking primarily involves technical corrections and drafting style changes identified in the 2001 5-Year Rules Review of Article 6. These changes are designed to correct outdated material and improve the accuracy, clarity, and understandability of the rules. There are no less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

A.A.C. R12-4-607. Rehearing or Review of Commission Decisions

A. Economic, small business and consumer impact summary.

1. Identification of the proposed rulemaking.

The proposed rulemaking primarily involves technical corrections and drafting style changes identified in the 2001 5-Year Rules Review of Article 6. These changes are designed to correct outdated material and improve the accuracy, clarity, and understandability of the rules, and increase the Game and Fish Commission's discretion in certain matters. The Department intends to amend the rule as follows:

- The Department has determined that subsection (A), which currently provides reference definitions for "contested case" and "party," is too narrow in scope. The Department will amend the rule to add a reference definition for "appealable agency action," as defined in A.R.S. § 41-1092(3).
- Subsection (C) currently states in part that the Commission may require the filing of written briefs on any issue raised in a motion or response, and may provide for oral argument. The intent of this statement has been found to be unclear, and the Department will amend the rule to make the following clarifications:

  C. A party may amend a motion for rehearing or review at any time before the Commission rules upon the motion. An opposing party has ~~10~~ 15 calendar days after service to respond to the motion or the amended motion. The Commission ~~may~~ has the authority to require ~~the filing of~~ that the parties file written briefs on any issue raised in a motion or response, and ~~may provide~~ allow for oral argument.

- Subsection (D) currently states in part that "The Commission may grant rehearing or review for any of the following causes materially affecting the moving party's rights." The intent of this statement has been found to be unclear, and the Department will amend the rule to make the following clarifications:

  D. The Commission ~~may~~ has the authority to grant rehearing or review for any of the following

causes materially affecting the moving party's rights:

- Subsection (F) currently states in part that not later than 10 calendar days after a decision is rendered, the Commission may order a rehearing or review for any reason for which it might have granted relief on motion of a party. The provision for 10 calendar days is inconsistent with the 15 day requirement in A.R.S. § 41-1092.09, and the Department will amend the rule to change the timeframe to 15 calendar days, as prescribed by A.R.S. § 41-1092.09.
- Subsection (G) currently states in part that the Commission may permit reply affidavits. The intent of this statement has been found to be unclear, and the Department will amend the rule to make the following clarifications:

G. When a motion for rehearing or review is based upon affidavits, the party shall serve the affidavits with the motion. An opposing party may, within 10 calendar days after ~~such~~ service, serve opposing affidavits. The Commission may extend this period for no more than 20 calendar days for good cause shown or by written stipulation of the parties. The Commission ~~may~~ has the authority to permit reply affidavits.

- The rule language will also be revised where necessary to make it consistent with the current requirements for rulemaking language and style.

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

The proposed rulemaking will directly benefit the Department and the Commission by giving the Commission greater discretion during rehearing or review of Commission Decisions. The proposed rulemaking will create no additional costs to other political subdivisions of this state, or businesses. The proposed rulemaking will not impact public or private employment in this state. The proposed rulemaking will not affect state revenues. The Department has determined that there are no alternative methods for achieving the objectives of the proposed rulemaking.

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

Mark Naugle, Rules and Risk Manager
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B. Economic, small business and consumer impact statement.

1. Identification of proposed rulemaking.

The proposed rulemaking primarily involves technical corrections and drafting style changes identified in the 2001 5-Year Rules Review of Article 6. These changes are designed to correct outdated material and improve the accuracy, clarity, and understandability of the rules, and increase the Game and Fish Commission's discretion in certain matters. The Department intends to amend the rule as follows:

- The Department has determined that subsection (A), which currently provides reference definitions for "contested case" and "party," is too narrow in scope. The Department will amend the rule to add a reference definition for "appealable agency action," as defined in A.R.S. § 41-1092(3).
- Subsection (C) currently states in part that the Commission may require the filing of written briefs on any issue raised in a motion or response, and may provide for oral argument. The intent of this statement has been found to be unclear, and the Department will amend the rule to make the following clarifications:

C. A party may amend a motion for rehearing or review at any time before the Commission rules upon the motion. An opposing party has ~~10~~ 15 calendar days after service to respond to the motion or the amended motion. The Commission ~~may~~ has the authority to require ~~the filing of~~ that the parties file written briefs on any issue raised in a motion or response, and ~~may provide~~ allow for oral argument.

Subsection (D) currently states in part that "The Commission may grant rehearing or review for any of the following causes materially affecting the moving party's rights." The intent of this statement has been found to be unclear, and the Department will amend the rule to make the following clarifications:

D. The Commission ~~may~~ has the authority to grant rehearing or review for any of the following causes materially affecting the moving party's rights:

- Subsection (F) currently states in part that not later than 10 calendar days after a decision is rendered, the Commission may order a rehearing or review for any reason for which it might have granted relief on motion of a party. The provision for 10 calendar days is inconsistent with the 15 day requirement

in A.R.S. § 41-1092.09, and the Department will amend the rule to change the timeframe to 15 calendar days, as prescribed by A.R.S. § 41-1092.09.

- Subsection (G) currently states in part that the Commission may permit reply affidavits. The intent of this statement has been found to be unclear, and the Department will amend the rule to make the following clarifications:

  G. When a motion for rehearing or review is based upon affidavits, the party shall serve the affidavits with the motion. An opposing party may, within 10 calendar days after ~~such~~ service, serve opposing affidavits. The Commission may extend this period for no more than 20 calendar days for good cause shown or by written stipulation of the parties. The Commission ~~may~~ has the authority to permit reply affidavits.

☐ The rule language will also be revised where necessary to make it consistent with the current requirements for rulemaking language and style.

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

The proposed rulemaking will directly benefit the Department and the Commission by giving the Commission greater discretion during rehearing or review of Commission Decisions. By giving the Commission authority to require filings of written briefs, grant rehearings, and permit reply affidavits, it is no longer bound by restrictions implicit in the formerly-used term "may". Thus, the Commission's discretion is more clearly defined in these matters. The benefit to the Department is measured in the reduction of documents that require processing.

Except for those costs associated with the rulemaking itself, the proposed rulemaking will result in no added cost. Therefore, the Department holds that the benefits of the proposed rulemaking outweigh the costs.

3. Cost benefit analysis:

(a) Probable costs and benefits to the Arizona Game and Fish Department and other agencies directly affected by the implementation and enforcement of the proposed rulemaking.

The proposed rulemaking will directly benefit the Department and the Commission by clearly defining the Commission's discretion during rehearing or review of Commission Decisions. By giving the Commission authority to require filings of written briefs, grant rehearings, and permit reply affidavits, it is no longer bound by restrictions implicit in the formerly-used term "may". Thus, the Commission's discretion is more clearly defined in these matters. The benefit to the Department is measured in the reduction of documents that require processing.

(b) Probable costs and benefits to political subdivisions of this state directly affected by implementation and enforcement of the proposed rulemaking.

Except for those costs associated with the rulemaking itself, the proposed rulemaking will result in no added costs to the political subdivisions of this state directly affected by 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.

Except for those costs associated with the rulemaking itself, the proposed rulemaking will result in no added costs to businesses, nor revenues or payroll expenditures of employers of this state directly affected by implementation and enforcement of the proposed rulemaking. Except for those costs associated with the rulemaking itself, the proposed rulemaking will result in no added costs to the political subdivisions of this state directly affected by implementation and enforcement of the proposed rulemaking.

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

The proposed rulemaking will create no impact to private or public employment in businesses, agencies or political subdivisions of this state.

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 proposed rulemaking will not impact small businesses directly subject to the proposed rulemaking.

(b) The administrative and other costs required for compliance with the proposed rulemaking.

The proposed rulemaking will not result in any additional costs for compliance for small businesses.

(c) A description of the methods that the agency may use to reduce the impact on small businesses:

(i) Establishing less costly compliance requirements in the proposed rulemaking for small businesses.

The proposed rulemaking will result in no additional compliance requirements for small businesses.

(ii) Establishing less costly schedules or less stringent deadlines for compliance in the proposed rulemaking.

The proposed rulemaking will result in no additional schedules or deadlines for small businesses.

(iii) Exempting small businesses from any or all requirements of the proposed rulemaking.

The proposed rulemaking will not impact small businesses directly subject to the proposed rulemaking.

(d) The probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.

Except for those costs associated with the rulemaking itself, the proposed rulemaking will result in no added cost to private persons or consumers.

6. A statement of the probable effect on state revenues.

There is no anticipated impact on state revenues as a result of this proposed rulemaking.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

The proposed rulemaking primarily involves technical corrections and drafting style changes identified in the 2001 5-Year Rules Review of Article 6. These changes are designed to correct outdated material and improve the accuracy, clarity, and understandability of the rules. There are no less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

A.A.C. R12-4-610. Petition for Requesting Closure of Hunting, Fishing, or Trapping Privileges on State or Federal Lands

A. Economic, small business and consumer impact summary.

1. Identification of the proposed rulemaking.

The proposed rulemaking primarily involves technical corrections and drafting style changes identified in the 2001 5-Year Rules Review of Article 6. These changes are designed to correct outdated material and improve the accuracy, clarity, and understandability of the rules, as well as consistency with other rules and statutes. The Department intends to amend the rule as follows:

- The heading of the rule has been found to be too narrow in scope. To fully address the provisions of the rule, the Department will amend the heading as follows: "Petitions ~~Petition~~ for ~~Requesting~~ the Closure of State or Federal Lands to Hunting, Fishing, or Trapping ~~Privileges on State or Federal Lands~~ or the Operation of Motor Vehicles."
- Subsections (E) and (E)(1) have been found to be vague and too narrow in scope to meet the objective of the rule. The Department will amend the rule to revise subsections (E) and (E)(1) as follows:

~~E. Within 15 working days of a petition's filing, the Department shall determine whether the petition meets the requirements prescribed in this rule and R12-4-110.~~

~~1. If the petition meets the requirements prescribed in this rule and R12-4-110, and alternate solutions cannot be found which are acceptable to the petitioner, the Department shall place the petition on the agenda of an open meeting of the Arizona Game and Fish Commission according to the schedule designated in subsection (D) of this rule. The petitioner shall have the right to present oral testimony in support of the petition at that meeting, according to the provisions of R12-4-603.~~

E. Within 15 business days after the petition is filed, the Department shall determine whether the petition complies with this Section, R12-4-110, and A.R.S. § 17-452. Once the Department determines that the petition meets these requirements, and if the petitioner has not agreed to an alternative solution or withdrawn the petition, the Department, in accordance with the schedule in subsection (D), shall place the petition on the agenda for the Commission's next open meeting and provide written notice to the petitioner of the date that the Commission will consider the petition.

1. The petitioner may present oral testimony in support of the petition at the Commission meeting, in accordance with the provisions of R12-4-603.

Subsection (E)(2) has been found to be vague and too narrow in scope to meet the objective of the rule. The Department will amend the rule to revise subsection (E)(2) as follows:

~~2. If the petition does not meet the requirements prescribed in this rule and R12-4-110, the Department shall return one copy of the petition as filed to the petitioner with reasons why it does not meet the requirements. The Department shall not place the petition on an agenda of an open meeting with the Commission.~~

2. If a petition does not meet the requirements prescribed in this Section, R12-4-110, and A.R.S. § 17-452, the Department shall return one copy of the petition as filed to the petitioner with the reasons why the petition does not meet the requirements, and not place the petition on a Commission agenda.

3. If the Department returns a petition to a petitioner for a reason that cannot be corrected, the Department shall serve on the petitioner a notice of appealable agency action under A.R.S. § 411092.03.

Subsections (F) through (J) have been found to be vague and too narrow in scope to meet the objective of the rule. The Department will amend the rule to combine existing subsections (F) through (J) into new subsection (F) with the following revised rule language:

F. The petitioner shall submit a petition that:
   1. Is typewritten, computer or word processor printed, or legibly handwritten, and doublespaced on 8 1/2 x 11" paper;
   2. Has a concise map that shows the specific location of the proposed closure;
   3. Has the title "Petition for the Closure of Hunting, Fishing, or Trapping Privileges on Public Land" or "Petition for the Closure of Public Lands to the Operation of Motor Vehicles" at the top of the page;
   4. Is in four parts, with titles designating each part as prescribed in this subsection;
   5. Has a "Part 1" with the title "Identification of Petitioner" and contains the following information, if applicable:
      a. If the petitioner is the leaseholder of the area proposed for closure, the name, lease number, mailing address, and home telephone number of the petitioner;
      b. If the petitioner is anyone other than the leaseholder, the name, mailing address, and telephone number of the leaseholder; the name, mailing address, and telephone number of the petitioner; and the name of each group or organization or organizations that the petitioner represents; or
      c. If the petitioner is a public agency, the name and address of the agency and the name, title, and telephone number of the agency's representative regarding the petition.
   6. Has a "Part 2" with the title "Request for Closure" and contains all of the following information, if applicable:
      a. The type of closure requested: either a hunting, fishing, or trapping closure, or closure to the operation of motor vehicles;
      b. A complete legal description of the area to be closed;
      c. The name or identifying number of any road and the portion of the road affected by the closure;
      d. The dates proposed for the closure:
         i. If the closure is to the operation of motor vehicles, the actual time period of the closure (up to 5 years), and whether or not the closure is seasonal; or
         ii. If the closure is for hunting, fishing, or trapping, whether or not the request is for a permanent closure or for some other period of time.
   7. Has a "Part 3" with the title "Reason for Closure" and contains all of the following information, if applicable:
      a. Each reason why the closure should be considered under R12-4-110, A.R.S. § 17-304(B), or A.R.S. § 17-452(A);
      b. Any data or other justification supporting the reasons for the closure with clear reference to any exhibits that may be attached to the petition.
      c. Each individual or segment of the public the petitioner believes will be impacted by the closure, including any other valid licensees, leasees, or permittees that will or may be affected, and how they will be impacted, including both positive and negative impacts;

d. If the petitioner is a public agency, a summary of issues raised in any public hearing or public meeting regarding the petition and a copy of each written comment or document of concurrence authotized under A.R.S. § 17-452(A), received by the petitioning agency; and

e. A proposed alternate access route, under R12-4-110.

8. Has a "Part 4" with the title "Dates and Signatures" and contains the following:

a. The original signature of the private party or the official contact named under subsection (F)(5)(a) or (F)(5)(b) of this Section, or, if the petitioner is a public agency, the signature of the agency head or the agency head's designee; and

b. The month, day, and year when the petition was signed.

☐The rule language will also be revised where necessary to make it consistent with the current requirements for rulemaking language and style.

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

The proposed rulemaking will create a direct benefit to individuals that petition the Arizona Game and Fish Commission, as well as to the Department itself. The proposed rulemaking will create no additional costs to other political subdivisions in this state, nor to businesses. The proposed rulemaking will not impact private or public employment. The proposed rulemaking will not affect state revenues. The Department has determined that there are no alternative methods to achieve the objectives of the proposed rulemaking.

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

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B. Economic, small business and consumer impact statement.

1. Identification of proposed rulemaking.

The proposed rulemaking primarily involves technical corrections and drafting style changes identified in the 2001 5-Year Rules Review of Article 6. These changes are designed to correct outdated material and improve the accuracy, clarity, and understandability of the rules, as well as consistency with other rules and statutes. The Department intends to amend the rule as follows:

- The heading of the rule has been found to be too narrow in scope. To fully address the provisions of the rule, the Department will amend the heading as follows: "Petitions ~~Petition~~ for ~~Requesting~~ the Closure of State or Federal Lands to Hunting, Fishing, or Trapping ~~Privileges on State or Federal Lands~~ or to the Operation of Motor Vehicles."
- Subsections (E) and (E)(1) have been found to be vague and too narrow in scope to meet the objective of the rule. The Department will amend the rule to revise subsections (E) and (E)(1) as follows:

~~E. Within 15 working days of a petition's filing, the Department shall determine whether the petition meets the requirements prescribed in this rule and R12-4-110.~~

~~1. If the petition meets the requirements prescribed in this rule and R12-4-110, and alternate solutions cannot be found which are acceptable to the petitioner, the Department shall place the petition on the agenda of an open meeting of the Arizona Game and Fish Commission according to the schedule designated in subsection (D) of this rule. The petitioner shall have the right to present oral testimony in support of the petition at that meeting, according to the provisions of R12-4-603.~~

E. Within 15 business days after the petition is filed, the Department shall determine whether the petition complies with this Section, R12-4-110, and A.R.S. § 17-452. Once the Department determines that the petition meets these requirements, and if the petitioner has not agreed to an alternative solution or withdrawn the petition, the Department, in accordance with the schedule in subsection (D), shall place the petition on the agenda for the Commission's next open meeting and provide written notice to the petitioner of the date that the Commission will consider the petition.

1. The petitioner may present oral testimony in support of the petition at the Commission meeting, in accordance with the provisions of R12-4-603.

☐ Subsection (E)(2) has been found to be vague and too narrow in scope to meet the objective of the rule. The Department will amend the rule to revise subsection (E)(2) as follows:

~~2. If the petition does not meet the requirements prescribed in this rule and R12-4-110, the Department shall return one copy of the petition as filed to the petitioner with reasons why it does not meet the requirements. The Department shall not place the petition on an agenda of an open meeting with the Commission.~~

2. If a petition does not meet the requirements prescribed in this Section, R12-4-110, and A.R.S. § 17-452, the Department shall return one copy of the petition as filed to the petitioner with the reasons why the petition does not meet the requirements, and not place the petition on a Commission agenda.
3. If the Department returns a petition to a petitioner for a reason that cannot be corrected, the Department shall serve on the petitioner a notice of appealable agency action under A.R.S. § 411092.03.

☐ Subsections (F) through (J) have been found to be vague and too narrow in scope to meet the objective of the rule. The Department will amend the rule to combine existing subsections (F) through (J) into new subsection (F) with the following revised rule language:

F. The petitioner shall submit a petition that:
   1. Is typewritten, computer or word processor printed, or legibly handwritten, and doublespaced on 8 1/2 x 11" paper;
   2. Has a concise map that shows the specific location of the proposed closure;
   3. Has the title "Petition for the Closure of Hunting, Fishing, or Trapping Privileges on Public Land" or "Petition for the Closure of Public Lands to the Operation of Motor Vehicles" at the top of the page;
   4. Is in four parts, with titles designating each part as prescribed in this subsection;
   5. Has a "Part 1" with the title "Identification of Petitioner" and contains the following information, if applicable:
      a. If the petitioner is the leaseholder of the area proposed for closure, the name, lease number, mailing address, and home telephone number of the petitioner;
      b. If the petitioner is anyone other than the leaseholder, the name, mailing address, and telephone number of the leaseholder; the name, mailing address, and telephone number

of the petitioner; and the name of each group or organization or organizations that the petitioner represents; or

c. If the petitioner is a public agency, the name and address of the agency and the name, title, and telephone number of the agency's representative regarding the petition.

6. Has a "Part 2" with the title "Request for Closure" and contains all of the following information, if applicable:

a. The type of closure requested: either a hunting, fishing, or trapping closure, or closure to the operation of motor vehicles;

b. A complete legal description of the area to be closed;

c. The name or identifying number of any road and the portion of the road affected by the closure;

d. The dates proposed for the closure:

i. If the closure is to the operation of motor vehicles, the actual time period of the closure (up to 5 years), and whether or not the closure is seasonal; or

ii. If the closure is for hunting, fishing, or trapping, whether or not the request is for a permanent closure or for some other period of time.

7. Has a "Part 3" with the title "Reason for Closure" and contains all of the following information, if applicable:

a. Each reason why the closure should be considered under R12-4-110, A.R.S. § 17-304(B), or A.R.S. § 17-452(A);

b. Any data or other justification supporting the reasons for the closure with clear reference to any exhibits that may be attached to the petition.

c. Each individual or segment of the public the petitioner believes will be impacted by the closure, including any other valid licensees, leasees, or permittees that will or may be affected, and how they will be impacted, including both positive and negative impacts;

d. If the petitioner is a public agency, a summary of issues raised in any public hearing or public meeting regarding the petition and a copy of each written comment or document of concurrence authotized under A.R.S. § 17-452(A), received by the petitioning agency; and

e. A proposed alternate access route, under R12-4-110.

8. Has a "Part 4" with the title "Dates and Signatures" and contains the following:

a. The original signature of the private party or the official contact named under subsection (F)(5)(a) or (F)(5)(b) of this Section, or, if the petitioner is a public agency, the signature of the agency head or the agency head's designee; and

b. The month, day, and year when the petition was signed.

☐ The rule language will also be revised where necessary to make it consistent with the current requirements for rulemaking language and style.

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

The proposed rulemaking will create a direct benefit to individuals that petition the Arizona Game and Fish Commission, as well as to the Department itself. The proposed amendments to subsection (F) through (J) will make the petition process more understandable and accessible to the public. These amendments will result in an increase in the number of qualified petitions submitted, and reduce the number of petitions rejected and returned to the original petitioner due to improper completion. The Department will also accept computer printed petitions for rule, instead of those that are exclusively typewritten.

Also, the proposed amendments to subsection (E) will benefit the Department, the Commission, and petitioners. The amendment to bring this Section into conformity with Title 41 will facilitate notification

on the part of the Department to the petitioner in order to keep that individual informed to the whereabouts of their petition in the submission process. In addition, it will require the Department to give a more timely response in addressing petition errors, so that individuals can resubmit corrected petitions as soon as possible.

Except for those costs associated with the rulemaking itself, the proposed rulemaking will result in no added cost. Therefore, the Department holds that the benefits of the proposed rulemaking outweigh the costs.

3. Cost benefit analysis:

(a) Probable costs and benefits to the Arizona Game and Fish Department and other agencies directly affected by the implementation and enforcement of the proposed rulemaking.

The proposed rulemaking will create a direct benefit to individuals that petition the Arizona Game and Fish Commission, as well as to the Department itself. The proposed amendments to subsection (F) through (J) will make the petition process more understandable and accessible to the public. These amendments will result in an increase in the number of qualified petitions submitted, and reduce the number of petitions rejected and returned to the original petitioner due to improper completion. The Department will also accept computer printed petitions for rule, instead of those that are exclusively typewritten.

Also, the proposed amendments to subsection (E) will benefit the Department, the Commission, and petitioners. The amendment to bring this Section into conformity with Title 41 will facilitate notification on the part of the Department to the petitioner in order to keep that individual informed to the whereabouts of their petition in the submission process. In addition, it will require the Department to give a more timely response in addressing petition errors, so that individuals can resubmit corrected petitions as soon as possible.

Except for those costs associated with the rulemaking itself, the proposed rulemaking will result in no added cost to the Arizona Game and Fish Department, or to other agencies directly affected by the implementation and enforcement of the proposed rulemaking.

(b) Probable costs and benefits to political subdivisions of this state directly affected by implementation and enforcement of the proposed rulemaking.

Except for those costs associated with the rulemaking itself, the proposed rulemaking will result in no added costs to the political subdivisions of this state directly affected by 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.

Except for those costs associated with the rulemaking itself, the proposed rulemaking will result in no added costs to businesses, nor revenues or payroll expenditures of employers of this state directly affected by implementation and enforcement of the proposed rulemaking.

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

The proposed rulemaking will create no impact to private or public employment in businesses, agencies or political subdivisions of this state.

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 proposed rulemaking will not impact small businesses directly subject to the proposed rulemaking.

(b) The administrative and other costs required for compliance with the proposed rulemaking.

The proposed rulemaking will not result in any additional costs for compliance for small businesses.

(c) A description of the methods that the agency may use to reduce the impact on small businesses:

(i) Establishing less costly compliance requirements in the proposed rulemaking for small businesses.

The proposed rulemaking will result in no additional compliance requirements for small businesses.

(ii) Establishing less costly schedules or less stringent deadlines for compliance in the proposed rulemaking.

The proposed rulemaking will result in no additional schedules or deadlines for small businesses.

(iii) Exempting small businesses from any or all requirements of the proposed rulemaking.

The proposed rulemaking will not impact small businesses directly subject to the proposed rulemaking.

(d) The probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.

The proposed rulemaking will create a direct benefit to individuals that petition the Arizona Game and Fish Commission, as well as to the Department itself. The proposed amendments to subsection (F) through (J) will make the petition process more understandable and accessible to the public. These amendments will result in an increase in the number of qualified petitions submitted, and reduce the number of petitions rejected and returned to the original petitioner due to improper completion. The Department will also accept computer printed petitions for rule, instead of those that are exclusively typewritten.

Also, the proposed amendments to subsection (E) will benefit the Department, the Commission, and petitioners. The amendment to bring this Section into conformity with Title 41 will facilitate notification on the part of the Department to the petitioner in order to keep that individual informed to the whereabouts of their petition in the submission process. In addition, it will require the Department to give a more timely response in addressing petition errors, so that individuals can resubmit corrected petitions as soon as possible.

Except for those costs associated with the rulemaking itself, the proposed rulemaking will result in no added cost to private persons or consumers. Therefore, the Department holds that the benefits of the proposed rulemaking outweigh the costs.

6. A statement of the probable effect on state revenues.

There is no anticipated impact on state revenues as a result of this proposed rulemaking.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

The proposed rulemaking primarily involves technical corrections and drafting style changes identified in the 2001 5-Year Rules Review of Article 6. These changes are designed to correct outdated material and improve the accuracy, clarity, and understandability of the rules. There are no less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

A.A.C. R12-4-611. Petition for a Hearing Before the Commission When No Remedy is Provided in Statute, Rule, or Policy

A. Economic, small business and consumer impact summary.

1. Identification of the proposed rulemaking.

The proposed rulemaking resolves the need identified in the 2001 5-Year Rules Review to prescribe a process for the public to petition the Commission to hold a hearing to address issues for which there is no procedure established in Article 6. These changes are designed to improve the accuracy, clarity, and understandability of this Article, and to conform to the adjudication procedures established in Title 41. The Department intends to amend the rule as follows:

☐ The Department intends to add a new section to the Article 6 rules to prescribe a process for petitions for Commission Hearings:

A. If no administrative remedy exists in statute, rule or policy, an aggrieved individual may request a hearing before the Commission by following the provisions of this Section.
B. Any individual who requests a hearing under this Section shall submit a petition as prescribed in this Section before the request for a hearing will be considered by the Commission.
C. A petitioner shall file the original and one copy of the petition with the Arizona Game and Fish Department, Director's Office, 2221 W. Greenway Rd., Phoenix, Arizona 85023.
D. The petitioner shall ensure that the petition is typewritten, computer or word processor printed, or legibly handwritten, and double-spaced on 8½" X 11" paper, or legible if handwritten. The petitioner shall place the title "Petition for Hearing by the Arizona Game and Fish Commission" at the top of the first page. The petition shall include the items listed in subsections (E) through (H). The petitioner shall present the items in the petition in the order in which they are listed in this Section.
E. The petitioner shall ensure that the title of Part 1 is "Identification of Petitioner" and that Part 1 includes the following information, as applicable:
   1. If the petitioner is a private person, the name, mailing address, telephone number, and e-mail address (if available) of the petitioner;
   2. If the petitioner is a private group or organization, the name and address of the organization; the name, mailing address, telephone number, and e-mail address (if available) of one person who is designated as the official contact for the group or organization; the number of individuals or members represented by the private group or organization, and the number of these individuals or members who are Arizona residents. If the petitioner prefers, the petitioner may provide the names and addresses of all members; or
   3. If the petitioner is a public agency, the name and address of the agency and the name, title, telephone number, and e-mail address (if available) of the agency's representative.

F. The petitioner shall ensure that the title of Part 2 is "Statement of Facts and Issues." Part 2 shall contain a description of the issue to be resolved, and a statement of the facts relevant to resolving the issue.

G. The petitioner shall ensure that the title of Part 3 is "Petitioner's Proposed Remedy." Part 3 shall contain a full and detailed explanation of the specific remedy the petitioner is seeking from the Commission.

H. The petitioner shall ensure that the title of Part 4 is "Date and Signatures." Part 4 shall contain:

1. The original signature of the private party or the official contact named in the petition, or, if the petitioner is a public agency, the signature of the agency head or the agency head's designee; and
2. The month, day, and year that the petition is signed.

I. If a petition does not comply with this Section, the Director shall return the petition and indicate why the petition is deficient.

J. After the Director receives a petition that complies with this Section, the Director shall place the petition on the agenda of a regularly-scheduled Commission meeting.

K. If the Commission votes to deny a petition, the Department shall not accept a subsequent petition on the same matter, unless the petitioner presents new evidence or reasons for considering the subsequent petition.

L. This Section does not apply to the following:

1. A matter related to a license revocation or civil assessment; or
2. An unsuccessful hunt permit-tag draw application, where there was no error on the part of the Department.

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

The proposed rulemaking will create a direct benefit to individuals that petition the Arizona Game and Fish Commission, as well as to the Department itself. The proposed rulemaking will not create any additional costs for other political subdivisions of this state, nor for businesses. The proposed rulemaking will not impact private or public employment of this state. The proposed rulemaking will have no effect on state revenues. The Department has determined that there are no alternative methods for achieving the objectives of the proposed rulemaking.

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

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B. Economic, small business and consumer impact statement.

1. Identification of proposed rulemaking.

The proposed rulemaking resolves the need identified in the 2001 5-Year Rules Review to prescribe a process for the public to petition the Commission to hold a hearing to address issues for which there is no procedure established in Article 6. These changes are designed to improve the accuracy, clarity, and understandability of this Article, and to conform to the adjudication procedures established in Title 41. The Department intends to amend the rule as follows:

☐ The Department intends to add a new section to the Article 6 rules to prescribe a process for petitions for Commission Hearings:

A. If no administrative remedy exists in statute, rule or policy, an aggrieved individual may request a hearing before the Commission by following the provisions of this Section.
B. Any individual who requests a hearing under this Section shall submit a petition as prescribed in this Section before the request for a hearing will be considered by the Commission.
C. A petitioner shall file the original and one copy of the petition with the Arizona Game and Fish Department, Director's Office, 2221 W. Greenway Rd., Phoenix, Arizona 85023.
D. The petitioner shall ensure that the petition is typewritten, computer or word processor printed, or legibly handwritten, and double-spaced on 8½" X 11" paper, or legible if handwritten. The petitioner shall place the title "Petition for Hearing by the Arizona Game and Fish Commission" at the top of the first page. The petition shall include the items listed in subsections (E) through (H). The petitioner shall present the items in the petition in the order in which they are listed in this Section.
E. The petitioner shall ensure that the title of Part 1 is "Identification of Petitioner" and that Part 1 includes the following information, as applicable:
   1. If the petitioner is a private person, the name, mailing address, telephone number, and email address (if available) of the petitioner;
   2. If the petitioner is a private group or organization, the name and address of the organization; the name, mailing address, telephone number, and e-mail address (if available) of one person who is designated as the official contact for the group or organization; the number of individuals or members represented by the private group or organization, and the number of these individuals or members who are Arizona residents. If the petitioner prefers, the petitioner may provide the names and addresses of all members; or
   3. If the petitioner is a public agency, the name and address of the agency and the name, title, telephone number, and e-mail address (if available) of the agency's representative.
F. The petitioner shall ensure that the title of Part 2 is "Statement of Facts and Issues." Part 2 shall contain a description of the issue to be resolved, and a statement of the facts relevant to resolving the issue.
G. The petitioner shall ensure that the title of Part 3 is "Petitioner's Proposed Remedy." Part 3 shall contain a full and detailed explanation of the specific remedy the petitioner is seeking from the Commission.
H. The petitioner shall ensure that the title of Part 4 is "Date and Signatures." Part 4 shall contain:
   1. The original signature of the private party or the official contact named in the petition, or, if the petitioner is a public agency, the signature of the agency head or the agency head's designee; and
   2. The month, day, and year that the petition is signed.
I. If a petition does not comply with this Section, the Director shall return the petition and indicate why the petition is deficient.
J. After the Director receives a petition that complies with this Section, the Director shall place the petition on the agenda of a regularly-scheduled Commission meeting.
K. If the Commission votes to deny a petition, the Department shall not accept a subsequent petition on the same matter, unless the petitioner presents new evidence or reasons for considering the subsequent petition.
L. This Section does not apply to the following:
   1. A matter related to a license revocation or civil assessment; or
   2. An unsuccessful hunt permit-tag draw application, where there was no error on the part of the Department.

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

The proposed rulemaking will create a direct benefit to individuals that petition the Arizona Game and Fish Commission, as well as to the Department itself. The general public will be able to petition the Commission to hold a public hearing for purposes other than those established in rule, giving the public greater access to the Commission to resolve issues.

The proposed rulemaking will benefit the Commission and the Department in non-monetary terms, specifically, by continuing to demonstrate accessibility to the public. In addition, the proposed rulemaking will make the Commission rules of Article 6 more compliant with objectives of Title 41, Article 6, Adjudicative Proceedings, to provide the public a venue for contesting agency actions. Therefore, the Department holds that the benefits of the proposed rulemaking outweigh the costs.

3. Cost benefit analysis:

(a) Probable costs and benefits to the Arizona Game and Fish Department and other agencies directly affected by the implementation and enforcement of the proposed rulemaking.

There will be limited additional costs to the agency as a result of these hearings as they will be conducted during the regularly scheduled Commission meetings, thus reducing or eliminating additional cost associated with extra meetings. The proposed rulemaking will benefit the Commission and the Department in non-monetary terms, specifically, by continuing to demonstrate accessibility to the public. In addition, the proposed rulemaking will make the Commission rules of Article 6 more compliant with objectives of Title 41, Article 6, Adjudicative Proceedings, to provide the public a venue for contesting agency actions. Therefore, the Department holds that the benefits of the proposed rulemaking outweigh the costs.

(b) Probable costs and benefits to political subdivisions of this state directly affected by implementation and enforcement of the proposed rulemaking.

Except for those costs associated with the rulemaking itself, the proposed rulemaking will result in no added costs to the political subdivisions of this state directly affected by 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.

Except for those costs associated with the rulemaking itself, the proposed rulemaking will result in no added costs to businesses, nor revenues or payroll expenditures of employers of this state directly affected by implementation and enforcement of the proposed rulemaking. Except for those costs associated with the rulemaking itself, the proposed rulemaking will result in no added costs to the political subdivisions of this state directly affected by implementation and enforcement of the proposed rulemaking.

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

The proposed rulemaking will create no impact to private or public employment in businesses, agencies or political subdivisions of this state.

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 proposed rulemaking will not impact small businesses directly subject to the proposed rulemaking.

(b) The administrative and other costs required for compliance with the proposed rulemaking.

The proposed rulemaking will not result in any additional costs for compliance for small businesses.

(c) A description of the methods that the agency may use to reduce the impact on small businesses:

(i) Establishing less costly compliance requirements in the proposed rulemaking for small businesses.

The proposed rulemaking will result in no additional compliance requirements for small businesses.

(ii) Establishing less costly schedules or less stringent deadlines for compliance in the proposed rulemaking.

The proposed rulemaking will result in no additional schedules or deadlines for small businesses.

(iii) Exempting small businesses from any or all requirements of the proposed rulemaking.

The proposed rulemaking will not impact small businesses directly subject to the proposed rulemaking.

(d) The probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.

The general public will be able to petition the Commission to hold a public hearing for purposes other than those established in rule. There will be limited additional costs to the agency as a result of these hearings as they will be conducted during the regularly scheduled Commission meetings, thus reducing or eliminating additional cost associated with extra meetings. The proposed rulemaking will benefit the Commission and the Department in non-monetary terms, specifically, by continuing to demonstrate accessibility to the public. In addition, the proposed rulemaking will make the Commission rules of Article 6 more compliant with objectives of Title 41, Article 6, Adjudicative Proceedings, to provide the public a venue for contesting agency actions. Therefore, the Department holds that the benefits of the proposed rulemaking outweigh the costs.

6. A statement of the probable effect on state revenues.

There is no anticipated impact on state revenues as a result of this proposed rulemaking.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

The proposed rulemaking resolves the need identified in the 2001 5-Year Rules Review to prescribe a process for the public to petition the Commission to hold a hearing to address issues for which there is no procedure established in Article 6. These changes are designed to improve the accuracy, clarity, and understandability of this Article, and to conform to the adjudication procedures established in Title 41. There are no less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

TITLE 12. NATURAL RESOURCES CHAPTER 4. GAME AND FISH COMMISSION ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION R12-4-601, R12-4-610, and R12-4-611

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 Department proposes to amend R12-4-601, R12-4-610, and R12-4-611 to reflect the Department's current headquarters address.

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

   The rulemaking clarifies the process used when petitioning the Department, under R12-4-601, R12-4-610, or R12-4-611, by providing the Department's current address.

   The Department anticipates that the rulemaking will not impact state revenues or political subdivisions.

   Members of private industry or the public will benefit from a rule that provides the Department's current mailing address.

   The only costs the Department will incur are those costs associated with the rulemaking process. The Commission has determined that the benefits of the rulemaking outweigh any costs.

   The Department and individuals submitting a petition to the Arizona Game and Fish Commission, under R12-4-601, R12-4-610, or R12-4-611, will benefit from a rule that is more clear and understandable. Since June 2009, the Department received three petitions authorized under R12-4-601, one petition authorized under R12-4-610, and one petition authorized under R12-4-611.

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

   Name: Marty Fabritz
   Address: 5000 W. Carefree Highway
   Phoenix, AZ 85086
   Telephone: (623) 236-7281
   Fax: (623) 236-7299
   E-mail: mfabritz@azgfd.gov

B. Economic, small business and consumer impact statement:

1. **Identification of the proposed rulemaking:**

   See paragraph (A)(1) above.

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

   Persons to bear costs:

- The Arizona Game and Fish Commission
- The Arizona Game and Fish Department Persons to benefit:
- The Arizona Game and Fish Commission
- The Arizona Game and Fish Department
- Individuals submitting a petition to the Department

3. Cost-benefit analysis:

a. Probable costs and benefits to the Arizona Game and Fish Department and other agencies directly affected by the implementation and enforcement of the proposed rulemaking:

The Department anticipates that amendments to R12-4-601, R12-4-610, and R12-4-611 will benefit the Department by ensuring that petitions are mailed to the correct address. This avoids unnecessary delays caused when an individual mails the required documentation to the Department's previous address and allows for a more efficient petition process.

b. Probable costs and benefits to political subdivisions of this state directly affected by the implementation and enforcement of the proposed rule(s):

The Department anticipates that political subdivisions of this state will not incur any additional costs associated with the rulemaking and will benefit from a rule that is clear and understandable.

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 Department anticipates that businesses, their revenues, or their payroll expenditures will not incur any additional costs associated with the rulemaking and will benefit from a rule that is clear, concise, and understandable.

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 Department anticipates that the rulemaking will not effect private and public employment in this state.

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

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

Small businesses may include businesses submitting a petition under R12-4-601, R12-4-610, or R12-4611.

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

The Department anticipates that the rulemaking will not impose any additional costs for compliance for small businesses.

c. Description of the methods the Arizona Game and Fish Department may use to reduce the impact on small businesses:

The rulemaking will not create any additional schedules or deadlines for compliance, thus the Department believes that it is not necessary to provide methods to reduce the impact on small businesses.

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

The Department anticipates that the rulemaking will not result in any additional costs to private persons and consumers.

Private persons and consumers will benefit from a rule that provides the Department's current mailing address.

Private persons and consumers submitting a petition to the Arizona Game and Fish Commission, under R12-4-601, R12-4-610, or R12-4-611, will benefit from a rule that is more clear and understandable.

6. Statement of probable effect on state revenues:

The Department anticipates that the rulemaking will not affect state revenues.

7. Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking:

The Department has determined that there are no less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

The Department believes the benefits derived from the rulemaking outweigh any associated costs.

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

The Department believes the data used to generate this economic impact statement is adequate and allowed for the sufficient assessment of this rulemaking.

TITLE 12. NATURAL RESOURCES CHAPTER 4. GAME AND FISH COMMISSION ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS ARTICLE 3. TAKING AND HANDLING OF WILDLIFE ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION ARTICLE 8. WILDLIFE AREAS AND DEPARTMENT PROPERTY R12-4-101, R12-4-103, R12-4-104, R12-4-105, R12-4-106, R12-4-107, R12-4-108, R12-4-110, R12-4-111, R12-4-112, R12-4-113, R12-4-114, R12-4-115, R12-4-116, R12-4-117, R12-4-118, R12-4-119, R12-4-120, R12-4-121, R12-4-124, R12-4-125, R12-4-302, R12-4-611, and R12-4-804

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 rules following the 2014 five-year rule review of 12 A.A.C. Chapter 4, Article 1, Definitions and General Provisions. The review report, as required under A.R.S. § 41-1056, established a course of action to amend Article 1 rules. A subsequent review of these recommendations evaluated their usefulness in practice and enforcement, resulting in the rulemaking as it is submitted in this Notice. In addition to the amendments proposed in the five-year review report, the Commission proposes to amend rules within 12 A.A.C. 4 to establish requirements necessary to allow a person to surrender an unused, original hunt permit-tag; allow a person to transfer an unused big game tag to a nonprofit organization that affords hunting opportunities and experiences to veterans with service-connected disabilities and establish an application process for a qualified nonprofit organization to implement recent legislative amendments resulting from Laws 2014, 2nd Regular Session, Ch. 55, Section 1; allow the Department to reinstate bonus points expended during the computer draw when a person donates an unused big game tag to a qualifying nonprofit organization or surrenders it to the Department; provide the Department with greater flexibility in procuring tags; enable the Department to move to a paperless application process for hunting and fishing licenses and big game tags; and remove the ability to petition the Commission for the reinstatement of bonus points. The Commission is also amending rule language where necessary to increase consistency between Commission rules and ensure conformity with the Arizona Administrative Procedures Act and the Secretary of State's rulemaking format and style requirements and standards. The Commission proposes to amend rules within 12 A.A.C. 4 as follows: **R12-4-101. Definitions** The objective of the rule is to establish definitions to assist in understanding the unique terms that are used throughout 12 A.A.C. 4. The rule is amended to define "bobcat seal" to provide clarity and increase consistency between Commission rules. The rule is amended to transfer definitions contained within the solicitation and events on state property rule to R12-4-101. The rule is amended to further clarify the Commission's interpretation of "day-long." In order to allow hunting in an area where a hunt number has not been assigned by Commission Order, the rule is amended to remove "by a particular hunt number" from the definition of "hunt area." The rule is amended to define "person" to simplify rule language and ensure all applicable individuals and entities are included, as appropriate for a specific rule. Under A.R.S.§ 17331(A), a person is required to carry a license or "proof of purchase" and produce it on request to any game ranger,

wildlife manager, or peace officer. Because Arizona hunting and fishing licenses and tags are available at Department offices, at license dealers, and online; the size, shape, format, and features of those licenses and tags will vary depending on where they were purchased. The rule is amended to define "proof of purchase" to communicate the acceptable criteria for meeting the requirements of A.R.S. § 17-331(A). The rule is also amended to define "adult bull buffalo," "adult cow buffalo, "rooster," and "yearling buffalo" to provide further clarity of terms referenced within Commission Order and rule. In addition, the rule is amended to remove "excluding male lambs" from the definition of "ram" to prevent a hunter from unintentionally violating the requirements established under statute, Commission Order, and rule. In the past, hunters have taken what they believed to be a ram only to find upon closer inspection that it was actually a male lamb.

R12-4-103. Duplicate Tags and Licenses

The objective of the rule is to establish requirements for the issuance of a duplicate license or tag when the original was not used and is lost, destroyed, mutilated, or otherwise unusable or a tag was placed on a harvested animal that was subsequently condemned and surrendered to the Department. The rule is amended to establish the license will expire on December 31 of the current year when the license expiration date cannot be verified. Due to the high volume of licenses sold by license dealers, the information from the sale of hunting and fishing licenses by license dealers may not be recorded in the Department's database for a period of time. This can be problematic now that a license is valid for 365 days from the date of purchase and a person can choose a license effective date up to 60 days out from the date of purchase. **R12-4-104. Application Procedures for Issuance of Hunt Permit-tags by Drawing and Purchase of Bonus Points**

The objective of the rule is to prescribe application requirements for hunt permit-tags issued by the computer draw or for the purchase of a bonus point. The rule is amended to replace the term "Departmentapproved" with "Department-sanctioned" to make the rule more accurate. The rule is amended to 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 to align the rule with statute. Under A.R.S. § 17-309, it is unlawful for a person to take or possess wildlife in excess of the bag limit authorized by Commission Order. The rule is amended to establish the Commission's authority to determine the times, locations, and manner in which an applicant may apply for a hunt permit-tag. This will enable the Department to move towards a paperless process. The rule is amended to require all applicants submitting an application to the Department to certify the information provided on the application is true and correct to increase consistency between Commission rules. The rule is amended to clarify the differences in how the Department processes fees submitted manually (paper application) and electronically (online application). The Department employs an online license application and computer draw system. At the time of application, a person who submits an application manually is required to submit all applicable required fees, which can include an application, tag, and license fee. If a person is unsuccessful in the computer draw, the Department processes a refund for the tag fee, only. At the time of application, a person who submits an electronic application is required to pay only the application and license fee. If a person is successful in the computer draw, the Department will then charge the applicant's debit or credit card for the tag fee. The rule is also amended to establish overpayments of $5

or less will not be refunded and are considered a donation to the Arizona Game and Fish Fund because the processing cost for refunding these overpayments is greater than the nominal amount of the refund. The Department processes approximately 340 overpayments of $5 or less each annually. The refund process involves multiple state agencies: the Department initiates the refund action; the General Accounting Office (GAO) processes the request and issues the warrants (refunds); the Department receives the warrants, verifies the payee and warrant amount, mails valid warrants, removes warrants payable to persons who subsequently submitted an insufficient funds payment, and initiates warrant corrections when necessary; GAO processes and issues the corrected warrants; and the Arizona Department of Revenue (ADOR) manages the unclaimed property process for any unclaimed refunds. Each refund costs the Department approximately $2 to $5 to process (Department materials and equipment as well as GAO and ADOR costs are not included in this estimate) and almost 70% of these refunds are not redeemed by the recipient. In addition, the rule is amended to 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. Currently, when the Department rejects an application with insufficient funds, the applicant forfeits any accrued loyalty bonus point and is ineligible for the computer draw and the awarding of any bonus points; all funds (less the application fee) are returned to the customer. The proposed amendment will 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 application will not be entered into the computer draw and any additional funds will be refunded. This change is in response to customer comments received by the Department.

R12-4-105. License Dealer's License

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 is amended to define "License Dealer Portal" and establish that a license dealer may be given authorization to issue online licenses through a License Dealer Portal. The Department is in the process of creating an online system that will allow a license dealer to log-in, issue hunting and fishing licenses, and access their license dealer account. The rule is amended to specify the deadline in which the license dealer shall transmit license and permit fees to the Department to align the rule with statute. Under A.R.S. § 17-338, a license dealer is required to transmit all license and permit fees collected to the Department within thirty days; failure to comply with this requirement shall be cause to cancel a license dealer's license. The rule is also amended to clarify duplicate license and tag requirements by adding a subsection that specifically addresses duplicate affidavit requirements. The Department requires a license dealer to submit an affidavit for each duplicate license sold by the dealer; the affidavit is included in the Arizona Game and Fish license book (on the back of the Department copy of the license). A duplicate license, tag, or permit is $4; however, any license dealer who fails to complete and submit the affidavit portion of the Department copy must remit the full license, tag, or permit fee. In addition, the rule is amended to include cancelation as a penalty that may be used when a license dealer fails to comply with the rule. Cancelation may occur when a license dealer fails to transmit

all license and permit fees to the Department by the established deadline. **R12-4-106. Licensing Time-frames**

The objective of the rule is to establish the time-frame during which the Department will review an application packet and grant or deny an applicant a special license or authorization. The rule heading is 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. The rule is amended 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 to provide additional clarity. The rule is amended to specify possible outcomes that may occur when a person submits an application for a special license. The rule is amended to allow the applicant and the Department to extend the over-all timeframe to ease the regulatory burden on both the applicant and the Department. The rule is amended to 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; this will increase efficiency and allow the Department to better utilize its resources. The rule is amended to establish time-frames for the Authorization for Use of Drugs on Wildlife. The rule is also amended to reflect amendments made to Article 4. Live Wildlife, which combines the four game bird license rules into one overarching game bird rule. In addition, the rule is amended to remove references to special license-tags. The Commission believes the special big game license-tags technically do not fall within the definition of “license” as used in the Administrative Procedure Act because an application is not required for these licenses.

R12-4-107. Bonus Point System

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 is amended to clarify that a bonus point is applied to a record using the person's Department identification number. The rule is amended to clarify that a bonus point is not transferable. The rule is 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. These changes are in response to customer comments received by the Department. As part of the tag surrender process, whenever it is possible to do so, the Department will attempt to re-issue a surrendered tag. The rule is amended to establish that 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. The rule is amended to clarify that a person who is unsuccessful in the first-come, first-served phase of the computer draw is not eligible for a bonus point. The rule is amended to 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. This change is made in response to customer comments submitted to the Department by the public. Completing the Department's hunter education course is one of the criteria for becoming a certified hunter education instructor. The rule is amended to specify which hunter education course qualifies a person for the hunter education bonus points. Because the

Department provides a variety of hunter education courses (bow hunter education, trapper education, and hunter education), there is some confusion as to which course qualifies a person for the hunter education bonus points. This change is made in response to customer comments submitted to the Department by the public. The rule is amended to 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. The Department will issue a license and award a bonus point when the payment submitted by the applicant is less than the total sum of all required fees, provided the funds submitted are sufficient to cover the application and license fees. This change is made in response to customer comments submitted to the Department by the public. The rule is amended to simplify the process by which a military member may request the reinstatement of a bonus point by no longer requiring a person to submit a letter requesting the reinstatement of their bonus points. The information required in the letter is readily available on other documents that are submitted at the time of the request. The rule is also amended to 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. The rule is amended to 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. In addition, the rule is amended to specify that any bonus point fraudulently 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. **R12-4-108. Management Unit Boundaries**

The objective of the rule is to establish Management Unit boundaries for the preservation and management of wildlife. The rule is amended to update Management Unit boundaries to incorporate future changes to management unit boundaries.

R12-4-110. Posting and Access to State Land

The objective of the rule is to establish standards of conduct on State Trust Lands and set forth the Commission’s criteria for allowing the closure of roads leading to hunting and fishing areas. The rule is amended to provide additional clarity by further defining “existing road” to clearly indicate that an existing road is a road that has not been closed by the Commission. The rule is amended to 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. The rule is also amended to clarify the Commission's interpretation of the recreational permit exemption provided by the State Land Department. In addition, the rule is amended to 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, to increase consistency between Commission rules. **R12-4-111. Identification Number**

The objective of the rule is to prescribe the information required to obtain a Department identification number, which is a unique number assigned by the Department to each applicant or licensee. The number is necessary to properly identify a person and link their license, permit, and tag records, maintained in the Department's sportsman's database, to that person. The rule is amended to remove the option that allows a person to use their Social Security Number as the Department Identification Number to better protect the person's identity. In addition, the rule is amended to replace the term "alias" with "any additional names the person has lawfully used in the past or is known by" to provide additional clarity.

R12-4-112. Diseased, Injured, or Chemically Immobilized Wildlife

The objective of the rule is to establish the Director's authority to allow Department employees to condemn a lawfully taken animal deemed to be unfit for consumption and issue a duplicate tag, thus allowing the hunter the opportunity to take another permitted animal. The rule is amended only to ensure conformity with the Arizona Administrative Procedures Act and the Secretary of State's rulemaking format and style requirements and standards.

R12-4-113. Small Game Depredation Permit

The objective of the rule is to establish permitted activities authorized under A.R.S. § 17-239(D), which allows any person suffering property damage to exercise all reasonable measures to alleviate damage; not to include the injuring or killing of game mammals, game birds, or wildlife protected under federal law or regulation, unless authorized by the Department or the U.S. Fish and Wildlife Service. The rule is amended to incorporate by reference the most recent edition of the applicable regulation, 50 C.F.R. 21.41. The rule is also amended to clarify depredation permit application requirements. In addition, the rule is amended to establish the Department shall specify the allowable methods of take that may be used by the permit holder.

R12-4-114. Issuance of Nonpermit-tags and Hunt Permit-tags

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 of hunt permit- and nonpermit-tags. The rule is amended to remove descriptive language relating to tag features. This change provides the Department with greater flexibility when procuring tags and implementing new tag features and enables the Department to offer "paperless" tags. The rule is amended to increase consistency between Commission rules by updating application requirements. The rule is amended to remove javelina from the list of game subject to the 10% nonresident cap to increase opportunity for nonresidents. The rule is amended to 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. Because the Department reserves a total of 20% of available hunt permit-tags for the bonus point pass of the computer draw, this amendment may result in reserving less than 20% of available hunt permit-tags in other hunt numbers. The rule is amended to describe all phases of the computer draw process to provide a more complete description of the computer draw system. The rule is amended to clarify that a person may possess the same number of hunt permit-tags equal to the applicable bag limit to align the rule with Commission Order. The rule is amended to 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 to align the rule with statute. Under A.R.S. § 17-309, it is unlawful for a person to take or possess wildlife in excess of the bag limit authorized by Commission Order. The rule is also amended to 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. In addition, the rule is amended to establish the Department shall not issue more than 50% of the hunt permittags available to nonresidents with the highest number of bonus points through the initial bonus point pass of the computer draw to increase opportunity for those persons who have no bonus points or very few bonus points.

R12-4-115. Supplemental Hunts and Hunter Pool

The objective of the rule is to establish the Commission's authority to offer a supplemental hunt when the regular season structure is not meeting management objectives, to take depredating wildlife, or address an immediate threat to the health, safety, or management of wildlife or its habitat, or public health or safety. The rule also establishes the requirements for the supplemental hunter pool, which is a listing of applicants who may be offered a restricted nonpermit-tag when the Department initiates a supplemental hunt. The rule is amended to define "companion tag" and "emergency season" to further clarify terms referenced within the rule and replace the term "supplemental hunt" with "restricted non-permit tag" to make the rule more concise. The rule is amended to enable the Commission to approve a supplemental hunt by Commission Order and establish a more efficient process by reducing the number of steps currently involved in the supplemental hunt process. The rule is amended to separate the processes and requirements specific to restricted nonpermit-tags and companion tags to make the rule more concise and understandable. The rule is amended to increase consistency between Commission rules by updating application requirements. The rule is also amended to clarify who is eligible to receive companion tag. When a supplemental hunt occurs in an area that matches the exact season dates and open areas of another big game hunt for which a computer draw has occurred, the Department will offer these restricted nonpermit-tags, also known as "companion tags," only to persons who were successful in that computer draw. In addition, the rule is amended to 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 to increase consistency between Commission rules. **R12-4-116. Reward Payments**

The objective of the rule is to establish reward payments requirements, to include the schedule of rewards. The reward program was established to motivate persons to report violations and provide information that can result in the arrest of a perpetrator when a case cannot otherwise be resolved. The rule is amended to increase the reward value to $500 for big game, eagles, and threatened and endangered species in an effort to maintain the intent of the rule. Reward amounts were established in 1991 and have not been increased since that time; also the purchasing power of a dollar at that time was close to twice that of today. **R12-4-117. Indian Reservations**

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 located within Arizona, that any lawfully taken game or fish may be transported 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 rule is amended to correct a statutory reference, Laws 2012, 2nd Reg. Sess., Ch. 128, amended A.R.S. § 17-309, resulting in the renumbering of subsequent subsections. In addition, the rule is amended to clarify that an inspection may be required when a person transports wildlife taken on an Indian reservation anywhere in this State. Under A.R.S. § 17211(E), a Game Ranger or Wildlife Manager may inspect all wildlife taken or transported anywhere in this State.

R12-4-118. Hunt Permit-tag Surrender

The objective of the proposed 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, original hunt permit-tag. Laws 2013, First Regular Session, Ch. 197 granted the Arizona Game and Fish Commission the authority to establish license classifications and fees to give the Department the ability to operate more like a business. In response to this new authority, the Commission implemented a new basic license structure to generate additional revenue for the Game and Fish Fund, remove barriers for recruitment of new hunters and anglers, and provide more value to recruit and retain customers. Although the Department's revenue projections indicate a $3.8 million revenue increase may result from the exempt rulemaking, it is too soon to tell if the projections were correct. The Arizona Game and Fish Department's principle operational revenue comes from the sale of hunting and fishing licenses, hunt permit-tags, stamps and matching funds from federal excise taxes hunters and anglers pay on guns, ammunition, fishing tackle, motorboat fuels, and related equipment. Over the past several years, sales of licenses, permits, stamps, and tags have trended downward while operational costs and Department responsibilities have either increased or expanded. In February 2014, the Commission directed the Department to proceed with the concept of a membership program, to include bundling products and services, as a means to encourage participation in recreational activities and generate additional revenue for the Game and Fish Fund. The Commission believes establishing a membership program will provide the public with a way to stay up-to-date on the latest hunting, angling, volunteer, and Department activities; connect with others who have like interests; and make a positive impact on the greater hunter, angler, and wildlife viewer community. The Commission also believes maintaining an active membership for multiple years can provide a rewarding experience as the program and its members grow. To solicit feedback and support, the Department deployed an outreach campaign beginning in March 2014 to inform the public of the proposed membership program, to include bundling products and services; and continuing in July through August 2014 to inform the public of the proposed membership program and collect feedback about the bundled products and services. The campaign included public meetings in Mesa, Flagstaff, Glendale, Payson, Phoenix, and Tucson. The Department published information regarding the proposed membership program and bundled services on the Department's website and Facebook page. The Department also created a dedicated e-mail address through which the public could submit comments and suggestions in regards to the membership program and tag surrender concepts. The Department issued press releases to announce public meeting dates and direct people to the web page. The Department held meetings with key members of a number of conservation groups to discuss the membership

program and the bundled products and services. In addition, the membership program and bundled products and services concept has been a standing agenda item at every Commission meeting since February 2014. In August 2014, the Commission directed the Department to incorporate the concept of a membership program as a means to encourage participation in recreational activities and generate additional revenue for the Game and Fish Fund into the Article 1 Rulemaking Package, for implementation in January 2016. The proposed rule specifies that different membership levels and prices will be based on the types of products and services offered. The Commission envisions the membership program and its associated benefits will continue to grow as new products and services become available. The proposed rule specifies the Department may establish the terms and conditions for the membership program, such as the membership is not transferable and that a payment made for the membership is not refundable. In addition, the proposed rule specifies the membership program is available for purchase/enrollment online-only to ensure immediate access to member benefits and to enable the Department to link the person's membership with their Department record, when one exists. The proposed rule limits the tag surrender program to a person who has a valid and active membership in a Department membership program; "valid and active membership" as defined in the proposed rule means a paid and unexpired membership in any level of the Department's membership program. The proposed rule requires a person wishing to participate in tag surrender to submit a valid application and surrender the unused, original hunt permit-tag prior to the close of business the day before the hunt begins. One of the most common comments submitted by the public related to the ability for a person to "game" the tag surrender program. For example, a person with a high number of bonus points could offer to apply with other person(s), for a fee, in order to increase the other person(s) odds of being drawn for a valued hunt permittag, then the person could surrender their tag, have their bonus points restored, and then repeat the process in the next computer draw offered by the Department. To prevent this from happening, the proposed rule establishes that a person is only eligible to surrender a tag for a specific species once before the bonus points accrued for that species must be expended. The proposed rule also limits the number of tags a person may surrender based on the person's membership level. The proposed rule requires the Department to restore the bonus points expended for the surrendered tag and award any bonus points the person would have accrued had the person been unsuccessful in the computer draw for that surrendered tag. The proposed rule specifies the Department will not refund any fees paid for the surrendered tag, as prohibited under A.R.S. § 17-332(E). The proposed rule also enables the Department to re-issue or destroy the surrendered tag. The Department will base the decision to re-issue or destroy the surrendered tag using specific criteria, such as but not limited to the proximity to the start date of the hunt for which the tag is valid, the type of tag, and whether the tag is for a high demand hunt. The Commission proposes to re-issue a surrendered tag using any one or more of the following methods (in no particular order): 1) Offer the surrendered tag, beginning with the highest membership level in the Department’s membership program, to a 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. The person must possess or purchase a valid license in order to be

eligible to purchase the surrendered tag. If the person is not interested in purchasing the surrendered tag or is not eligible because the person has already met the annual or lifetime bag limit for that genus, the tag would be offered to the next person within that membership level in the Department's membership program 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, and so on. 2) Offer the surrendered tag to a person who has a valid and active membership in any tier of the Department's membership program which contained a tag surrender option and 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. The same limitations and requirements that apply to method #1 will apply to this method. 3) Offer the surrendered tag to an eligible person who would have been next to receive a tag, as evidenced by the random numbers assigned during the Department's computer draw process. The same limitations and requirements that apply to method 1 will apply to this method. 4) Offering the surrendered tag through the first-come, first-served process. For group applications where one or more members of the group is qualified under the particular method for re-issuing the surrendered tag, the Commission proposes to offer the surrendered tag first to the applicant designated "A," if eligible to receive the surrendered tag. If applicant "A" chooses not to purchase the surrendered tag or is not eligible, the Department will offer the surrendered tag to the applicant designated "B" if qualified to receive a surrendered tag. 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. The proposed rule specifies that a person purchasing the surrendered tag shall expend all bonus points accrued for that genus, except for any accrued Hunter Education and loyalty bonus points. The Commission is concerned that a person who is successful in the computer draw may have the desire, but not the ability to surrender a hunt permit-tag for a hunt occurring later in the same year. In addition, the proposed rule specifies that a person is not eligible to petition the Commission under R12-4-611 for reinstatement of any forfeited bonus points, except as authorized under R12-4-107(M).

R12-4-119. Arizona Game and Fish Department Reserve

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 is amended only to ensure conformity with the Arizona Administrative Procedures Act and the Secretary of State's rulemaking format and style requirements and standards.

R12-4-120. Issuance, Sale, and Transfer of Special Big Game License Tags

The objective of the rule is to establish procedures for the application, selection criteria, award, and issuance of special big game license-tags authorized under A.R.S. § 17-346. The rule is 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. **R12-4-121. Big Game Permit or Tag Transfer**

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. The rule also allows 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 a lifethreatening medical condition or physical disability or a veteran of the Armed Forces of the United States with a service connected disability. The rule is amended to implement recent legislative amendments resulting from Laws 2014, 2nd Regular Session, Ch. 55, Section 1 (House Bill 2303) which allow a person to donate a tag to a veteran of the Armed Forces of the United States with a service connected disability and the Commission to establish an application process for a qualified nonprofit organization. The rule is amended to define "authorized nonprofit organization" as part of the application process for a qualified nonprofit organization. The rule is amended to replace "Department-approved" with "Departmentsanctioned" to make the rule more accurate. The rule is amended to clarify that a tag may not be transferred to a person who has reached the applicable annual or lifetime bag limit for that genus to increase consistency between Commission laws and rules. Under A.R.S. § 17-309, it is unlawful for a person to take or possess wildlife in excess of the bag limit authorized by Commission Order. Currently, because this restriction is not addressed in rule, a person or organization may attempt to transfer a tag to a person who has already reached the annual or lifetime bag limit for that genus. The rule is also amended to allow a person to request the reinstatement of bonus points after donating an unused, original tag to a qualified 501(c)(3) organization, provided the person has a valid and active membership in the Department's membership program with at least one available unredeemed tag surrender at the time the person donates the hunt permit-tag to a qualified 501(c)(3) organization. This is done to ensure qualified 501(c)(3) organizations are not negatively impacted by the provisions established under the proposed new rule, R124-118. In addition, the rule is amended to establish application requirements for a nonprofit organization seeking to obtain donated big game tags for use by a minor child with a life-threatening medical condition or physical disability or a veteran of the Armed Forces of the United States with a service connected disability.

R12-4-124. Proof of Domicile

The Commission proposes to adopt a new rule to establish acceptable proof of domicile to align the rule with statute. Laws 2012, 2nd Regular Session, Ch. 237 and 272 amended A.R.S. §§ 5-301 and 17-101 respectively to authorize the Commission to prescribe which documents may be used 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 proposed rule specifies acceptable proof of domicile may be requested and that more than one document may be required.

R12-4-125. Public Solicitation or Event on Department Property

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

Commission proposes to renumber R12-4-804 to R12-4-125. The rule is amended to allow mid-level managers to approve minor, incidental solicitations on Department properties to make the approval process more efficient and eliminate unnecessary administrative delay. The rule replaces the term "applicant" with "sponsor" to make the rule more concise. The rule is amended to 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. The rule is amended to require an applicant to provide proof of insurance no less than ten business days before the solicitation or event. The rule is amended to 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 to reduce the Department's and State's liability. The rule is amended to 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. The rule is amended to remove "rights of appeal" language as a person whose application is denied has no such right. The rule is amended to require a vendor who is working under a sponsor to provide certificates of insurance to the Department, when applicable. In addition, the rule is amended to establish a sponsor shall not allow the unlawful possession or use of drugs at the solicitation or event site to reduce the Department's and State's liability. **R12-4-302. Use of Tags**

The objective of the rule is to establish requirements for the possession and use of tags issued by the Department. The rule is amended to remove descriptive language relating to the manner in which the tag is attached to the animal and specify that the tag shall be attached to the wildlife carcass in the manner indicated on the tag. This change provides the Department with greater flexibility when procuring tags and when implementing new tag features.

R12-4-611. Petition for Hearing Before the Commission When No Remedy is Provided in Statute, Rule, or Policy

The objective of the rule is to establish the requirements for submitting a petition for a hearing before the Commission when no remedy is provided in statute, rule, or policy. Current statute and administrative rule do not provide a remedy to 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 for any reason. The Commission believes the tag surrender component of the membership program will provide a satisfactory remedy to a person who applied for the wrong hunt or is unable to use the hunt permit-tag. The rule is amended to prohibit persons from petitioning the

Commission for reinstatement of any expended bonus points, except as authorized under R12-4107(M). The Commission believes R12-4-118 provides a satisfactory remedy.

(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.

R12-4-104. Application Procedures for Issuance of Hunt Permit-tags by Drawing and Purchase of Bonus Points

Persons continue to apply for or obtain additional hunt permit-tags after they have reached the annual bag limit for that genus, which is prohibited under A.R.S. § 17-309. The Commission is unable to establish the frequency of occurrence as there is currently no mechanism in place to track these types of incidents. The Department contacts approximately 1,700 persons annually because their credit card payment was declined after a computer draw occurs. The Department processes approximately 340 refunds of $5 or less annually; approximately 230 of those refunds are never redeemed by the recipient.

R12-4-105. License Dealer's License

License dealers fail to transmit all license and permit fees to the Department in a timely manner, approximately 325 times annually. License dealers fail to submit approximately 680 completed duplicate affidavits annually.

R12-4-107. Bonus Point System

A person who obtains a bonus point by fraud may apply that bonus point to an application once they are eligible to apply for a computer draw. 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 approximately seven to twelve applicants annually. **R12-4-118. Hunt Permit-tag Surrender**

The Department has no mechanism in place that allows the Department to reinstate a person's bonus points expended when the hunter successfully draws a hunt permit-tag that they applied for in error or cannot use. In addition, the Department's principle operational revenue comes from the sale of hunting and fishing licenses, hunt permit-tags, stamps and matching funds from federal excise taxes hunters and anglers pay on guns, ammunition, fishing tackle, motorboat fuels, and related equipment. Over the past several years, sales of licenses, permits, stamps, and tags have trended downward while operational costs and Department responsibilities have either increased or expanded. New figures from the U.S. Fish and Wildlife Service show that the number of hunters 16 and older declined by 10% between 1996 and 2006; from 14 million to about 12.5 million. The number of anglers also has declined by 15% between 1996 and 2006; from 35.2 million to about 30 million.

(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 the rules identified below, the Commission believes the targeted conduct identified in (A)(1)(a) will continue to occur and may increase if the rule is not amended as indicated in (A)(1): **R12-4-104.**

Application Procedures for Issuance of Hunt Permit-tags by Drawing and Purchase of Bonus Points

Hunter opportunity is negatively impacted when a person is able to continue to obtain tags after they have met the bag limit established by Commission Order. The Department expends approximately $2 to $5 to process each refund; processing costs for refunding these overpayments are greater than the nominal amount of the refund. The Department expends additional resources contacting persons whose credit card was declined after the computer draw occurs. Persons forfeit their loyalty point when their credit cards are declined after a computer draw occurs.

R12-4-105. License Dealer's License

The Department expends additional resources in contacting license dealers, attempting to collect untimely monies, and reconciling the monies, which prevents the timely submittal of license revenue, when a license dealer fails to submit a completed duplicate affidavit for each duplicate license sold. The Department itself is unable to apply the authority provided under A.R.S. § 17-338(A) in a timely manner, resulting in greater losses to the Department.

R12-4-107. Bonus Point System

Hunter opportunity is negatively impacted when a person applies bonus points obtained by fraud to a computer draw application. Persons forfeit their loyalty point when their credit card is declined after the computer draw occurs.

R12-4-118. Hunt Permit-tag Surrender

It can take years for a person to accrue enough bonus points to be successful in drawing a high demand hunt and to lose those bonus points for an unwanted hunt permit-tag can be devastating to some persons as bonus points are highly valued by most hunters. The Department relies on hunting and fishing license fees for the bulk of its revenue, with no money coming from the State's general fund (tax dollars). The loss of hunters and anglers are a long-term concern as the forecasted drop in future revenues make it difficult for the Department to afford the rising costs of conservation efforts and fund the acquisition of open space.

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

R12-4-104. Application Procedures for Issuance of Hunt Permit-tags by Drawing and Purchase of Bonus Points

R12-4-105. License Dealer's License

R12-4-107. Bonus Point System

The Commission anticipates the frequency of the targeted conduct identified in (A)(1)(a) will gradually decrease with each passing year after the effective date of the rule amendments. **R12-4-118. Hunt Permit-tag Surrender**

The Commission is unable to establish the actual change in frequency as the membership and tag surrender programs are new ventures for the Department. The Commission envisions the types of products and services will continue to expand and anticipates that, over time, the number of persons

purchasing/enrolling in Department membership programs will grow. Thus ensuring the Department is able to continue to conserve and manage Arizona's wildlife populations and their habitats in the future.

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

The Commission anticipates the proposed rulemaking in general will benefit the regulated community by creating more opportunities for the use of wildlife resources, with few costs, and maintaining resident hunting opportunity. The Commission believes the regulated community and the Department benefit from the proposed rulemaking through clarification of rule language governing general provisions. The Commission anticipates the proposed rulemaking may impact businesses, both large and small; however, the Commission has determined that the impact will not be significant enough to impact business revenues or payroll expenditures. In addition, the Commission anticipates the proposed rulemaking will provide a benefit to the regulated community and the Department by establishing a membership program and establishing 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 anticipates the proposed rulemaking will have a minimal impact on the regulated community. 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 Commission does not anticipate the membership fee will 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. The Department will benefit from the additional revenue that may be generated. The Commission anticipates the proposed rulemaking will not impact public or private employment. The Commission anticipates the proposed rulemaking will not have a significant impact on State revenues. In addition, the rulemaking will not impose increased monetary or regulatory costs on other state agencies, political subdivisions of this State, persons, or individuals so regulated. The Commission has determined that there are no alternative methods of achieving the objectives of the proposed rulemaking and that the benefits of the proposed rulemaking outweigh the costs.

R12-4-101. Definitions

The Commission anticipates the regulated community and the Department will benefit from the amendments that create or refine terms referenced throughout Commission rules as they help to clarify the Commission's intent and foster consistent interpretation of Commission rules. The Commission anticipates the regulated community and the Department will benefit from the amendments that define "proof of purchase" and removes "excluding male lambs" from the definition of ram because both amendments reduce the regulatory burden.

R12-4-103. Duplicate Tags and Licenses

The Commission anticipates the regulated community will benefit from the amendment that establishes an expiration date for duplicate licenses that are not recorded in the Department's database. Persons whose original license expires before December 31 will gain a period of time, while persons who purchased an

original license before December 31 will lose a period of time. However, if the person prefers not to lose a period of time they can provide the Department with proof of when they purchased the original license. **R12-4-104. Application Procedures for Issuance of Hunt Permit-tags by Drawing and Purchase of Bonus Points**

The Commission anticipates the regulated community and the Department will benefit from the amendment that provides application requirements for hunt permit-tags and bonus points. The Commission also anticipates the Department, GAO, and ADOR benefit from the amendment that establishes a minimum refund limit through costs savings from not processing refunds that have a greater cost to the agency than the refund itself. Persons who submit an overpayment of $5 or less will bear costs; however, $5 is a minimal amount. The Commission does not believe the rulemaking will have a significant impact on persons subject to the rule, especially when one considers that approximately 70% of those refunds for $5 or less are not redeemed by the recipients. Currently, when the Department rejects an application based on insufficient funds, the applicant forfeits any accrued loyalty bonus points and is ineligible for the computer draw and the awarding of any bonus points and all funds (less the application fee) are returned to the customer. By allowing the Department to issue a license and award a bonus point when the payment submitted by the applicant is less than the total sum of all required fees, an applicant is able to retain their loyalty point and accrue a bonus point for that draw.

R12-4-105. License Dealer's License

The Commission anticipates the Department, GAO, and Attorney General's office will benefit from the amendment that establishes a deadline for the transmittal of license and permit fees. Under A.R.S. § 17-338, a license dealer is required to transmit all license and permit fees collected to the Department within thirty days; failure to comply with this requirement shall be cause to cancel a license dealer's license. Each year, license dealers fail to transmit license and permit fees to the Department in a timely manner. The Department, GAO, and Attorney General's office expend additional resources in contacting license dealers, attempting to collect untimely monies, and reconciling the monies, which prevents the timely submittal of license revenue, when a license dealer fails to submit a completed duplicate affidavit for each duplicate license sold. In some cases, license dealers continually fail to transmit license and permit fees to the Department in a timely manner while continuing to sell additional licenses and permits. By the time the Department cancels the license dealer's license, the license dealer is in arrears, may have used the Department's license and permit fees to supplement their own business, and is unable to reimburse the Department (anywhere from $4,500 to $20,000 annually). For these license dealers, the Department attempts to collect those missing fees; any fees that are not collected by the Department are turned over to the Attorney General's office who initiates formal collection procedures. Once in collections, the third-party responsible for collecting monies on behalf of the State is permitted to negotiate payments and total amounts owed, which can result in the license dealer's debt being reduced to a fraction of the original amount owed to the Department, resulting in greater losses to the Department. The Commission also anticipates the Department will benefit from the amendment that clarifies

duplicate affidavit requirements through increased efficiency by allowing the Department to better utilize its resources. **R12-4-106. Licensing Time-frames**

The Commission anticipates the regulated community and the Department will benefit from the amendments designed to clarify the rule and reduce the regulatory burden. **R12-4-107. Bonus Point System**

The Commission anticipates the regulated community and the Department will benefit from amendments that simplify the process by which a military member may request the reinstatement of bonus points. The regulated community will benefit from the amendment that allows the Department to void bonus points that were fraudulently obtained due to increased opportunity. The Commission anticipates the regulated community and the Department will benefit from 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. **R12-4-108. Management Unit Boundaries**

The Commission anticipates the regulated community and the Department will benefit from amendments that update Management Unit boundaries. Hunters purchase tags that identify a specific hunting season and Management Unit, portion of a unit, or group of units; hunters rely on the unit boundary descriptions provided under R12-4-108 to ensure that they are in compliance with Game and Fish Commission laws, rules, and orders.

R12-4-110. Posting and Access to State Land

The Commission anticipates the regulated community and the Department will benefit from amendments that clarify the rule and increase consistency between Commission rules. **R12-4-111. Identification Number**

The Commission anticipates the regulated community will benefit from the amendment that removes rule language that allowed a person to use their Social Security Number as the Department identification number. No longer allowing a person to use their Social Security Number as a Department identifier reduces the possibility of identity theft.

R12-4-114. Issuance of Nonpermit-tags and Hunt Permit-tags

The Commission anticipates the regulated community and the Department will benefit from a rule that establishes hunt permit- and nonpermit-tag requirements. The Commission anticipates prospective vendors, who were previously eliminated from consideration due to their inability to meet specific tag feature requirements, will benefit by being able to submit a proposal and possibly be awarded a bid. The Commission anticipates the regulated community and the Department will 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. Currently, a person who takes a mountain lion in a hunt area where multiple bag limits are authorized by Commission Order would have to leave the hunt area and go to a Department office or license dealer to obtain a second mountain lion tag. Allowing the purchase of multiple tags at one time reduces the regulatory burden on both the regulated community and the Department. The Commission also anticipates the Department will benefit from increased tag sales.

R12-4-118. Hunt Permit-tag Surrender

The Commission anticipates the proposed rulemaking will provide a benefit to the regulated community 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 anticipates the proposed rulemaking will have a minimal impact on the regulated community. 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. Being eligible for a surrendered tag will increase opportunity for persons who are eligible to purchase a surrendered tag. The Commission does not anticipate the membership fee will 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 will have no impact on the person's odds in any computer draw held by the Department. The Commission anticipates the Department will bear costs associated with the development and administration of the tag surrender program. However, these costs should lessen with each passing year. The Commission also anticipates the Department will benefit from the ability to re-issue (re-sell) a surrendered tag.

R12-4-121. Big Game Permit or Tag Transfer

The Commission anticipates the Department will benefit from the amendment that brings the rule into alignment with recent legislative changes that allow a person to transfer their unused big game tag to a 501(c)(3) organization that provides hunting opportunities and experiences to a veteran of the Armed Forces of the United States with a service connected disability as the Department has received a number of comments asking to be able to donate their unused tag to a veteran. The Commission anticipates the regulated community and the Department will benefit from the amendment that establishes an application process for a qualified nonprofit organization by increasing consistency and ensuring fairness and equity between qualified nonprofit organizations. The Commission anticipates the regulated community and the Department will benefit from the amendment that clarifies a tag may not be transferred to a person who has reached the applicable annual or lifetime bag limit. Under A.R.S. § 17-309, it is unlawful for a person to take or possess wildlife in excess of the bag limit authorized by Commission Order. Because the rule does not state this, some organizations have attempted to transfer a tag to a person who has met the bag limit for that species. The Commission anticipates the proposed rulemaking will provide a benefit to the regulated community by allowing the Department to restore the bonus points expended for the donated tag. It is difficult to quantify the value a person places on their bonus points; however, it can be significant. The Commission anticipates the Department will bear costs associated with the development and administration of the application process for a qualified nonprofit organization. However, these costs should lessen with each passing year.

R12-4-124. Proof of Domicile

The Commission anticipates the regulated community and the Department will benefit from the rulemaking that prescribes which documents may be used to provide acceptable "proof of domicile." In 2014, 176 persons

were cited for purchasing a resident license or tag when they should have purchased a nonresident license or tag. While not every instance was due to misunderstanding of the residency requirements, the Commission anticipates the rulemaking will help increase understanding as to how the Department

determines a person's true domicile for the purposes of establishing residency.

R12-4-125. Public Solicitation or Event on Department Property

The Commission anticipates the regulated community and the Department will benefit from the amendment that allows mid-level managers to approve minor, incidental solicitations on Department properties as the sponsor may receive the approval or denial of a request more quickly and the Department's administrative burden may be reduced. The Commission anticipates the amendments that require a vendor working under a sponsor to provide certificates of insurance to the Department; 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; and prohibit the possession and use of unlawful drugs may impact the regulated community (public and private individuals or small businesses); however the Department has a duty to protect state assets. The Commission anticipates the rules can impact small businesses looking to conduct a solicitation or special event on state property in cases where a special event is cancelled due to costs for deposits, insurance coverage, medical support, security, and sanitary services. The Commission does not anticipate these requirements will result in an increased burden on the small businesses because these are standard requirements that are applicable to most facility rentals However, these rules on special events can have a favorable impact on small businesses as well, such as insurance agents who provide coverage, medical support, security, and sanitary services.

R12-4-302. Use of Tags

The Commission anticipates prospective vendors, who were previously eliminated from consideration due to their inability to meet specific tag feature requirements, will benefit by being able to submit a proposal and possibly be awarded a bid.

R12-4-611. Petition for Hearing Before the Commission When No Remedy is Provided in Statute, Rule, or Policy

The Commission anticipates the Department will benefit from the amendment that prohibits a person from petitioning the Commission for reinstatement of any expended bonus points due to a reduced administrative burden. The Department expends resources administering the petition process. It is not possible to quantify the number of persons who applied for a wrong hunt or are unable to use the hunt permit-tag as many persons take no formal action; however, approximately four persons per year petition the Department for the reinstatement of bonus points.

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: Amber Munig, Big Game Management Supervisor

Address: Arizona Game and Fish Department
5000 W. Carefree Highway
Phoenix, AZ 85086
Telephone: (623) 236- 7355
Fax: (623) 236-7929
E-mail: AMunig@azgfd.gov

B. The economic, small business and consumer impact statement:

1. **Identification of the proposed rulemaking.**

   See paragraph (A)(1) above.

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

   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, regulated community and the Department will benefit from the proposed rulemaking through clarification of rule language.

R12-4-103. Duplicate Tags and Licenses

Persons whose original license expires before December 31 will gain a period of time, while persons whose original license expires after December 31 will lose a period of time. However, if the person prefers not to lose a period of time they can provide the Department with proof of when they purchased the original license.

R12-4-104. Application Procedures for Issuance of Hunt Permit-tags by Drawing and Purchase of Bonus Points

A person whose credit card is declined after a computer draw occurs will benefit by being able to retain their loyalty point and accrue a bonus point for that computer draw. A person who submits an overpayment $5 or less will not receive a refund; the overpayment will be considered a donation to the Game and Fish Fund. The Commission believes $5 is an insignificant amount and the fact that almost 70% of these refunds are not redeemed supports this belief.

R12-4-105. License Dealer's License

A license dealer who fails to transmit license and permit fees to the Department in a timely manner will have their dealer license cancelled. This can impact their business, especially if the ability to issue a Department license draws customers to their business. However, transmitting fees to the Department is a statutory requirement and the fees collected, less the 5% commission authorized under A.R.S. § 17-338(B), belong to the Department.

R12-4-107. Bonus Point System

A military member who was successful in the computer draw and is subsequently activated or deployed will benefit from the simplified process by which the military member can request the reinstatement of bonus

points. A person whose credit card is declined after a computer draw occurs will benefit by being able to retain their loyalty point and accrue a bonus point for that draw.

R12-4-108. Management Unit Boundaries

A person who purchases a tag for a particular Management Unit, portion of a unit, or group of units; will benefit from a rule that clearly described unit boundary descriptions.

R12-4-111. Identification Number

A person may benefit from the increased security of not having their Social Security Number printed on a Department license.

R12-4-114. Issuance of Nonpermit-tags and Hunt Permit-tags

A vendor, who was previously eliminated from consideration due to their inability to meet specific tag feature requirements, is able to submit a proposal and possibly be awarded a bid. The Department may benefit from having a greater selection of vendors to choose from when purchasing tags. A person who hunts multiple bag limit species will benefit by being able to purchase multiple tags at one time. The Department benefits from increased tag sales.

R12-4-118. Hunt Permit-tag Surrender

A person who becomes a member of the membership program will benefit from the unique services provided by the program, such as electronic accessibility to personalized content, the ability to surrender an unused, original hunt permit-tag and have a bonus point reinstated, opportunity to purchase surrendered tags, early access to draw results, and exclusive sales or special offers. While a fee is associated with the membership program, membership is voluntary and enrollment will have no impact on a person's odds in any computer draw held by the Department. A person who purchases a membership may surrender at least one unused, original hunt permit-tag; the Department will restore the bonus points expended for the surrendered tag and award the bonus point the person would have accrued had they been unsuccessful in the computer draw. While one could establish the value of a bonus point simply as being equal to an application fee ($7.50 to $15 depending on when accrued), other factors may increase their value to the person who possessed them, such as the type of bonus point, the number of points, the particular genus, etc. In addition, a person who purchases a membership and was unsuccessful in a computer draw is eligible to purchase a surrendered hunt permit-tag for that computer draw. While one could establish the value of the surrendered tag as being equal to the actual tag fee ($15 to $5,400 depending on the genus), the satisfaction from an additional opportunity to hunt may increase its value to the person who purchases the surrendered tag. The Department will benefit from being able to re-issue a surrendered tag ($15 to $5,400 depending on the genus). However, it is not possible to quantify the number or value of the tags surrendered in any given period as this is a new venture for the Department. The Department will incur costs associated with the development and administration of the membership and tag surrender program. Initially, these costs will be significant, but should lessen with each passing year. However, the Commission anticipates the programs will be successful and will result in increased revenue for the Game and Fish Fund. The Department currently maintains sufficient staff in each

respective area to carry out the requirements of the proposed rule; thus new full-time employees are not necessary to implement and enforce the rule. **R12-4-121. Big Game Permit or Tag Transfer**

A nonprofit organization that provides outdoor experiences to children with life-threatening medical conditions or with 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. In addition, a person who donates their tag to a nonprofit organization may claim their donation as a deduction for tax purposes. The Commission anticipates the proposed rulemaking will provide a benefit to the regulated community by allowing the Department to restore the bonus points expended for the donated tag. While one could establish the value of a bonus point simply as being equal to an application fee ($7.50 to $15 depending on when accrued), other factors may increase their value to the person who possessed them, such as the type of bonus point, the number of points, the particular genus, etc. The Commission anticipates the Department will bear costs associated with the development and administration of the application process for a qualified nonprofit organization and these costs should lessen with each passing year. The Department currently maintains sufficient staff in each respective area to carry out the requirements of the proposed rule; thus new full-time employees are not necessary to implement and enforce the rule.

R12-4-124. Proof of Domicile

A person who is unsure of their residency status will benefit from the rulemaking that prescribes documents that may be used as acceptable "proof of domicile." In 2014, 176 persons are cited for purchasing a resident license when they should have purchased a nonresident license.

R12-4-125. Public Solicitation or Event on Department Property

Public and private persons and small businesses will benefit from the amendment that allows mid-level managers to approve minor, incidental solicitations on Department properties as the person/business may receive the approval or denial of a request more quickly. In addition, this amendment will reduce the

Department’s administrative burden. A vendor working under a sponsor may be negatively impacted by the amendment that requires the sponsor to provide certificates of insurance to the Department. A sponsor may be negatively impacted by the amendment that removes 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. The amendment that prohibits the possession and use of unlawful drugs may impact the regulated community (public and private persons and small businesses). However, these amendments are proposed to protect State assets. The rule can impact small businesses looking to conduct a solicitation or special event on state property in cases where a special event is cancelled due to costs for deposits, insurance coverage, medical support, security, and sanitary services. However, the rule can have a favorable impact on small businesses as well, such as businesses that provide insurance coverage, medical support, security, and sanitary services.

R12-4-302. Use of Tags

A vendor, who was previously eliminated from consideration due to their inability to meet specific tag feature requirements, is able to submit a proposal and possibly be awarded a bid. The Department may benefit from having a greater selection of vendors to choose from when purchasing tags.

R12-4-611. Petition for Hearing Before the Commission When No Remedy is Provided in Statute, Rule, or Policy

The Department will benefit from the amendment that prohibits a person from petitioning the Commission for reinstatement of any expended bonus points due to a reduced administrative burden. The Department expends resources administering the petition process.

3. Cost benefit analysis:

(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 not have a significant impact on the Department or other agencies directly affected by the implementation and enforcement of the proposed rulemaking. The Commission has determined that the proposed rulemaking will not require any additional full-time employees to implement and enforce the proposed amendments. The principle benefit the Department will receive from the proposed rulemaking is increasing customer satisfaction. Many of these proposals originated as a result of comments submitted by the regulated community. As a result, some of the proposed amendments will create costs to the agency. Proposed amendments to R12-4-104, R12-4-114, and R12-4-118 will result in financial benefits to the Department. Proposed amendments to R12-4-104 will result in minute financial benefits to the Department, GAO, and ADOR. The Department, GAO, and ADOR ultimately benefits by being able to use its employees to the utmost of their assigned tasks. 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.

(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.

Overall, the Commission anticipates the proposed 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.**

   Overall, the Commission anticipates the proposed amendments will have no impact on private and public employment in businesses, agencies, and political subdivisions of this State. Of those that do or may have an impact, the Commission does not anticipate the impact will be significant.

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 proposed rulemaking will impact license dealers, nonprofit organizations that may qualify as businesses, and outfitters; if these businesses qualify as small businesses.

   (b) Administrative and other costs required for compliance with the proposed rulemaking. Overall, the Commission anticipates the proposed amendments will not result in increased administrative and other costs for small businesses. Of those that do or may have an impact, the Commission does not anticipate the impact will be significant.

   (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 additional 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 license and permit rules and in doing so ensuring the continued integrity of and compliance with its rules. The Commission anticipates the proposed rulemaking will benefit private persons who participate in the membership program. The Commission does not anticipate the membership fee will 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. A person who surrenders a tag in compliance with the proposed rule will benefit from having their bonus points reinstated. Given the Department's computer draw process, persons with bonus points have a higher likelihood of drawing a hunt permit-tag. A person who is eligible to purchase a surrendered tag may benefit from increased opportunity. While a nominal fee is associated with the membership program, membership is voluntary and enrollment will have no impact on the person's odds in any computer draw held by the Department.

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

   The Commission anticipates the proposed amendments will have little or no impact on state revenues. The Department holds that, in general, the proposed rulemaking will not impact the general fund. The Commission anticipates the proposed amendments to R12-4-104 will result in minute financial benefits to the Department, GAO, and ADOR. The Department, GAO, and ADOR ultimately benefits by being able to

use its employees to the utmost of their assigned tasks. The Commission anticipates the membership program will encourage participation in recreational activities and generate additional revenue for the Game and Fish Fund. The Commission believes the benefits of the rulemaking outweigh any costs.

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.

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

   For this rulemaking, the Commission relied on empirical data based on agency experience, observations, or inference; which included comments from agency staff who administer and enforce rules included in this rulemaking, comments from the public, historical data (i.e., meeting notes from previous rulemaking teams, refund reports, license and permit sales reports, other state agency rules, recruitment and retention reports, etc.), current processes, benchmarking with other states, and the Department's wildlife objectives. This rulemaking includes rules that govern general provisions for hunting and fishing, such as application procedures for hunt permit-tags, the computer draw, license dealers, the bonus point system, management unit boundaries, procedures for posting and access to state land, a membership program, and use of Department facilities; the taking and handling of wildlife; and petitioning the Commission when no remedy is provided in statute, rule, or policy. The subjects the rules address are based on social sciences rather than formal sciences, thus recommendations based on empirical data using agency experience and observations is acceptable data. The Commission approached this rulemaking and the use of the documentation, statistics, and research in a methodical way, testing various approaches and trying to replicate approaches that were successful in other states.

C. If for any reason adequate data are not reasonably available to comply with the requirements of subsection B of this section, the agency shall explain the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize the probable impacts in qualitative terms. The absence of adequate data, if explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic, small business and consumer impact statement.

The Department tasked a team of subject matter experts to review and make recommendations for rules contained within Article 1. In its review, the team considered all comments from agency staff who administer and enforce Article 1 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.

ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION

R12-4-601. Petition for Rule or Review of Practice or Policy

A. Any individual, including any organization or agency, requesting that the Commission make, amend, or repeal a rule, shall submit a petition as prescribed under this Section.

B. Any individual, including any organization or agency, requesting that the Commission review an existing Department practice or substantive policy that the petitioner alleges to constitute a rule under A.R.S. § 41-1033, as defined under A.R.S. § 41-1001, shall submit a petition as prescribed under this Section.

C. A petitioner shall not address more than one rule, practice, or substantive policy in the petition.

D. If the Commission has considered and denied a petition, and a petitioner submits a petition within the next year that addresses the same substantive issue, the petitioner shall provide a written statement that contains any reason not previously considered by the Commission in making a decision.

E. A petitioner shall submit an original and one copy of a petition to the Arizona Game and Fish Department, Director's Office, 5000 W. Carefree Highway, Phoenix, AZ 85086. The Commission shall render a decision on the petition as required under A.R.S. § 41-1033.

F. Within five working days after a petition is submitted, the Director shall determine whether the petition complies with this Section.

1. If the petition complies with this Section, the Director shall place the petition on a Commission open meeting agenda. The petitioner may present oral testimony at that meeting, as established under R12-4-603.
2. If a petition does not comply with subsections (G) through (L) of this Section, the Director shall return a copy of the petition as filed to the petitioner and indicate in writing why the petition does not comply with this Section. The Director shall not place the petition on a Commission agenda. The Department shall maintain the original petition on file for five years and consider the petition as a comment during the five-year review process.

G. Petitions shall be typewritten, computer or word processor printed, or legibly handwritten, and double-spaced, on 8 1/2" x 11" paper; or typewritten, computer or word processor printed, or legibly handwritten on a form provided by the Department. The title shall be centered at the top of the first page and appear as "Petition to the Arizona Game and Fish Commission." The petition shall include the items listed in subsections (H) through (L). The items in the petition shall be presented in the order in which they are listed in this Section.

H. The title of Part 1 shall be "Identification of Petitioner." The title shall be centered at the top of the first page of this part. Part 1 shall contain:

1. If the petitioner is a private individual, the name, mailing address, and telephone number of the petitioner;
2. If the petitioner is a private group or organization, the name and address of the group or organization; the name, mailing address, and telephone number of an individual who is designated as the representative or official contact for the petitioner; the total number of individuals, and the number of Arizona residents represented by the petitioner;

or the names and addresses of all individuals represented by the petitioner; or

3. If the petitioner is a public agency, the name and address of the agency and the name, title, and telephone number of the agency's representative.

I. The title of Part 2 shall be "Request for Rule" or "Request for Review," as applicable. The title shall be centered at the top of the first page of this part. Part 2 shall contain:

1. If the petition is for a new rule, a statement to this effect, followed by the heading and specific language of the proposed rule;

2. If the request is for amendment of a current rule, a statement to this effect, followed by the *Arizona Administrative Code* number of the current rule proposed for amendment, the heading of the rule, the specific, clearly readable language of the rule, indicating language to be deleted with strikeouts, and language to be added with underlining;

3. If the request is for repeal of a current rule, a statement to this effect, followed by the *Arizona Administrative Code* number of the rule proposed for repeal and the heading of the rule; or

4. If the request is for review of an existing agency practice or substantive policy statement that the petitioner alleges qualifies as a rule, as defined under A.R.S. § 41-1001, a statement to this effect, followed by the practice or policy number, if any, the practice or policy heading, if any, or a brief description of the practice or policy subject matter.

J. The title of Part 3 shall be "Reason for the Petition." The title shall be centered at the top of the first page of this part. Part 3 shall contain:

1. The reason the petitioner believes rulemaking or review of a practice or policy is necessary;

2. Any statistical data or other justification supporting rulemaking or review of the practice or policy, with clear reference to any exhibits that are attached to or included with the petition;

3. An identification of any individuals or special interest groups the petitioner believes would be impacted by the rule or a review of the practice or policy, and how they would be impacted; and

4. If the petitioner is a public agency, a summary of issues raised in any public meeting or hearing regarding the petition, or any written comments offered by the public.

K. The title of Part 4 shall be "Statutory Authority." The title shall be centered at the top of the first page of this part. In Part 4, the petitioner shall identify any statute that authorizes the Commission to make the rule, if known, or cite A.R.S. § 41-1033 if the petition relates to review of an existing practice or substantive policy statement.

L. The title of Part 5 shall be "Date and Signature." The title shall be centered at the top of the first page of this part. Part 5 shall contain:

1. An original signature of the representative or official contact, if the petitioner is a private group or organization or private individual named under subsection (H)(1) or (2); or

2. If the petitioner is a public agency, the signature of the agency head or the agency head's designee; and

3. The month, day, and year that the petition is signed.

Historical Note

Adopted effective December 22, 1987 (Supp. 87-4).

Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2). Amended by final rulemaking at 16 A.A.R. 1465, effective July 13, 2010 (Supp. 10-3).

R12-4-602. Written Comments on Proposed Rules

Any individual may submit written statements, arguments, data, and views on proposed rules that have been filed with the Secretary of State under A.R.S. § 41-1022. An individual who submits written comments to the Commission may voluntarily provide their name and mailing address. To be placed into the rulemaking record

and considered by the Commission for a final decision, the individual submitting the written comments shall ensure that they:

1. Are received before or on the closing date for written comments, as published by the Secretary of State in the Arizona Administrative Register;
2. Indicate, if expressed on behalf of a group or organization, whether the views expressed are the official position of the group or organization, the number of individuals represented are represented, types of membership available, and number of Arizona residents in each membership category; and
3. Are submitted to the employee designated by the Department to receive written comments, as published in the Arizona Administrative Register.

Historical Note

Adopted effective December 22, 1987 (Supp. 87-4). Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2).

R12-4-603. Oral Proceedings Before the Commission

A. For the purposes of this Section, “matter” or “proceeding” means any contested case, appealable agency action, rule or review petition hearing, rulemaking proceeding, or any public input at a Commission meeting.

B. The Commission may allow an oral proceeding on any matter. At an oral proceeding:

1. The Chair is responsible for conducting the proceeding. If an individual wants to speak, the individual shall first request and be granted permission by the Chair.
2. Depending on the nature of the proceeding, the Chair may administer an oath to a witness before receiving testimony.
3. The Chair may order the removal of any individual who is disrupting the proceeding.
4. Based on the amount of time available, the Chair may limit the number of presentations or the time for testimony regarding a particular issue and shall prohibit irrelevant or immaterial testimony.
5. Technical rules of evidence do not apply to an oral proceeding, and no informality in any proceeding or in the manner of taking testimony invalidates any order, decision, or rule made by the Commission.

C. The Commission authorizes the Director to designate a hearing officer for oral proceedings to take public input on proposed rulemaking. The hearing officer has the same authority as the Chair in conducting oral proceedings, as provided in this Section.

D. The Commission authorizes the Director to continue a scheduled proceeding to a later Commission meeting. To request a continuance, a petitioner shall:

1. Deliver the request to the Director no later than 24 hours

before the scheduled proceeding;
2. Demonstrate that the proceeding has not been continued more than twice; and
3. Demonstrate good cause for the continuance.

Historical Note

Adopted effective December 22, 1987 (Supp. 87-4).
Amended effective November 10, 1997 (Supp. 97-4).
Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2).

R12-4-604. Ex Parte Communication

A. For purposes of this Section:
1. "Individual outside the Commission" means any individual other than a Commissioner, personal aide to a Commissioner, Department employee, consultant of the Commission, or an attorney representing the Commission.
2. "Ex parte communication" means any oral or written communication with the Commission that is not part of the public record and for which no reasonable prior written notice has been given to all interested parties.

B. In any contested case (as defined in A.R.S. § 41-1001) or proceeding or appealable agency action (as defined in A.R.S. § 41-1092) before the Commission, except to the extent required for disposition of ex parte matters as authorized by law or these rules of procedure, the following prohibitions apply to ex parte communication:
1. An interested individual outside the Commission shall not make or knowingly cause to be made to any Commissioner, Commission hearing officer, personal aide to a Commissioner, Department employee, or consultant who is or may reasonably be expected to be involved in the decision-making process of the proceeding, an ex parte communication relevant to the merits of the proceeding;
2. A Commissioner, Commission hearing officer, personal aide to a Commissioner, Department employee, or consultant who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall not make or knowingly cause to be made to any interested person outside the Commission an ex parte communication relevant to the merits of the proceeding.

C. A Commissioner, Commission hearing officer, personal aide to a Commissioner, Department employee, or consultant who is or may be reasonably expected to be involved in the decisional process of the proceeding, who receives, makes, or knowingly causes to be made a communication prohibited by subsection (B)(1) or (B)(2) of this Section, shall place on the public record of the proceeding and serve on all interested parties to the proceeding:
1. A copy of each written communication;
2. A memorandum stating the substance of each oral communication; and
3. A copy of each response and memorandum stating the substance of each oral response to any communication governed by subsections (C)(1) and (C)(2).

D. Upon receipt of a communication made or knowingly caused to be made by a party in violation of this Section, the Commission or its hearing officer, to the extent consistent with equity and fairness, may require the party to show cause why the claim or interest in proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected because of the violation.

E. The provisions of this Section apply from the date that a notice of hearing for a contested case is served, a notice of appealable

agency action is served, or a request for hearing is filed, whichever comes first, unless the person responsible for the communication has knowledge that a proceeding will be noticed, in which case the prohibitions apply from the date that the individual acquired the knowledge.

Historical Note

Adopted effective December 22, 1987 (Supp. 87-4).
Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2).

R12-4-605. Standards for Revocation, Suspension, or Denial of a License

A. Under A.R.S. § 17-340, the Commission shall hold a hearing and may revoke, suspend, or deny any hunting, fishing, or trapping license for an individual who has been convicted of any of the following offenses:

1. Killing or wounding a big game animal during a closed season or possessing a big game animal taken during a closed season. Conviction for possession of a road-kill animal or an animal that was engaged in depredation is not considered “possessing during a closed season” for the purposes of this subsection.
2. Destroying, injuring, or molesting livestock, or damaging or destroying personal property, notices or signboards, other improvements, or growing crops while hunting, fishing, or trapping.
3. Careless use of a firearm while hunting, fishing, or trapping that results in the injury or death of any person, if the act of discharging the firearm was deliberate.
4. Applying for or obtaining a license or permit by fraud or misrepresentation in violation of A.R.S. § 17-341.
5. Entering upon a game refuge or other area closed to hunting, trapping or fishing and taking, driving, or attempting to drive wildlife from the area in violation of A.R.S. §§ 17-303 and 17-304.
6. Unlawfully posting state or federal lands in violation of A.R.S. § 17-304(B).

B. Under A.R.S. § 17-340, the Commission shall hold a hearing and may revoke, suspend, or deny any hunting fishing, or trapping license if the Department recommends revocation, suspension, or denial of the license for an individual convicted of any of the following offenses:

1. Unlawfully taking or possessing big game, if sufficient evidence, which may or may not have been introduced in the court proceeding, supports any of the following conclusions:
a. The big game was taken without a valid license or permit.
b. The unlawful taking was willful and deliberate.
c. The person in unlawful possession aided the unlawful taking or was, or should have been, aware that the taking was unlawful.
2. Unlawfully taking or possessing small game or fish, if sufficient evidence, which may or may not have been introduced in the court proceeding, supports any of the following conclusions:
a. The taking was willful and deliberate.
b. The possession was in excess of the lawful possession limit plus the daily bag limit.
3. Unlawfully taking wildlife species if sufficient evidence, which may or may not have been introduced in the court

proceeding, indicates that the act of taking was willful and deliberate and showed disregard for state wildlife laws.

4. Littering a public hunting or fishing area while taking wildlife, if sufficient evidence, which may or may not have been introduced in the court proceeding, indicates that an individual littered the area, the amount of litter discarded was unreasonably large, and that the individual convicted made no reasonable effort to dispose of the litter in a lawful manner.

5. Careless use of a firearm while hunting, fishing, or trapping that resulted in injury or death to any person, if the act of discharging the firearm was not deliberate, but sufficient evidence, which may or may not have been introduced in the court proceeding, indicates that the careless use demonstrated wanton disregard for the safety of human life or property.

6. Any violation for which a license can be revoked under A.R.S. § 17-340, if the person has been convicted of a revocable offense within the past three years.

7. Violation of A.R.S. § 17-306 for unlawful possession of wildlife.

C. Under A.R.S. §§ 17-238, 17-362, 17-363, 17-364, and 17-340, if the Department has made a recommendation to the Commission for license revocation, the Commission shall hold a hearing and may revoke any fur dealer, guide, taxidermy, or special license (as defined in R12-4-401) in any case where license revocation is authorized by law.

Historical Note

Adopted effective December 22, 1987 (Supp. 87-4).
Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2).

R12-4-606. Proceedings for License Revocation, Suspension, or Denial of Right to Obtain a License, and Civil Damages

A. The Director may commence a proceeding for the Commission to revoke, suspend or deny a license under A.R.S. §§ 17-238, 17-340, 17-362, 17-363, 17-364, R12-4-105, and R12-4-605. The Director may also commence a proceeding for civil damages under A.R.S. § 17-314.

B. The Commission shall conduct a hearing concerning revocation, suspension, or denial of the right to obtain a license in accordance with the Administrative Procedure Act, A.R.S. Title 41, Chapter 6, Article 10. A respondent shall limit testimony to facts that show why the license should not be revoked or denied. Because the Commission does not have the authority to consider or change the conviction, a respondent is not permitted to raise this issue in the proceeding. The Commission shall permit a respondent to offer testimony or evidence relevant to the Commission's decision to order recovery of civil damages or wildlife parts.

C. If a respondent does not appear for a hearing on the date scheduled, at the time and location noticed, no further opportunity to be heard is provided, unless rehearing or review is granted under R12-4-607. If the respondent does not wish to attend the hearing, the respondent may submit written testimony to the Department before the hearing date designated in the Notice of Hearing required by A.R.S. § 17-340(D). The Commission shall ensure that written testimony received at the time of the hearing is read into the record at the hearing.

D. The Commission shall base its decision on the officer's case report, a summary prepared by the Department, a certified copy of the court record, and any testimony presented at the

hearing. With the notice of hearing required by A.R.S. § 17-340(D), the Department shall supply the respondent with a copy of each document provided to the Commission for use in reaching a decision.

E. Any party may apply to the Commission for issuance of a subpoena to compel the appearance of any witness or the production of documents at any hearing or deposition. Not later than 10 calendar days before the hearing or deposition, the party shall file a written application that provides the name and address of the witness, the subject matter of the expected testimony, the documents sought to be produced, and the date, time, and place of the hearing or deposition. The Commission chair has the authority to issue the subpoenas.

1. A party shall have a subpoena served as prescribed in the Arizona Rules of Civil Procedure, Rule 45. An employee of the Department may serve a subpoena at the request of the Commission chair.

2. A party may request that a subpoena be amended at any time before the deadline provided in this Section for filing the application. The party shall have the amended subpoena served as provided in subsection (E)(1).

F. A license revoked by the Commission is suspended on the date of the hearing and revoked upon issuance of the findings of

fact, conclusions of law, and order. If a respondent appeals the Commission's order revoking a license, the license is revoked after all appeals have been completed. A denial of the right to obtain a license is effective for a period not to exceed five years, as determined by the Commission, beginning on the date of the hearing.

G. A license suspended by the Commission is suspended on the date of the hearing, and suspended upon issuance of the findings of fact, conclusions of law, and order. If a respondent appeals the Commission's order suspending a license, the license is suspended after all appeals have been completed. Under A.R.S. § 17-340(A), a suspension of a license is effective for a period not to exceed five years, as determined by the Commission, beginning on the date of the hearing.

Historical Note

Adopted effective December 22, 1987 (Supp. 87-4).
Amended effective November 10, 1997 (Supp. 97-4).
Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2).

R12-4-607. Rehearing or Review of Commission Decisions

A. For purposes of this Section the following terms apply:

1. "Contested case" and "party" are defined as provided in A.R.S. § 41-1001;

2. "Appealable agency action" is defined as provided in A.R.S. § 41-1092(3).

B. Except as provided in subsection (G), any party in a contested case or appealable agency action before the Commission may file a motion for rehearing or review within 30 calendar days after service of the final administrative decision. For purposes of this subsection a decision is served when personally delivered or mailed by certified mail to the party's last known residence or place of business. The party shall attach a supporting memorandum, specifying the grounds for the motion.

C. A party may amend a motion for rehearing or review at any time before the Commission rules upon the motion. An opposing party has 15 calendar days after service to respond to the

motion or the amended motion. The Commission has the authority to require that the parties file written briefs on any issue raised in a motion or response, and allow for oral argument.

D. The Commission has the authority to grant rehearing or review for any of the following causes materially affecting the moving party's rights:

1. Irregularity in the proceedings of the Commission, or any order or abuse of discretion that deprived the moving party of a fair hearing;
2. Misconduct of the Commission, its staff, an administrative law judge, or the prevailing party;
3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the original hearing;
5. Excessive or insufficient penalties;
6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceeding; or
7. That the findings of fact or decision is not justified by the evidence or is contrary to law.

E. The Commission 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 subsection (D). The Commission's order modifying a decision or granting a rehearing shall specify the grounds for the order, and any rehearing shall cover only those specified matters.

F. Not later than 15 calendar days, after a decision, the Commission may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Commission may grant a motion for rehearing or review for a reason not stated in the motion.

G. When a motion for rehearing or review is based upon affidavits, the party shall serve the affidavits with the motion. An opposing party may, within 10 calendar days after service, serve opposing affidavits. The Commission may extend this period for no more than 20 calendar days for good cause shown or by written stipulation of the parties. The Commission has the authority to permit reply affidavits.

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 without change as Section R12-4-607 effective December 22, 1987 (Supp. 87-4). Amended effective November 10, 1997 (Supp. 97-4). Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2).

R12-4-608. Expired

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective May 27, 1992 (Supp. 92-1). Amended 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 expired under A.R.S. § 41-1056(E) at 8 A.A.R. 853, effective January 31, 2002 (Supp. 02-1).

R12-4-609. Commission Orders

A. Except as provided in subsection (B):

1. At least 20 calendar days before a meeting where the

Commission will consider a Commission Order, the Department shall ensure that a public meeting notice and agenda for the public meeting is posted in accordance with A.R.S. § 38-431.02. The Department shall also issue a public notice of the recommended Commission Order to print and electronic media at least 20 calendar days before the meeting.

2. The Department shall ensure that the public meeting notice and agenda contains the date, time, and location of the Commission meeting where the Commission Order will be considered and a statement that the public may attend and present written comments at or before the meeting.

3. The Department shall also ensure that the public meeting notice and agenda states that a copy of the proposed Commission Order is available for public inspection at the Department offices in Phoenix, Pinetop, Flagstaff, Kingman, Yuma, Tucson, and Mesa 10 calendar days before the meeting. The Commission may make changes to the recommended Commission Order at the Commission meeting.

B. The requirements of subsection (A) do not apply to Commission orders establishing:

1. Supplemental hunts as prescribed in R12-4-115, and

2. Special seasons for individuals that possess special license tags issued under A.R.S. § 17-346 and R12-4-120.

C. The Department shall publish the content of all Commission orders and make them available to the public without charge.

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 November 10, 1997 (Supp. 97-4). 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. 2245, effective July 6, 2004 (Supp. 04-2).

R12-4-610. Petitions for the Closure of State or Federal Lands to Hunting, Fishing, Trapping, or Operation of Motor Vehicles

A. An individual or agency requesting that the Commission consider closing state or federal land to hunting, fishing, or trapping as provided under A.R.S. § 17-304(B) or R12-4-110; or closing roads or trails on state lands as provided under R12-4-110, shall submit a petition as prescribed in this Section before the Commission will consider the request.

B. A petition shall not address more than one contiguous closure request.

C. Once the Commission has considered and denied a petition, an individual who subsequently submits a petition that addresses the same contiguous closure request shall provide a written statement that contains any reason not previously considered by the Commission in making a decision.

D. A petitioner shall submit an original and one copy of the petition to the Director of the Arizona Game and Fish Department, Director's Office, 5000 W. Carefree Highway, Phoenix, AZ 85086, not less than 60 calendar days before a scheduled Commission meeting to be placed on the agenda for that meeting. If the Commission receives a petition after that time it will be considered at the next regularly-scheduled open meeting. At

any time, the petitioner may withdraw the petition or request delay to a later regularly-scheduled open meeting.

E. Within 15 business days after the petition is filed, the Department shall determine whether the petition complies with the requirements established under A.R.S. § 17-452, R12-4-110, and this Section. Once the Department determines that the petition meets these requirements, and if the petitioner has not agreed to an alternative solution or withdrawn the petition, the Department, in accordance with the schedule in subsection (D), shall place the petition on the agenda for the Commission's next open meeting and provide written notice to the petitioner of the date that the Commission will consider the petition.

1. The petitioner may present oral testimony in support of the petition at the Commission meeting, in accordance with the provisions established under R12-4-603.
2. If a petition does not meet the requirements prescribed under A.R.S. § 17-452, R12-4-110, and this Section, the Department shall return one copy of the petition as filed to the petitioner with the reasons why the petition does not meet the requirements, and not place the petition on a Commission agenda.
3. If the Department returns a petition to a petitioner for a reason that cannot be corrected, the Department shall serve on the petitioner a notice of appealable agency action under A.R.S. § 41-1092.03.

F. The petitioner shall submit a petition that:

1. Is typewritten, computer or word processor printed, or legibly handwritten, and double-spaced, on 8 1/2" x 11" paper;
2. Has a concise map that shows the specific location of the proposed closure;
3. Has the title "Petition for the Closure of Hunting, Fishing, or Trapping Privileges on Public Land" or "Petition for the Closure of Public Lands to the Operation of Motor Vehicles" at the top of the first page;
4. Is in four parts, with titles designating each part as prescribed in this subsection;
5. Has a "Part 1" with the title "Identification of Petitioner" and contains the following information, if applicable:
   a. If the petitioner is the leaseholder of the area proposed for closure, the name, lease number, mailing address, and home telephone number of the petitioner;
   b. If the petitioner is anyone other than the leaseholder, the name, mailing address, and telephone number of the leaseholder; the name, mailing address, and telephone number of the petitioner; and the name of each group or organization or organizations that the petitioner represents; or
   c. If the petitioner is a public agency, the name and address of the agency and the name, title, and telephone number of the agency's representative regarding the petition.
6. Has a "Part 2" with the title "Request for Closure" and contains all of the following information, if applicable:
   a. The type of closure requested: either a hunting, fishing, or trapping closure, or closure to the operation of motor vehicles;
   b. A complete legal description of the area to be closed;
   c. The name or identifying number of any road and the portion of the road affected by the closure; and

d. The dates proposed for the closure:
i. If the closure is to the operation of motor vehicles, the actual time period of the closure (up to five years), and whether or not the closure is seasonal; or
ii. If the closure is for hunting, fishing, or trapping, whether or not the request is for a permanent closure or for some other period of time.
7. Has a “Part 3” with the title “Reason for Closure” and contains all of the following information, if applicable:
a. Each reason why the closure should be considered under R12-4-110, A.R.S. § 17-304(B), or A.R.S. § 17-452(A);
b. Any data or other justification supporting the reasons for the closure with clear reference to any exhibits that may be attached to the petition;
c. Each individual or segment of the public the petitioner believes will be impacted by the closure, including any other valid licensees, lessees, or permittees that will or may be affected, and how they will be impacted, including both positive and negative impacts;
d. If the petitioner is a public agency, a summary of issues raised in any public hearing or public meeting regarding the petition and a copy of each written comment or document of concurrence authorized under A.R.S. § 17-452(A), received by the petitioning agency; and
e. A proposed alternate access route, under R12-4-110.
8. Has a “Part 4” with the title “Dates and Signatures” and contains the following:
a. The original signature of the private party or the official contact named under subsection (F)(5)(a) or (b) of this Section, or, if the petitioner is a public agency, the signature of the agency head or the agency head’s designee; and
b. The month, day, and year when the petition was signed.

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 by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2). Amended by final rulemaking at 16 A.A.R. 1465, effective July 13, 2010 (Supp. 10-3).

R12-4-611. Petition for Hearing Before the Commission When No Remedy is Provided in Statute, Rule, or Policy

A. If no administrative remedy exists in statute, rule or policy, an aggrieved individual may request a hearing before the Commission by following the provisions of this Section.
B. Any individual who requests a hearing under this Section shall submit a petition as prescribed in this Section before the request for a hearing will be considered by the Commission.
C. A petitioner shall submit an original and one copy of a petition to the Arizona Game and Fish Department, Director’s Office, 5000 W. Carefree Highway, Phoenix, AZ 85086.
D. The petitioner shall ensure that the petition is typewritten, computer or word processor printed, or legibly handwritten, and double-spaced on 8 1/2” x 11” paper. The petitioner shall

place the title “Petition for Hearing by the Arizona Game and Fish Commission” at the top of the first page. The petition shall include the items listed in subsections (E) through (H). The petitioner shall present the items in the petition in the order in which they are listed in this Section.

E. The petitioner shall ensure that the title of Part 1 is “Identification of Petitioner” and that Part 1 includes the following information, as applicable:

1. If the petitioner is a private person, the name, mailing address, telephone number, and e-mail address (if available) of the petitioner;
2. If the petitioner is a private group or organization, the name and address of the organization; the name, mailing address, telephone number, and e-mail address (if available) of one person who is designated as the official contact for the group or organization; the number of individuals or members represented by the private group or organization, and the number of these individuals or members who are Arizona residents. If the petitioner prefers, the petitioner may provide the names and addresses of all members; or
3. If the petitioner is a public agency, the name and address of the agency and the name, title, telephone number, and e-mail address (if available) of the agency’s representative.

F. The petitioner shall ensure that the title of Part 2 is “Statement of Facts and Issues.” Part 2 shall contain a description of the issue to be resolved, and a statement of the facts relevant to resolving the issue.

G. The petitioner shall ensure that the title of Part 3 is “Petitioner’s Proposed Remedy.” Part 3 shall contain a full and detailed explanation of the specific remedy the petitioner is seeking from the Commission.

H. The petitioner shall ensure that the title of Part 4 is “Date and Signatures.” Part 4 shall contain:

1. The original signature of the private party or the official contact named in the petition, or, if the petitioner is a public agency, the signature of the agency head or the agency head’s designee; and
2. The month, day, and year that the petition is signed.

I. If a petition does not comply with this Section, the Director shall return the petition and indicate why the petition is deficient.

J. After the Director receives a petition that complies with this Section, the Director shall place the petition on the agenda of a regularly scheduled Commission meeting.

K. If the Commission votes to deny a petition, the Department shall not accept a subsequent petition on the same matter, unless the petitioner presents new evidence or reasons for considering the subsequent petition.

L. This Section does not apply to the following:

1. A matter related to a license revocation or civil assessment;
2. An unsuccessful hunt permit-tag computer draw application, where there was no error on the part of the Department; or
3. The reinstatement of a bonus point, except as authorized under R12-4-107(M).

Historical Note

New Section made by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2). Amended by final rulemaking at 16 A.A.R. 1465, effective July 13, 2010 (Supp. 10-3). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4)

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.

B. The commission may:

1. Conduct investigations, inquiries or hearings in the performance of its powers and duties.

41-1003. Required rule making

Each agency shall make rules of practice setting forth the nature and requirements of all formal procedures available to the public.

41-1033. Petition for a rule or review of a practice or policy

A. Any person, in a manner and form prescribed by the agency, may petition an agency 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. The petition shall clearly state the rule, agency practice or substantive policy statement which the person wishes the agency to make or review. Within sixty days after submission of a petition, the agency shall either deny the petition in writing, stating its reasons for denial, initiate rule making proceedings in accordance with this chapter or, if otherwise lawful, make a rule.

B. A person may appeal to the council the agency's final decision within thirty days after the agency gives written notice pursuant to subsection A of this section. The appeal shall be limited to whether an 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.

C. If the council receives information indicating that an existing agency practice or substantive policy statement may constitute a rule and at least four council members request the chairperson that the matter be heard in a public meeting:

1. Within ninety days of receipt of the fourth council member request, the council shall determine if the agency practice or substantive policy statement constitutes a rule.

2. Within ten days of receipt of the fourth council member request, the council shall notify the agency that the matter has been or will be placed on an agenda.

3. Within thirty days of receiving notice from the council, the agency shall submit a statement that addresses whether the existing agency practice or substantive policy statement constitutes a rule.

D. For the purposes of subsection C of this section, the council meeting shall not be held until the expiration of the agency response period prescribed in subsection C, paragraph 3 of this subsection.

E. An agency practice or substantive policy statement 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 statement constitutes a rule, the practice or statement shall be considered void.

F. 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.

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.

41-1092. Definitions

In this article, unless the context otherwise requires:

1. "Administrative law judge" means an individual or an agency head, board or commission that sits as an administrative law judge, that conducts administrative hearings in a contested case or an appealable agency action and that makes decisions regarding the contested case or appealable agency action.

2. "Administrative law judge decision" means the findings of fact, conclusions of law and recommendations or decisions issued by an administrative law judge.

3. "Appealable agency action" means an action that determines the legal rights, duties or privileges of a party and that is not a contested case. Appealable agency actions do not include interim orders by self-supporting regulatory boards, rules, orders, standards or statements of policy of general application issued by an administrative agency to implement, interpret or make specific the legislation enforced or administered by it or clarifications of interpretation, nor does it mean or include rules concerning the internal management of the agency that do not affect private rights or interests. For the purposes of this paragraph, administrative hearing

does not include a public hearing held for the purpose of receiving public comment on a proposed agency action.

4. "Director" means the director of the office of administrative hearings.

5. "Final administrative decision" means a decision by an agency that is subject to judicial review pursuant to title 12, chapter 7, article 6.

6. "Office" means the office of administrative hearings

41-1001. Definitions

In this chapter, unless the context otherwise requires:

1. "Agency" means any board, commission, department, officer or other administrative unit of this state, including the agency head and one or more members of the agency head or agency employees or other persons directly or indirectly purporting to act on behalf or under the authority of the agency head, whether created under the Constitution of Arizona or by enactment of the legislature. Agency does not include the legislature, the courts or the governor. Agency does not include a political subdivision of this state or any of the administrative units of a political subdivision, but does include any board, commission, department, officer or other administrative unit created or appointed by joint or concerted action of an agency and one or more political subdivisions of this state or any of their units. To the extent an administrative unit purports to exercise authority subject to this chapter, an administrative unit otherwise qualifying as an agency must be treated as a separate agency even if the administrative unit is located within or subordinate to another agency.

2. "Audit" means an audit, investigation or inspection pursuant to title 23, chapter 2 or 4.

3. "Code" means the Arizona administrative code.

4. "Committee" means the administrative rules oversight committee.

5. "Contested case" means any proceeding, including rate making, except rate making pursuant to article XV, Constitution of Arizona, price fixing and licensing, in which the legal rights, duties or privileges of a party are required or permitted by law, other than this chapter, to be determined by an agency after an opportunity for an administrative hearing.

6. "Council" means the governor's regulatory review council.

7. "Delegation agreement" means an agreement between an agency and a political subdivision that authorizes the political subdivision to exercise functions, powers or duties conferred on the delegating agency by a provision of law. Delegation agreement does not include intergovernmental agreements entered into pursuant to title 11, chapter 7, article 3.

8. "Emergency rule" means a rule that is made pursuant to section 41-1026.

9. "Fee" means a charge prescribed by an agency for an inspection or for obtaining a license.

10. "Final rule" means any rule filed with the secretary of state and made pursuant to an exemption from this chapter in section 41-1005, made pursuant to section 41-1026, approved by the council pursuant to section 41-1052 or 41-1053 or approved by the attorney general pursuant to section 41-1044. For purposes of judicial review, final rule includes expedited rules pursuant to section 41-1027.

11. "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.

12. "License" includes the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law, but does not include a license required solely for revenue purposes.

13. "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license.

14. "Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

15. "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.

16. "Preamble" means:

(a) For any rulemaking subject to this chapter, a statement accompanying the rule that includes:

(i) Reference to the specific statutory authority for the rule.

(ii) The name and address of agency personnel with whom persons may communicate regarding the rule.

(iii) An explanation of the rule, including the agency's reasons for initiating the rulemaking.

(iv) A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes 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.

(v) The economic, small business and consumer impact summary, or in the case of a proposed rule, a preliminary summary and a solicitation of input on the accuracy of the summary.

(vi) A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state.

(vii) Such other matters as are prescribed by statute and that are applicable to the specific agency or to any specific rule or class of rules.

(b) In addition to the information set forth in subdivision (a) of this paragraph, for a proposed rule, the preamble also shall include a list of all previous notices appearing in the register addressing the proposed rule,

a statement of the time, place and nature of the proceedings for the making, amendment or repeal of the rule and where, when and how persons may request an oral proceeding on the proposed rule if the notice does not provide for one.

(c) In addition to the information set forth in subdivision (a) of this paragraph, for an expedited rule, the preamble also shall include a statement of the time, place and nature of the proceedings for the making, amendment or repeal of the rule and an explanation of why expedited proceedings are justified.

(d) For a final rule, except an emergency rule, the preamble also shall include, in addition to the information set forth in subdivision (a), the following information:

(i) A list of all previous notices appearing in the register addressing the final rule.

(ii) A description of the changes between the proposed rules, including supplemental notices and final rules.

(iii) A summary of the comments made regarding the rule and the agency response to them.

(iv) A summary of the council's action on the rule.

(v) A statement of the rule's effective date.

(e) In addition to the information set forth in subdivision (a) of this paragraph, for an emergency rule, the preamble also shall include an explanation of the situation justifying the rule being made as an emergency rule, the date of the attorney general's approval of the rule and a statement of the emergency rule's effective date.

17. "Provision of law" means the whole or a part of the federal or state constitution, or of any federal or state statute, rule of court, executive order or rule of an administrative agency.

18. "Register" means the Arizona administrative register.

19. "Rule" means an agency statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency. Rule includes prescribing fees or the amendment or repeal of a prior rule but does not include intraagency memoranda that are not delegation agreements.

20. "Rulemaking" means the process for formulation and finalization of a rule.

21. "Small business" means a concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year. For purposes of a specific rule, an agency may define small business to include more persons if it finds that such a definition is necessary to adapt the rule to the needs and problems of small businesses and organizations.

22. "Substantive policy statement" means a written expression which informs the general public of an agency's current approach to, or opinion of, the requirements of the federal or state constitution, federal or state statute, administrative rule or regulation, or final judgment of a court of competent jurisdiction, including, where appropriate, the agency's current practice, procedure or method of action based upon that approach or opinion. A substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents which only affect the internal procedures of the agency and does not impose additional

requirements or penalties on regulated parties, confidential information or rules made in accordance with this chapter.

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.

17-314. Civil liability for illegally taking or wounding wildlife; recovery of damages

A. The commission or any officer charged with enforcement of the laws relating to game and fish, if so directed by the commission, may bring a civil action in the name of the state against any person unlawfully taking, wounding or killing, or unlawfully in possession of, any of the following wildlife, or part thereof, and seek to recover the following minimum sums as damage:

1.	For each turkey or javelina	$500.00
2.	For each bear, mountain lion, 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. No verdict or judgment recovered by the state in such action shall be for less than the sum fixed in this section. The minimum sum that the commission may seek to recover as damages from a person pursuant to this section may be doubled for a second verdict or judgment and tripled for a third verdict or judgment. The action for damages may be joined with an action for possession, and recovery had for the possession as well as the damages.

C. The pendency or determination of an action for damages or payment of 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.

17-452. 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.

BOARD OF EXAMINERS OF NURSING CARE INSTITUTION ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS (F-17-0302)

Title 4, Chapter 33, Article 1, General; Article 2, Nursing Care Administrator Licensing; Article 3, Administrator-in-Training Program; Article 5, Continuing Education

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

MEETING DATE: March 7, 2017 **AGENDA ITEM: E-7**

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

FROM: Seth U. Nwosu, BA, CP, Paralegal Project Specialist

DATE : February 21, 2017

SUBJECT: **BOARD OF EXAMINERS OF NURSING CARE INSTITUTION ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS (F-17-0302)**
Title 4, Chapter 33, Article 1, General; Article 2, Nursing Care Administrator Licensing; Article 3, Administrator-in-Training Program; Article 5, Continuing Education

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Purpose of the Agency and Number of Rules in the Report

This five-year-review report from the Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers (Board) covers twenty-six (26) rules in A.A.C. Title 4, Chapter 33, related to professions and occupations. Collectively and respectively, the rules became effective as early as 1976; last amended and adopted as late as 2015.

I. **Article 1** - sets forth: (1) definitions; (2) fees; (3) and procedures;
II. **Article 2** - sets forth: (1) the application process; (2) licensure requirements; and (3) standards of conduct.
III. **Article 3** - sets forth the administrator-in-training program.
IV. **Article 5** - sets forth continuing education requirements.

Proposed Action

The Board believes none of the issues identified in this report is sufficiently problematic to justify the expense of amending the rules. The Board will make the necessary changes when it is necessary to amend the rules for a substantive reason.

Substantive or Procedural Concerns

None.

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

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

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

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

Yes. The Board indicates that the rules are generally effective in achieving their objectives. The Board bases this conclusion on the fact it is able to protect the public by licensing and regulating administrators without difficulty.

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

No.

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

Yes. The Board cites to both general and specific authority for the rules. The Board relies upon A.R.S. § 36-446.03(A) for general authority; and A.R.S. § 36-446.04 for specific authority for the Board to issue a license as a nursing care institution administrator.

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

Yes. The Board indicates that the rules are generally consistent with state and federal statutes and other rules. Under A.R.S. § 36-446.03(A), the Board's rules are required to comply with Title XIX § 1900, et al., codified under 42 U.S.C. § 1396, et seq., of the *Social Security Act* (SSA).

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

Yes. The Board has enforced all of the rules without difficulty.

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

Yes. The Board indicates that the rules are generally clear, concise, and understandable, with the following exceptions:

- As incorporated by reference under R1-6-301(6) of the Report; and
- A definition for "licensee" is not explicitly defined under R4-33-101 or A.R.S. § 36-446. "Licensee" is being used under Title 4 Chapter 33 of the administrative rules and Title 36 Chapter 4 Article 6 of the state statutes, without being explicitly defined, and could cause confusion as to its interpretation, and could raise a valid legal argument, if challenged.

Staff would recommend that the Board define licensee in the rule as reliance upon a dictionary definition would, in staff's view, be legally improper.

8. Stringency of the Rules:

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

The Board indicates that nursing care institutions and assisted living facilities are required to comply with Title XIX of the *Social Security Act*. The Board notes that there are numerous other federal laws with which they must comply. However, no provision of the *Act* or other federal law is directly applicable to the subject matter of these rules.

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

Not applicable.

9. For rules adopted after July 29, 2010:

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

As incorporated by reference under R1-6-301(13) of the Report, the license issued under R4-33-203 complies with A.R.S. § 41-1037 because it is issued to qualified individuals to conduct activities that are substantially similar in nature.

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

Not applicable.

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

Yes. In the report approved by Council on March 2, 2012, the Board indicated that because only minor issues had been identified in the review, the Board had no plan to amend or repeal and existing rule or make a new rule.

Conclusion

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. The Board believes none of the issues identified in this report is sufficiently problematic to justify the expense of amending the rules. This analyst recommends the approval of the report.

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

MEETING DATE: March 7, 2017 **AGENDA ITEM: E-7**

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

FROM: Seth U. Nwosu, BA, CP, Paralegal Project Specialist

DATE : February 21, 2017

SUBJECT: **BOARD OF EXAMINERS OF NURSING CARE INSTITUTION ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS (F-17-0302)**
Title 4, Chapter 33, Article 1, General; Article 2, Nursing Care Administrator Licensing; Article 3, Administrator-in-Training Program; Article 5, Continuing Education

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I have reviewed the five-year-review report for the Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers' (the Board's) Title 4, Chapter 33, Articles 1, 2, 3, and 5. An economic, small business, and consumer impact statement (EIS) was prepared as part of the rulemaking process. The five-year review reflected on this analysis. The following includes comments on the analysis provided for compliance with A.R.S. § 41-1056.

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

The Board was established in 1975 as an extension of Congress's establishment of the National Advisory Council on Nursing Home Administration in 1967. The legislature expanded the authority of the Board in 1991, giving it the jurisdiction to certify and regulate living managers. The rules examined in this five-year review report include rules introduced between 2006 and 2015 to support the Board.

The Board examined the economic impact of the collective rulemakings passed at a single time. None of the rules reviewed have been amended since their rulemaking. The Board specifies the economic impacts as being as anticipated for the rules passed in November 2006, February 2008, November 2009, and April 2015. The Board does not specify whether or not the economic impact estimate for the June 2013 rulemaking was accurate.

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

The Board believes that the rules impose the least burden and costs to regulated persons including paperwork and compliance costs. A majority of the licensing and employment costs are required by state statute for which rules were established to abide by. The Board states that the rules "simply establish minimal procedures and standards for accomplishing the statutory requirements."

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

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

4. Conclusion

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

BOARD OF EXAMINERS OF NURSING CARE INSTITUTION ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS

Douglas A. Ducey
Governor

1400 West Washington, Suite B – 8 Phoenix, Arizona 85007
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Email: allen.imig@azncia board.us Website: www.azncia board.us

Allen Imig
Executive Director

January 4, 2017

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GRRC

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

RE: Five-year-review Report on 4 A.A.C. 33, Articles 1-3 and 5

Dear Ms. Ong:

As required by A.R.S. § 41-1056, the Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers 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 questions regarding this report, please contact me at (602) 542-8156. Thank you for your consideration.

Sincerely,

Allen Imig
Executive Director

BOARD OF EXAMINERS OF NURSING CARE INSTITUTION ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS

Five-year-review Report: A.A.C. Title 4, Chapter 33, Articles 1-3 and 5

January 2017

Five-year-review Report

A.A.C. Title 4. Professions and Occupations

Chapter 33. Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers

INTRODUCTION

In 1966, Congress passed the Medicaid Amendments to the Social Security Act.[1] The Medicaid Amendments required that states participating in any Medicaid funding establish a board to license nursing home administrators. In 1967, Congress passed Section 1908 of the Social Security Amendments which set up the National Advisory Council on Nursing Home Administration (Council). In 1969, the Council recommended a model code to the federal government and the establishment of state licensing boards. In 1970, final regulations that govern state nursing home administrator boards were published in the Federal Register.

The Board of Examiners for Nursing Care Institution Administrators and Assisted Living Facility Managers (Board) was created by the Arizona legislature in 1975. In 1991, the Arizona legislature also granted the Board authority to certify and regulate assisted living facility managers. In addition to licensing and certifying applicants, the Board approves AIT, continuing education, and assisted living facility training programs. Nursing care institutions and assisted living facilities are licensed by the Arizona Department of Health Services. There are currently 144 nursing care institutions in Arizona with 16,071 beds.

Statute that generally authorizes the agency to make rules: A.R.S. § 36-446.03(A)

1. Specific statute authorizing the rule:

R4-33-101:	A.R.S. § 36-446.03(A)
R4-33-102:	A.R.S. § 36-446.03(C)
R4-33-103:	A.R.S. § 41-1073
Table 1:	A.R.S. § 41-1073

[1] Title XIX § 1900, et al., codified under 42 U.S.C. § 1396 et seq., of the Social Security Act.

R4-33-104: A.R.S. §§ 36-446.03 (B) and (N) and 36-446.12

R4-33-105: A.R.S. § 36-446.07(J)

R4-33-106: A.R.S. § 41-1092.09

R4-33-107: A.R.S. §§ 36-446.03(A) and 36-446.07(K)

R4-33-108: A.R.S. § 36-446.01

R4-33-109: A.R.S. § 36-446.04(A)(4), (B), (C)(5), and (D)

R4-33-201: A.R.S. § 36-446.04(A) and (B)

R4-33-202: A.R.S. § 36-446.05

R4-33-203: A.R.S. § 36-446.06

R4-33-204: A.R.S. § 36-446.04

R4-33-205: A.R.S. § 36-446.04(A)(3)

R4-33-206: A.R.S. §§ 36-446.04(F), 36-446.07(E), and 36-446.12(A)(4)

R4-33-207: A.R.S. §§ 36-446.07(H) and 36-446.12(A)(5)

R4-33-208: A.R.S. §§ 36-446.04(A)(1) and 36-446.07

R4-33-210: A.R.S. §§ 36-446.04(A)(1) and 36-446.07

R4-33-211: A.R.S. § 36-446.01

R4-33-212: A.R.S. § 36-446.03

R4-33-301: A.R.S. § 36-446.04(A)(2)

R4-33-302: A.R.S. § 36-446.04(A)(2)

R4-33-501: A.R.S. § 36-446.07(E) and (F)

R4-33-502: A.R.S. §§ 36-446.03(B)(8) and (10) and 36-446.12

R4-33-503: A.R.S. § 36-446.07(E) and (F)

R4-33-504: A.R.S. § 36-446.07(G)

2. <u>Objective of the rule including the purpose for the existence of the rule:</u>

R4-33-101: Definitions. The objective of the rule is to define terms used in the rules in a manner that is not explained adequately by a dictionary definition. The definitions are designed to facilitate understanding by those who use the rules.

R4-33-102: Board Officers. The objective of this rule is to specify when Board officers are elected and their duties. This provides public transparency regarding Board operation.

R4-33-103: Time-frames for Licenses, Certifications, and Approvals. The objective of this rule is to specify the time frames within which the Board will act on a license, certificate, or approval application. This enables an applicant to anticipate when the Board-approval process will be completed.

Table 1: Time-frames (in days). The objective of this rule is to specify in table form the time frames within which the Board will act on a license, certificate, or approval application. This enables an applicant to anticipate when the Board-approval process will be completed.

R4-33-104: Fees. The objective of the rule is to specify the fees that the Board charges for its licensing activities. This increases efficiency in the licensing process by enabling an applicant to submit the correct amount.

R4-33-105: Hearing Procedures. The objective of the rule is to provide notice of the procedures used by the Board when conducting a hearing. This provides public transparency regarding Board operation and enables those involved in a hearing to prepare.

R4-33-106: Rehearing or Review of Decision. The objective of the rule is to specify the procedures and standards for requesting a rehearing or review of a Board decision. This enables a licensee to know how to exhaust the licensee's administrative remedies before making application for judicial review under A.R.S. § 12-901.

R4-33-107: Change of Name or Address. The objective of the rule is to provide notice that the Board communicates with a licensee using the information the licensee has provided. This ensures that a licensee knows it is important to keep the Board apprised of changes in contact information.

R4-33-108: Display of License or Certificate. The objective of the rule is to provide notice to an administrator or manager of the requirement that a license or certificate be publicly displayed. This enables members of the public to know whether the administrator or manager of a facility is licensed.

R4-33-109: Fingerprint Clearance Card Requirements. The objective of the rule is to provide notice to an administrator or manager of the requirement to maintain a valid fingerprint clearance card. This ensures a licensee knows the law.

R4-33-201: Requirements for Initial License by Examination. The objective of the rule is to provide notice of the requirements for obtaining a license by examination as an administrator. This enables an individual to assess whether the individual is qualified for licensure and if so, to comply with the requirements.

R4-33-202: Requirements for Initial License by Reciprocity. The objective of the rule is to provide notice of the requirements for obtaining a license by reciprocity as an administrator. This enables an individual to assess whether the individual is qualified for licensure and if so, to comply with the requirements.

R4-33-203: Requirements for Temporary License. The objective of the rule is to provide notice of the requirements for obtaining a temporary license as an administrator. This enables an individual to assess whether the individual is qualified for temporary licensure and if so, to comply with the requirements.

R4-33-204: Initial Application. The objective of this rule is to specify the content of an application for a license. This increases efficiency in the licensing process by enabling applicants to submit an administratively complete application.

R4-33-205: Administration of Examinations; License Issuance. The objective of the rule is to provide information to applicants regarding the examinations that must be passed to obtain licensure. This increases efficiency in the licensure process by providing applicants with information necessary to complete the process.

R4-33-206: Renewal Application. The objective of this rule is to specify the requirements for renewal of a license, the manner in which renewal application is made, and consequences of failing to renew. This increases efficiency in the licensing process by enabling licensees to

submit a timely and administratively complete renewal application and avoid having a license expire.

R4-33-207: Inactive Status. The objective of the rule is to provide information regarding how to place a license on inactive status and how to resume active status. This enables nursing care institution administrators to manage their license status during times when they may be between jobs, out of state, or otherwise not actively engaged as a nursing care institution administrator.

R4-33-208: Standards of Conduct; Disciplinary Action. The objective of the rule is to protect the public by establishing ethical standards with which an administrator must conform and specifying the consequences of failing to comply. This enables an administrator to avoid conduct that might lead to disciplinary action and enables the Board to fulfill its statutory responsibility to protect the public.

R4-33-210: Licensure Following Revocation. The objective of the rule is to provide notice to administrators whose license is revoked of the procedure for obtaining a new license. This increases efficiency in the licensing process.

R4-33-211: Notice of Appointment. The objective of the rule is to provide notice of the requirement for an administrator to keep the Board apprised of the nursing care institution at which the administrator is appointed. This ensures that a licensee knows it is important to keep the Board apprised of changes in appointment status.

R4-33-212: Appointment as Administrator of Multiple Nursing Care Institutions. The objective of the rule is to provide notice of the limitations on being appointed as administrator at multiple nursing care institutions. This ensures a licensee knows the limitations on multiple appointments and protects the public.

R4-33-301: Approval of an AIT Program. The objective of the rule is to provide notice of the standards and procedures for Board approval of an administrator-in-training program.

This increases efficiency in the approval process by enabling a provider of an AIT program to make a complete application.

R4-33-302: Standards for an AIT Program. The objective of the rule is to specify the standards for an AIT program. This increases efficiency in the approval process by enabling an AIT program provider to comply with the standards.

R4-33-501: Continuing Education Requirement. The objective of the rule is to specify the continuing education requirement, credit hours for different kinds of activities, limitations on credit hours received, and required evidence of compliance. This increases efficiency in the regulatory process by informing a licensee of requirements and protects the public.

R4-33-502: Approval of Continuing Education. The objective of the rule is to identify continuing education the Board approves without application and the manner in which a continuing education provider may apply for Board approval. This provides a level playing field for all providers of continuing education.

R4-33-503: Audit of Compliance and Sanction for Noncompliance with Continuing Education Requirement. The objective of the rule is to provide notice to licensees that the Board will audit compliance with the continuing education requirement and the manner in which an audited licensee is required to submit evidence of compliance. This enables a licensee to avoid being sanctioned for noncompliance.

R4-33-504: Extension of Time to Complete the Continuing Education Requirement. The objective of the rule is to specify the manner in which a licensee may apply for an extension of time to complete the required continuing education and the Board standards for approving a request. This creates efficiency in the regulatory process.

3. <u>Effectiveness of the rule in achieving the objective including a summary of any available data supporting the conclusion:</u>

The rules are effective in achieving their objectives. The Board bases this conclusion on the fact it is able to protect the public by licensing and regulating administrators without difficulty.

Although effective, the Board would like to amend R4-33-202 to make it easier for currently licensed administrators in other states to become licensed in Arizona.

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 Board determined the rules are consistent with state and federal statutes. Under A.R.S. § 36-446.03(A), the Board's rules are required to be in compliance with Title XIX of the Social Security Act, as amended.

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

   The Board enforces all the rules without difficulty.

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

   The Board determined the rules are clear, concise, and understandable. However, the Board believes the following changes would enhance clarity:

   1. R4-33-101: The definition of "ACHCA certified" is not written properly.
   2. R4-33-103 and Table 1: The Office of the Secretary of State now prefers that the phrase "time-frame" be written without a hyphen unless used as a compound adjective.
   3. R4-33-104(A)(8) and (B)(8): The rule would be clearer if it specified the late renewal fee is payable in addition to the renewal fee.
   4. R4-33-204, 206, and 301: To enhance electronic communication, an accurate e-mail address needs to be obtained.
   5. R4-33-204(B): This subsection would be clearer if it was divided into two subsections—one dealing with materials to be submitted by the applicant and the second dealing with materials to be submitted on behalf of the applicant.
   6. R4-33-206(D)(2): It is unnecessarily burdensome to require completion of this form at the time of renewal if the form submitted at the time of initial application provided evidence of citizenship or permanent residency.

7. Summary of written criticisms of the rule received by the agency with the past five years, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods, and, written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute or beyond the authority of the agency to enact, and the result of the litigation of administrative proceedings: The Board received no written criticisms during the last five 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:

November 2006 Rulemaking (12 A.A.R. 4075)

The following rules have not been amended since being made in this rulemaking: R4-33-103, R4-33-105, R4-33-106, R4-33-107, R4-33-205, R4-33-207, R4-33-210, R4-33-211, R4-33-502, R4-33-503, andR4-33-504. The Board believes the economic impact estimated when the rules were made is accurate.

During FY2016 the Board complied with its time frame rules and was not required to refund or forgive any fees. Twenty-seven individuals have inactive licenses. The Board received 14 complaints against administrators last year. Most alleged unprofessional conduct. None of the complaints went to hearing so there were no requests for rehearing or review. Two administrators were disciplined for unprofessional conduct and not having a valid fingerprint clearance card. The discipline was suspension and probation. There were no applications for licensure following revocation. The Board approved 1,877 hours of CE for providers and 93 hours for individuals. The Board audited CE compliance by selecting a random sample of 50 licensees and requesting they submit evidence of compliance. There was a 100 percent compliance rate. Approximately 15 licensees requested an extension of time in which to complete the required CE.

February 2008 Rulemaking (14 A.A.R. 516)

The following rules have not been amended since being made in this rulemaking: R4-33-102, R4-33-109, R4-33-201, R4-33-202, R4-33-204, and R4-33-301. The Board believes the economic impact estimated when the rules were made is accurate.

There are currently 309 licensed administrators of nursing care institutions. During FY2016, the Board received 46 applications for licensure either by examination or reciprocity. R4-33-109 stated the requirement that an administrator maintain a valid fingerprint card. There is a cost to maintaining a valid fingerprint card but the cost results from the statutory requirement rather than rule. The Board uses the fingerprint card to conduct a background check on an applicant. This helps the Board determine whether an applicant failed to disclose a criminal act. The Board is also notified if a licensed administrator is arrested for a crime. Failure to maintain a valid fingerprint card was an issue in disciplinary proceedings in FY2016.

There are currently 12 approved AIT programs. Eleven of these are provided by accredited colleges and universities. Unless an applicant holds a master's degree in a health-related field, the applicant is required by statute (See A.R.S. § 36-446.04(A)(2)) to successfully complete an AIT program. Participation in an AIT program costs approximately $250.

November 2009 Rulemaking (15 A.A.R. 1975)

The following rules have not been amended since being made in this rulemaking: R4-33-206 and R4-33-501. The Board believes the economic impact estimated when the rules were made is accurate.

Licensees renew biennially in even-numbered years so all individuals licensed as an administrator on June 30, 2016 were required to renew. A licensee is required by statute to complete 50 hours of continuing education during each license period (See A.R.S. § 36-446.07(E)). There is a cost to participate in CE but the legislature determined this requirement was necessary to protect public health and safety.

June 2013 Rulemaking (19 A.A.R. 1619)

The following rules have not been amended since being made in this rulemaking: Table 1 and R4-33-104. These rules, dealing with licensing time frames and fees, were amended to establish time frames and fees for training programs for assisted living facility managers and caregivers. This report does not address the rules dealing with training programs. However, as indicated above, the Board complies with its time frames. Fees are collected. During FY2016, the Board collected $408,271. Ten percent of this amount was contributed to the state's general fund. The Board was appropriated $423,000 and spent $379,515.

April 2015 Rulemaking (21 A.A.R. 543)

The following rules have not been amended since being made in this rulemaking: R4-33-101, R4-33-108, R4-33-203, R4-33-208, R4-33-212, and R4-33-302. The Board believes the economic impact estimated when the rules were made is accurate.

This rulemaking added a provision specifying the circumstances under which an administrator may be appointed at more than one nursing care institution. The provision was added to ensure proper supervision of institutions dealing with vulnerable populations. During 2016, six administrators held multiple appointments. The Board received 14 applications for a temporary license during FY2016.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states:

   No analysis has been submitted.

10. How the agency completed the course of action indicated in the agency's previous 5YRR:

    In a 5YRR approved by Council on March 2, 2012, the Board indicated that because only minor issues had been identified in the review, the Board had no plan to amend or repeal an existing rule or make a new rule.

11. A determination after analysis that the probable benefits of the rule outweigh within this state the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:

The Board determined the rules impose the least burden and costs to regulated persons, including paperwork and other compliance costs. Most of the costs associated with being licensed as an administrator result from statute. It is statute that requires a license to be employed as an administrator. Statute specifies that an applicant for an administrator license have completed a course of instruction and training approved by the Board, passed an examination, and secured a valid fingerprint clearance card. Statute requires that a licensee complete 50 hours of CE before license renewal. And it is statute that specifies multiple grounds for disciplinary action. The rules simply establish minimal procedures and standards for accomplishing the statutory requirements.

In the interest of protecting the public, the rules require a licensee to provide notice to the Board when appointed to an administrator position and places limits on an administrator's ability to have multiple appointments.

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:
Nursing care institutions and assisted living facilities are required to comply with Title XIX of the Social Security Act. There are numerous other federal laws with which they must also comply. However, no provision of the Act or other federal law is directly applicable to the subject matter of these rules.
13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:
The following rules were made after July 29, 2010:
R4-33-101. Definitions
Table 1. Time-frames
R4-33-104. Fees
R4-33-108. Display of License or Certificate
R4-33-203. Requirements for a Temporary License
R4-33-208. Standards of Conduct; Disciplinary Action
R4-33-212. Appointment as Administrator of Multiple Nursing Care Institutions
R4-33-302. Standards for an AIT Program

The license issued under R4-33-203 complies with A.R.S. § 41-1037 because it is issued to qualified individuals to conduct activities that are substantially similar in nature.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule or to make a new rule. If no issues are identified for a rule in the report, the agency may indicate that no action is necessary for the rule:

    The Board believes none of the issues identified in this report is sufficiently problematic to justify the expense of amending the rules. The Board will make the necessary changes when it is necessary to amend the rules for a substantive reason.

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 33. BOARD OF EXAMINERS OF NURSING CARE INSTITUTION ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS

Chapter heading amended from "Board of Examiners for Nursing Care Institution Administrators and Assisted Living Facility Managers" to "Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers" to be consistent with A.R.S. § 36-446.02 (Supp. 11-4).

Authority: A.R.S. § 36-446.03(A)

ARTICLE 1. GENERAL

Section
R4-33-101. Definitions
R4-33-102. Board Officers
R4-33-103. Time-frames for Licenses, Certifications, and Approvals
Table 1. Time-frames (in days)
R4-33-104. Fees
R4-33-105. Hearing Procedures
R4-33-106. Rehearing or Review of Decision
R4-33-107. Change of Name or Address
R4-33-108. Display of License or Certificate
R4-33-109. Fingerprint Clearance Card Requirement

ARTICLE 2. NURSING CARE INSTITUTION ADMINISTRATOR LICENSING

Section
R4-33-201. Requirements for Initial License by Examination
R4-33-202. Requirements for Initial License by Reciprocity
R4-33-203. Requirements for Temporary License
R4-33-204. Initial Application
R4-33-205. Administration of Examinations; License Issuance
R4-33-206. Renewal Application
R4-33-207. Inactive Status
R4-33-208. Standards of Conduct; Disciplinary Action
R4-33-210. Licensure Following Revocation
R4-33-211. Notice of Appointment
R4-33-212. Appointment as Administrator of Multiple Nursing Care Institutions

ARTICLE 3. ADMINISTRATOR-IN-TRAINING PROGRAM

Section
R4-33-301. Approval of an AIT Program
R4-33-302. Standards for an AIT Program

ARTICLE 5. CONTINUING EDUCATION

Section
R4-33-501. Continuing Education Requirement
R4-33-502. Approval of Continuing Education
R4-33-503. Audit of Compliance and Sanction for Noncompliance with Continuing Education Requirement
R4-33-504. Extension of Time to Complete the Continuing Education Requirement

ARTICLE 1. GENERAL

R4-33-101. Definitions

The definitions in A.R.S. § 36-446 apply to this Chapter. Additionally, in this Chapter, unless otherwise specified:

"Accredited" means approved by the North Central Association of Colleges and Secondary Schools, New England Association of Schools and Colleges, Middle States Association of Colleges and Secondary Schools, Northwest Association of Schools and Colleges, Southern Association of Colleges and Schools, or Western Association of Schools and Colleges.

"ACHCA certified" means written evidence of completing the Professional Certification Program administered by the American College of Health Care Administrators.

"Administrator" has the meaning prescribed at A.R.S. § 36-446 and means an individual licensed under this Chapter to supervise a nursing care institution.

"Administrator in training" or "AIT" means an individual who is taking an AIT program to be licensed as an administrator for a nursing care institution.

"AIT program" means a training that the Board approves after determining that the training meets the standards at R4-33-302.

"Applicant" means an individual who applies to the Board to be licensed as an administrator of a nursing care institution, to be certified as a manager of an assisted living facility, or for approval of a continuing education.

"Application package" means the forms, documents, and fees that the Board requires an applicant to submit or have submitted on the applicant's behalf.

"Arizona examination" means a measure of an applicant's knowledge of Arizona statutes and rules regarding nursing care institution administration or assisted living facility management.

"Biennial period" means July 1 of an even-numbered year through June 30 of the next even-numbered year for an administrator and July 1 of an odd-numbered year through June 30 of the next odd-numbered year for a manager.

"Contact hour" means an hour during which an administrator or manager is physically present at a continuing education or a manager is physically present at a required initial training.

"Continuing education" means a planned educational course or program that the Board approves under R4-33-502.

"Good standing" means that an individual licensed by the state is not subject to any disciplinary action or consent order, and not currently under investigation for alleged unprofessional conduct.

"Health care institution" means every place, institution, building or agency, whether organized for profit or not, which provides facilities with medical services, nursing 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 A.R.S. § 36-151 and hospice services agencies. A.R.S. § 36-401.

"Manager" means an assisted living facility manager, as defined at A.R.S. § 36-446, who is certified under this Chapter to supervise an assisted living facility.

"NAB" means the National Association of Board of Examiners for Nursing Home Administrators.

"Party" has the same meaning as prescribed in A.R.S. § 41-1001.

"Preceptor" means a practicing nursing care institution administrator who helps to develop a new professional in the field of long-term care administration by tutoring the new professional.

"Qualified instructor" means a person who meets one or more of the following criteria:

A registered nurse, licensed under A.R.S. Title 32, Chapter 15;

An instructor employed by an accredited college or university, or health care institution to teach a health-care related course; or

A person or entity that has sufficient education and training to be qualified to teach a health-care related course.

"Work experience in a health-related field" means employment in a health care institution or in the professional fields of medicine, nursing, social work, gerontology, or other closely related field.

Historical Note

Section R4-33-101 renumbered from R4-33-112 and amended by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 516, effective April 5, 2008 (Supp. 08-1). Amended by final rulemaking at 21 A.A.R. 543, effective June 6, 2015 (Supp. 15-2).

R4-33-102. Board Officers

A. At its first annual meeting, the Board shall elect a president and vice-president.

B. The functions, duties, and limitations of these officers are as follows:

1. President. The president shall call and preside at all Board meetings. The president shall act as chief officer of the Board, appoint committees, and delegate authority to other members of the Board as needed.
2. Vice-president. The vice-president shall preside at Board meetings in the absence of the president and may exercise all the powers and duties of the president in the absence of the president.

C. Board officers serve for one year. A Board officer shall not serve more than two consecutive years in the same position.

Historical Note

Section R4-33-102 renumbered from R4-33-113 and amended by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 516, effective April 5, 2008 (Supp. 08-1).

R4-33-103. Time-frames for Licenses, Certifications, and Approvals

A. For each type of license, certification, or approval issued by the Board, the overall time-frame described in A.R.S. § 41-1072(2) is listed in Table 1.

B. For each type of license, 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 on the date the Board receives an application package.

1. If an application package is not administratively complete, the Board shall send a deficiency notice to the applicant that specifies each piece of information or document needed to complete the application package.

Within the time provided in Table 1 for response to a deficiency notice, beginning on the mailing date of the deficiency notice, the applicant shall submit to the Board the missing information or document specified in the deficiency notice. The time-frame for the Board to finish the administrative completeness review is suspended from the date the Board mails the deficiency notice to the applicant until the date the Board receives the missing information or document.

2. If an application package is administratively complete, the Board shall send a written notice of administrative completeness to the applicant.
3. If an application package is not completed within the time provided to respond to the deficiency notice, the Board shall send a written notice to the applicant informing the applicant that the application is deemed withdrawn.

C. For each type of license, 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 on the date the Board sends written notice of administrative completeness to the applicant.

1. During the substantive review time-frame, the Board may make one comprehensive written request for additional information. Within the time provided in Table 1 for response to a comprehensive written request for additional information, beginning on the mailing date of the comprehensive written request for additional information, the applicant shall submit to the Board the requested additional information. The time-frame for the Board to finish the substantive review is suspended from the date the Board mails the comprehensive written request for additional information to the applicant until the Board receives the requested additional information.
2. The Board shall issue a written notice informing the applicant that the application is deemed withdrawn if the applicant does not submit the requested additional information within the time provided in Table 1.

D. Within the overall time-frame listed in Table 1, the Board shall:

1. Deny a license, certificate, or approval to an applicant if the Board determines that the applicant does not meet all of the substantive criteria required by statute and this Chapter; or
2. Grant a license, certificate, or approval to an applicant if the Board determines that the applicant meets all of the substantive criteria required by statute and this Chapter.

E. If the Board denies a license, certificate, or approval under subsection (D)(1), the Board shall provide a written notice of denial to the applicant that explains:

1. The reason for the denial, with citations to supporting statutes or rules;
2. The applicant's right to seek a fair hearing to challenge the denial; and
3. The time for appealing the denial.

F. In computing any period of time prescribed in this Section, the day of the act, event or default after which the designated period of time begins to run is not included. The last day of the period is included unless it is Saturday, Sunday, or a state holiday, in which event the period runs until the end of the next day that is not Saturday, Sunday, or a state holiday. The computation includes intermediate Saturdays, Sundays, and state holidays. The time begins on the date of personal service, date shown as received on a certified mail receipt, or postmark date.

Historical Note

Section R4-33-103 adopted by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4).

Table 1. Time-frames (in days)

Type of License	Overall Time-frame	Administrative Review Time-frame	Time to Respond to Deficiency Notice	Substantive Review Time-frame	Time to Respond to Request for Additional Information
Initial License R4-33-201 and R4-33-202 A.R.S. §§ 36-446.04(A) and 36-446.05	135	30	90	105	60
Renewal of License R4-33-206 A.R.S. § 36-446.07(E)	75	30	15	45	15
Temporary License R4-33-203 A.R.S. § 36-446.06	135	30	90	105	60
Continuing Education Program Approval R4-33-502 A.R.S. § 36-446.07(E) and (F)	60	15	30	45	15
Administrator-in-Training Program Approval R4-33-301 A.R.S. § 36-446.04	60	15	30	45	15
Initial Certification R4-33-401 A.R.S. § 36-446.04(B)	135	30	90	105	60
Renewal of Certification R4-33-405 A.R.S. § 36-446.07(F)	75	30	15	45	15
Temporary Certification R4-33-402 A.R.S. § 36-446.06	135	30	90	105	60
Initial Approval of an Assisted Living Facility Manager or Caregiver Training Program R4-33-604, R4-33-704, A.R.S. § 36-446.03(O)	120	60	60	60	60
Renewal Approval of an Assisted Living Facility Manager or Caregiver Training Program R4-33-605, R4-33-705, A.R.S. § 36-446.03(O)	120	60	30	60	30

Historical Note

Table 1 adopted by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1619, effective August 4, 2013 (Supp. 13-2).

R4-33-104. Fees

A. Under the authority provided at A.R.S. § 36-446.12(A), the Board establishes and shall collect the following fees related to nursing care institution administrators. The fees are nonrefundable unless A.R.S. § 41-1077 applies:

1. Initial application, $150
;
2. Arizona examination, $500
;
3. Re-administer Arizona examination, $150
;
4. Issuance of a license, $400 or $17 for each month remaining in the biennial period, whichever is less
;
5. Duplicate license, $75
;
6. Biennial active license renewal, $400
;
7. Biennial inactive license renewal, $200
;
8. Late renewal, $100
;
9. Temporary license, $300
;
10. Certify licensure status, $15
;
11. Review sponsorship of a continuing education, $10 per credit hour;
12. Review a licensed administrator's request for continuing education credit, $5 per credit hour.

B. Under the authority provided at A.R.S. § 36-446.03(B), the Board establishes and shall collect the following fees related to assisted living facility managers. The fees are nonrefundable unless A.R.S. § 41-1077 applies:

1. Initial application, $150
;
2. Arizona examination, $150
;
3. Re-administer Arizona examination, $150
;
4. Issuance of a certificate, $150 or $7 for each month remaining in the biennial period, whichever is less
;
5. Duplicate certificate, $75
;
6. Biennial active certificate renewal, $150
;
7. Biennial inactive certificate renewal, $100
;
8. Late renewal, $75
;
9. Temporary certificate, $100
;
10. Review sponsorship of a continuing education, $10 per credit hour;
11. Review a certified manager's request for continuing education credit, $5 per credit hour.

C. Under the authority provided at A.R.S. § 36-446.03(B), the Board establishes and shall collect the following fees related to approval of an assisted living facility manager training program. The fees are nonrefundable unless A.R.S. § 41-1077 applies:

1. Initial approval, $1,000; and
2. Renewal approval, $600.

D. Under the authority provided at A.R.S. § 36-446.03(B), the Board establishes and shall collect the following fees related to approval of an assisted living facility caregiver training program. The fees are nonrefundable unless A.R.S. § 41-1077 applies:

1. Initial approval, $1,500; and
2. Renewal approval, $1,300.

E. The Board shall ensure that fees established under this subsection are not increased by more than 25 percent above the amounts previously prescribed by the Board.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 805, effective April 13, 2004 (Supp. 04-1). Amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 15 A.A.R. 1975, effective November 3, 2009 (Supp. 09-4). Amended by final rulemaking at 19 A.A.R. 1619, effective August 4, 2013 (Supp. 13-2).

R4-33-105. Hearing Procedures

As required under A.R.S. § 36-446.07(J), the Board shall conduct all hearings according to the procedures in A.R.S. Title 41, Chapter 6, Article 10 and rules issued by the Office of Administrative Hearings.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4).

R4-33-106. Rehearing or Review of Decision

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

B. Except as provided in subsection (I), a party is required to file a motion for rehearing or review of a decision of the Board to exhaust the party's administrative remedies.

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

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

1. Irregularity in the proceedings of the Board or any order or abuse of discretion that deprived the moving party of a fair hearing;
2. Misconduct of the Board, its staff, or an administrative law judge;
3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
5. Excessive or insufficient penalty;
6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings; and
7. The findings of fact or decision is not justified by the evidence or is contrary to law.

E. The Board may affirm or modify a decision or grant a rehearing or review to all or some of the parties on all or some of the issues for any of the reasons listed in subsection (D). An order modifying a decision or granting a rehearing or review shall specify with particularity the grounds for the order. If a rehearing or review is granted, the rehearing or review shall cover only the matters specified in the order.

F. Not later than 30 days after the date of a decision and after giving the parties notice and an opportunity to be heard, the Board may, on its own initiative, order a rehearing or review of its decision for any reason it might have granted a rehearing or review on motion of a party. The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion. An order granting a rehearing or review shall specify with particularity the grounds on which the rehearing or review is granted.

G. When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. This period may be extended by the Board for a maximum of 20 days for good cause as described in subsection (H) or by written stipulation of the parties. Reply affidavits may be permitted.

H. The Board may extend all time limits listed in this Section upon a showing of good cause. A party demonstrates good cause by showing that the grounds for the party's motion or other action could not have been known in time, using reasonable diligence, and a ruling on the motion will:

1. Further administrative convenience, expedition, or economy; or
2. Avoid undue prejudice to any party.

I. If, in a particular decision, the Board makes a specific finding that the immediate effectiveness of the decision is necessary for immediate preservation of the public health, safety, or welfare and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If an application for judicial review of the decision is made, it shall be made under A.R.S. § 12-901 et seq.

Historical Note

Section R4-33-106 renumbered from R4-33-209 and amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4).

R4-33-107. Change of Name or Address

A. The Board shall communicate with an administrator or manager using the name and address in the Board's records. To ensure timely communication from the Board, an administrator or manager shall inform the Board in writing of any change in name or address.

B. An administrator or manager shall include in a notice of change in name or address either the new and former name or new and former address.

C. An administrator or manager shall attach to a notice of change in name a copy of the legal document changing the name.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4).

R4-33-108. Display of License or Certificate

A. An administrator shall display the administrator's original license and current renewal receipt in a conspicuous place in the nursing care institution at which the administrator is appointed.

B. A manager shall display the manager's original certificate and current renewal receipt in a conspicuous place in the assisted care facility at which the manager is appointed.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 21 A.A.R. 543, effective June 6, 2015 (Supp. 15-2).

R4-33-109. Fingerprint Clearance Card Requirement

Under A.R.S. § 36-446.04, an administrator or manager is required to maintain a valid fingerprint clearance card during the biennial period. Within 10 days after the referenced action, an administrator or manager shall:

1. Submit to the Board a photocopy of the front and back of a new fingerprint clearance card issued to the administrator or manager during the biennial period, or
2. Provide written notice to the Board if:
   a. The fingerprint clearance card of the administrator or manager is suspended or revoked, or
   b. The administrator or manager is denied a new fingerprint clearance card.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 516, effective April 5, 2008 (Supp. 08-1).

ARTICLE 2. NURSING CARE INSTITUTION ADMINISTRATOR LICENSING

R4-33-201. Requirements for Initial License by Examination

To be eligible to receive an initial license by examination as a nursing care institution administrator, an individual shall:

1. Education and training.
   a. Hold a minimum of a baccalaureate degree from an accredited college or university and successfully complete an AIT program;
   b. Hold a minimum of a masters degree in a health-related field from an accredited college or university; or
   c. Hold a minimum of an associate of arts degree in nursing from an accredited college or university and:
      i. Be currently licensed as a registered nurse under A.R.S. § 32-1632,
      ii. Have worked as a registered nurse for five of the last seven years, and
      iii. Successfully complete an AIT program.
2. Examination.
   a. Obtain the scaled passing score on the NAB examination, and
   b. Obtain a score of at least 80 percent on the Arizona examination;
3. Fingerprint clearance card. Have a valid fingerprint clearance card issued under A.R.S. Title 41, Chapter 12, Article 3.1; and
4. Application. Submit all applicable information required under R4-33-204.

Historical Note

Adopted effective October 12, 1976 (Supp. 76-5). Former Section R4-33-15 renumbered and amended as Section R4-33-115 (Supp. 82-1). Section R4-33-202 renumbered from R4-33-115 by emergency action effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Amended effective August 6, 1991 (Supp. 91-3). Emergency expired. New Section R4-33-201 renumbered from R4-33-115 by emergency action effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). New Section R4-33-201 renumbered from R4-33-115 by emergency action effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). New Section R4-33-201 renumbered from R4-33-115 by emergency action effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. New Section R4-33-201 renumbered from R4-33-115 by emergency action effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R4-33-201 renumbered from R4-33-115 effective November 25, 1992 (Supp. 92-4). Text corrected to include amendments adopted effective August 6, 1991, which were inadvertently omitted (Supp. 95-2). Amended by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Former R4-33-201 renumbered to R4-33-204; new R4-33-201 renumbered from R4-33-204 and amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 516, effective April 5, 2008 (Supp. 08-1).

R4-33-202. Requirements for Initial License by Reciprocity

To be eligible for an initial license by reciprocity as a nursing care institution administrator, an individual shall:

1. Substantially equivalent educational requirement.
   a. Meet the education and training requirement described in R4-33-201(1), or
   b. Hold ACHCA certification;
2. Substantially equivalent examination requirement.
   a. Hold a valid and current license as a nursing care institution administrator issued by a state or territory, which was obtained by passing the NAB examination; and
   b. Obtain a score of at least 80 percent on the Arizona examination;
3. Fingerprint clearance card. Have a valid fingerprint clearance card issued under A.R.S. Title 41, Chapter 12, Article 3.1; and
4. Application.
   a. Submit all applicable information required under R4-33-204,
   b. Have submitted directly to the Board a certified copy of the valid and current license issued by a state or territory, and
   c. Have submitted directly to the Board the score that the applicant obtained on the NAB examination.

Historical Note

Adopted effective October 12, 1976 (Supp. 76-5). Former Section R4-33-16 renumbered as Section R4-33-116 (Supp. 82-1). Section R4-33-203 renumbered from R4-33-116 by emergency action effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Amended as Section R4-33-116 effective August 6, 1991 (Supp. 91-3). Section R4-33-202 renumbered from R4-33-116 by emergency action effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Section R4-33-202 renumbered from R4-33-116 by emergency action effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Section R4-33-202 renumbered from R4-33-116 by emergency action effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Section R4-33-202 renumbered from R4-33-116 by emergency action effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R4-33-202 renumbered from R4-33-116 effective November 25, 1992 (Supp. 92-4). Text corrected to include amendments adopted effective August 6, 1991, which were inadvertently omitted (Supp. 95-2). Amended by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Former R4-33-202 renumbered to R4-33-205; new R4-33-202 renumbered from R4-33-203 and amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 516, effective April 5, 2008 (Supp. 08-1).

R4-33-203. Requirements for Temporary License

A. To be eligible for a temporary license as a nursing care institution administrator, an individual shall:

1. Meet the requirements specified in R4-33-201 or R4-33-202 except for the requirement at R4-33-201(2) or R4-33-202(2)(b);
2. Have the owner of a nursing care institution that intends to appoint the applicant as administrator if the applicant is successful in obtaining a temporary license submit to the Board a Letter of Intent to Appoint on a form that is available from the Board. The owner of the nursing care institution shall include the following in the Letter of Intent to Appoint:
   a. Name of the owner of the nursing care institution,
   b. Name and address of the nursing care institution,
   c. Name of the applicant,
   d. An affirmation of intent to appoint the applicant,
   e. Reason for requesting a temporary license for the applicant,
   f. License number of the nursing care institution, and
   g. Notarized signature of the owner of the nursing care institution;
3. Not have held an Arizona temporary license as a nursing care institution administrator within the past three years; and
4. Not have failed the Arizona or NAB examination before applying for a temporary license.

B. At the Board's request, an applicant for a temporary license shall appear or be available by telephone for an interview with the Board.

C. A temporary license is valid for 150 days and is not renewable. Before expiration of the temporary license, the temporary licensee shall become licensed under A.R.S. § 36-446.04 and this Article or discontinue as administrator of the nursing care institution.

D. If a temporary licensee fails the Arizona or NAB examination during the term of the temporary license, the temporary license is automatically revoked and the former licensee shall discontinue as administrator of the nursing care institution.

Historical Note

Adopted effective October 12, 1976 (Supp. 76-5). Former Section R4-33-17 renumbered and amended as Section R4-33-117 (Supp. 82-1). Section R4-33-204 renumbered from R4-33-117 by emergency action effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Amended as Section R4-33-117 effective August 6, 1991 (Supp. 91-3). Section R4-33-203 renumbered from R4-33-117 by emergency action effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Section R4-33-203 renumbered from R4-33-117 by emergency action effective February 28. 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Section R4-33-203 renumbered from R4-33-117 by emergency action effective May 28. 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Section R4-33-203 renumbered from R4-33-117 by emergency action effective September 10. 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R4-33-203 renumbered from R4-33-117 effective November 25, 1992 (Supp. 92-4). Text corrected to include amendments adopted effective August 6, 1991, which were inadvertently omitted (Supp. 95-2). Amended by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Former R4-33-203 renumbered to R4-33-202; new R4-33-203 renumbered from R4-33-212 and amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006
(Supp. 06-4). Amended by final rulemaking at 21 A.A.R. 543, effective June 6, 2015 (Supp. 15-2).

R4-33-204. Initial Application

A. An individual who desires to be licensed as a nursing care institution administrator shall submit the following information to the Board on an application form, which is available from the Board:

1. Full name of the applicant;
2. Other names that the applicant has used;
3. Mailing address of the applicant;
4. Home, work, and mobile telephone numbers of the applicant;
5. Applicant's date and place of birth;
6. Applicant's Social Security number;
7. Address of every residence at which the applicant has lived in the last five years;
8. Name and address of every accredited college or university attended, dates of attendance, date of graduation, and degree or certificate received;
9. Information regarding professional licenses or certifications currently or previously held by the applicant, including:

a. Name of issuing agency;
b. License or certificate number;
c. Issuing jurisdiction;
d. Date on which the license or certificate was first issued;
e. Whether the license or certificate is current; and
f. Whether the license or certificate is in good standing and if not, an explanation;

10. Information regarding the applicant's employment record for the last five years, including:
    a. Name, address, and telephone number of each employer;
    b. Title of position held by the applicant;
    c. Name of applicant's supervisor;
    d. Dates of employment; and
    e. Reason for employment termination;
11. Whether the applicant was ever denied a professional license or certificate and if so, the kind of license or certificate denied, licensing authority making the denial, and date;
12. Whether the applicant ever voluntarily surrendered a professional license or certificate and if so, the kind of license or certificate surrendered, licensing authority, date, and reason for the surrender;
13. Whether the applicant ever allowed a professional license or certificate to lapse and if so, the kind of license or certificate that lapsed, licensing authority, date, reason for lapse, and whether the license or certificate was reinstated;
14. Whether the applicant ever had a limitation imposed on a professional license or certificate and if so, the kind of license or certificate limited, licensing authority, date, nature of limitation, reason for limitation, and whether the limitation was removed;
15. Whether the applicant ever had a professional license or certificate suspended or revoked and if so, the kind of license or certificate suspended or revoked, licensing authority, date, and reason for the suspension or revocation;
16. Whether the applicant ever was subject to disciplinary action with regard to a professional license or certificate and if so, the kind of license or certificate involved, licensing authority, date, and reason for and nature of the disciplinary action;
17. Whether any unresolved complaint against the applicant is pending with a licensing authority, professional association, health care facility, or nursing care institution and if so, the nature of and where the complaint is pending;
18. Whether the applicant ever was charged with or convicted of a felony or a misdemeanor, other than a minor traffic violation, in any court and if so, the nature of the offense, jurisdiction, and date of discharge; and
19.

Whether the applicant ever was pardoned from or had expunged the record of a felony conviction and if so, the nature of the offense, jurisdiction, and date of pardon or expunging.

B. In addition to the application form required under subsection (A), an applicant shall submit or have submitted on the applicant's behalf:

1. Official transcript submitted directly to the Board by each accredited college or university attended by the applicant;
2. Verification of license that is signed, authenticated by seal or notarization, and submitted directly to the Board by each agency that ever issued a professional license to the applicant;
3. "Character Certification" form submitted directly to the Board by two individuals who have known the applicant for at least three years and are not related to, employed by, or employing the applicant;
4. If the applicant is certified by ACHCA, verification of certification submitted directly to the Board by ACHCA;
5. If the applicant completed an AIT program, a photocopy of the certificate issued upon completion;
6. For every felony or misdemeanor charge listed under subsection (A)(18), a copy of documents from the appropriate court showing the disposition of each charge;
7. For every felony or misdemeanor conviction listed under subsection (A)(18), a copy of documents from the appropriate court showing whether the applicant met all judicially imposed sentencing terms;
8. Passport-size, color, full-face photograph of the applicant taken within the last 180 days and signed on the back by the applicant;
9. Fingerprint clearance card.
    a. Photocopy of the front and back of the applicant's fingerprint clearance card,
    b. Proof of submission of an application for a fingerprint clearance card, or
    c. If denied a fingerprint clearance card, proof that the applicant qualifies for a good-cause exception hearing under A.R.S. § 41-619.55;
10. A completed Arizona Statement of Citizenship and Alien Status for State Public Benefits, which is a form available from the Board;
11. Signed and notarized affidavit affirming that the information provided in the application is true and complete and authorizing others to release information regarding the applicant to the Board; and
12. Fees required under R4-33-104(A)(1) and (A)(2).

C. If required by the Board under A.R.S. § 36-446.03(D), an applicant shall appear before the Board.

D. When the information required under subsections (A) and (B) is received and following an appearance before the Board required under subsection (C), the Board shall provide notice regarding whether the applicant may take the licensing examinations required under R4-33-201 or R4-33-202.

E. Because of the time required for the Board to perform an administrative completeness review under R4-33-103, an applicant shall submit the information required under subsections (A) and (B) at least 30 days before the applicant expects to take the Arizona examination.

Historical Note

Adopted effective October 12, 1976 (Supp. 76-5). Former Section R4-33-18 renumbered as Section R4-33-118 and repealed effective February 10, 1982 (Supp. 82-1). Section R4-33-205 renumbered from R4-33-118 by emergency action effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Section R4-33-204 renumbered from R4-33-118 by emergency action effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Section R4-33-204 renumbered from R4-33-118 by emergency action effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Section R4-33-204 renumbered from R4-33-118 by emergency action effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Section R4-33-204 renumbered from R4-33-118 by emergency action effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R4-33-204 renumbered from R4-33-118 effective November 25, 1992 (Supp. 92-4). Final amendment at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Former R4-33-204 renumbered to R4-33-201; new R4-33-204 renumbered from R4-33-201 and amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 516, effective April 5, 2008 (Supp. 08-1).

R4-33-205. Administration of Examinations; License Issuance

A. The Board shall administer the Arizona examination at least twice each year at times and places specified by the Board.

B. An applicant shall make arrangements directly with NAB to take the NAB examination.

C. The Board shall provide written notice to an applicant regarding whether the applicant passed a required examination.

D. An applicant for licensure under R4-33-201 is not required to take or pass both examinations at the same time. An applicant who passes one of the examinations listed in R4-33-201(2) but fails the other is required to retake only the examination failed.

E. When an applicant passes the examinations required under R4-33-201 or R4-33-202, the Board shall send the applicant a written notice that the Board will issue a license to the applicant when the applicant submits to the Board the fee required under R4-33-104(A)(4). If the applicant fails to submit the fee within six months of the Board's notice, the Board shall administratively close the applicant's file. An individual whose file is administratively closed may receive further consideration only by submitting a new application under R4-33-201 or R4-33-202.

Historical Note

Adopted effective October 12, 1976 (Supp. 76-5). Amended effective July 24, 1978 (Supp. 78-4). Former Section R4-33-19 renumbered as Section R4-33-119 and repealed, new Section R4-33-119 adopted effective February 10, 1982 (Supp. 82-1). Amended effective May 2, 1984 (Supp. 84-3). Amended as an emergency effective October 2, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency expired. Emergency amendments readopted without change effective January 3, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-1). Emergency amendments adopted again without change effective April 3, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days; amended effective June 14, 1990 (Supp. 90-2). Section R4-33-206 renumbered from R4-33-119 by emergency action effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Amended as R4-33-119 effective August 6, 1991 (Supp. 91-3). Emergency expired. Section R4-33-206 renumbered from R4-33-119 by emergency action effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Section R4-33-205 renumbered from R4-33-119 by emergency action effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Section R4-33-205 renumbered from R4-33-119 by emergency action effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Section R4-33-205 renumbered from R4-33-119 by emergency action effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R4-33-205 renumbered from R4-33-119 effective November 25, 1992 (Supp. 92-4). Text corrected to include amendments adopted effective August 6, 1991, which were inadvertently omitted (Supp. 95-2). Amended by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Section repealed by final rulemaking at 10 A.A.R. 805, effective April 13, 2004 (Supp. 04-1). Section R4-33-205 renumbered from R4-33-202 and amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4).

R4-33-206. Renewal Application

A. The Board shall provide a licensee with notice of the need for license renewal. Failure to receive notice of the need for license renewal does not excuse a licensee's failure to renew timely.

B. An administrator license expires at midnight on June 30 of each even-numbered year.

C. To renew an administrator license, the licensee shall submit the following information to the Board, on or before June 30, on a renewal application, which is available from the Board:

1. Current address;
2. Current home and business telephone numbers;
3. Whether within the last 24 months the licensee was convicted of or pled guilty or no contest to a criminal offense, other than a minor traffic violation, in any court and if so, attach a copy of the original arrest record and final court judgment;
4. Whether within the last 24 months the licensee was denied a professional license or had a professional license revoked, suspended, placed on probation, limited, or restricted in any way by a state or federal regulatory authority and if so, the kind of license, license number, issuing authority, nature of the regulatory action, and date;
5. An affirmation that the number of hours of continuing education required under R4-33-501 has been completed; and
6. The licensee's dated and notarized signature affirming that the information provided is true and complete.

D. In addition to the renewal application required under subsection (C), a licensee shall submit:

1. A photocopy of the front and back of the licensee's fingerprint clearance card;
2. A completed Arizona Statement of Citizenship and Alien Status for State Public Benefits, which is a form available from the Board; and

3. The license renewal fee required under R4-33-104.

E. An individual whose license expires because of failure to renew timely may apply for renewal by complying with subsections (C) and (D) if:

1. The individual complies with subsections (C) and (D) on or before July 31,
2. The individual pays the late renewal fee prescribed under R4-33-104, and
3. The individual affirms that the individual has not acted as a nursing care institution administrator since the license expired.

F. An individual whose license expires because of failure to renew timely and who does not comply with subsection (E) may become licensed as a nursing care institution administrator only by complying with R4-33-201 or R4-33-202.

Historical Note

Adopted effective October 12, 1976 (Supp. 76-5). Amended effective July 24, 1978 (Supp. 78-4). Former Section R4-33-20 renumbered and amended as Section R4-33-120 (Supp. 82-1). Section R4-33-207 renumbered from R4-33-120 by emergency action effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Amended as R4-33-120 effective August 6, 1991 (Supp. 91-3). Section R4-33-207 renumbered from R4-33-120 by emergency action effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Section R4-33-207 renumbered from R4-33-120 by emergency action effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Section R4-33-207 renumbered from R4-33-120 by emergency action effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Section R4-33-207 renumbered from R4-33-120 by emergency action effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R4-33-206 renumbered from R4-33-120 effective November 25, 1992 (Supp. 92-4). Text corrected to include amendments adopted effective August 6, 1991, which were inadvertently omitted (Supp. 95-2). Amended by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 516, effective April 5, 2008 (Supp. 08-1). Amended by final rulemaking at 15 A.A.R. 1975, effective November 3, 2009 (Supp. 09-4).

R4-33-207. Inactive Status

A. The Board shall place an administrator's license on inactive status if the administrator:

1. Is in good standing in Arizona,
2. Submits a written request to the Board to be placed on inactive status, and
3. Submits evidence that complies with R4-33-501(D) showing that the administrator completed two hours of continuing education for each month in the current biennial period before the request to be placed on inactive status.

B. Within seven days after receiving a request to be placed on inactive status, the Board shall provide the administrator written confirmation of inactive status.

C. An administrator whose license is on inactive status is not required to comply with R4-33-501.

D. An inactive license expires under R4-33-206 unless the administrator timely submits a renewal application and the fee required under R4-33-104(A)(7).

E. To resume active licensure status, an administrator shall:

1. Submit evidence that complies with R4-33-501(D) showing that the administrator completed 25 hours of continuing education within the six months before requesting to resume active licensure status, and
2. Submit a written request to the Board to resume active licensure status.

F. The Board shall grant a request to resume active licensure status if the requirements of subsection (E) are met. Within seven days after receiving the written request to resume active licensure status, the Board shall send written notice to the administrator granting or denying active status.

Historical Note

Adopted effective October 12, 1976 (Supp. 76-5). Former Section R4-33-21 renumbered and amended as Section R4-33-121 (Supp. 82-1). Section R4-33-208 renumbered from R4-33-121 by emergency action effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Section R4-33-208 renumbered from R4-33-121 by emergency action effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Section R4-33-208 renumbered from R4-33-121 by emergency action effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Section R4-33-208 renumbered from R4-33-121 by emergency action effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Section R4-33-208 renumbered from R4-33-121 by emergency action effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R4-33-207 renumbered from R4-33-121 effective November 25, 1992 (Supp. 92-4). Section R4-33-207 renumbered to R4-33-208, new Section adopted by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4).

R4-33-208. Standards of Conduct; Disciplinary Action

A. An administrator shall know and comply with all federal and state laws applicable to operation of a nursing care institution.

B. An administrator shall not:

1. Engage in unprofessional conduct as defined at A.R.S. § 36-446;
2. Be addicted to or dependent on the use of narcotics or other drugs, including alcohol;
3. Directly or indirectly permit an owner, officer, or employee of a nursing care institution to solicit, offer, or receive any premium, rebate, or other valuable consideration in connection with furnishing goods or services to patients of the institution unless the resulting economic benefit is directly passed to the patients;

4. Directly or indirectly permit an owner, officer, or employee of a nursing care institution to solicit, offer, or receive any premium, rebate, or other valuable consideration for referring a patient to another person or place unless the resulting economic benefit is directly passed to the patient;
5. Willfully permit the unauthorized disclosure of information relating to a patient or a patient's records;
6. Discriminate against a patient or employee on the basis of race, sex, age, religion, disability, or national origin;
7. Misrepresent the administrator's qualifications, education, or experience;
8. Aid or abet another person to misrepresent that person's qualifications, education, or experience;
9. Defend, support, or ignore unethical conduct of an employee, owner, or other administrator;
10. Engage in any conduct or practice contrary to recognized community standards or ethics of a nursing care institution administrator;
11. Engage in any conduct or practice that is or might constitute incompetence, gross negligence, repeated negligence, or negligence that might constitute a danger to the health, welfare, or safety of a patient or the public;
12. Procure or attempt to procure by fraud or misrepresentation a license or renewal of a license as a nursing care institution administrator;
13. Violate a formal order, condition of probation, or stipulation issued by the Board;
14. Commit an act of sexual abuse, misconduct, harassment, or exploitation;
15. Retaliate against any person who reports in good faith to the Board alleged incompetence or illegal or unethical conduct of any administrator; or
16. Accept an appointment as administrator of a nursing care institution in violation of R4-33-212.

C. The Board shall consider a final judgment or conviction for a felony, an offense involving moral turpitude, or direct or indirect elder abuse as grounds for disciplinary action under A.R.S. § 36-446.07 including denial of a license or license renewal.

D. An administrator who violates any provision of A.R.S. Title 36, Chapter 4, Article 6 or this Chapter is subject to discipline under A.R.S. § 36-446.07.

Historical Note

Adopted effective July 24, 1978 (Supp. 78-4). Former Section R4-33-22 renumbered as Section R4-33-122 (Supp. 82-1). Section R4-33-209 renumbered from R4-33-122 by emergency action effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Section R4-33-209 renumbered from R4-33-122 by emergency action effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Section R4-33-209 renumbered from R4-33-122 by emergency action effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Section R4-33-209 renumbered from R4-33-122 by emergency action effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Section R4-33-209 renumbered from R4-33-122 by emergency action effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R4-33-208 renumbered from R4-33-122 effective November 25, 1992 (Supp. 92-4). Section R4-33-208 renumbered to R4-33-209, new Section R4-33-208 renumbered from R4-33-207 and amended by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 21 A.A.R. 543, effective June 6, 2015 (Supp. 15-2).

R4-33-210. Licensure Following Revocation

An individual who wishes to be licensed after the individual's license as a nursing care institution administrator is revoked shall:

1. Not apply for licensure until at least 12 months have passed since the revocation; and
2. Apply for licensure under R4-33-201 or R4-33-202.

Historical Note

Adopted effective October 12, 1976 (Supp. 76-5). Former Section R4-33-24 renumbered as Section R4-33-124 (Supp. 82-1). Section R4-33-211 renumbered from R4-33-124 by emergency action effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Section R4-33-212 renumbered from R4-33-124 by emergency action effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Section R4-33-210 renumbered from R4-33-124 by emergency action effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Section R4-33-210 renumbered from R4-33-124 by emergency action effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Section R4-33-210 renumbered from R4-33-124 by emergency action effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R4-33-210 renumbered from R4-33-124 effective November 25, 1992 (Supp. 92-4). Section R4-33-210 renumbered to R4-33-211, new Section R4-33-210 renumbered from R4-33-209 and amended by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4).

R4-33-211. Notice of Appointment

A. An administrator shall provide written notice to the Board, within 30 days, of being appointed administrator of a nursing care institution or terminating an appointment.

B. An administrator shall include the following, as applicable, in a notice regarding the administrator's appointment:

1. Administrator's name,
2. Administrator's license number,
3. Name and address of the nursing care institution to which the administrator is appointed,
4. Date of appointment,
5. Name and address of the nursing care institution at which the administrator's appointment is terminated, and
6. Date of termination.

Historical Note

Section R4-33-211 renumbered from R4-33-125 by emergency action effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Section R4-33-211 renumbered from R4-33-125 by emergency action effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Section R4-33-211 renumbered from R4-33-125 by emergency action effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R4-33-211 renumbered from R4-33-125 effective November 25, 1992 (Supp. 92-4). New Section R4-33-211 renumbered from R4-33-210 and amended by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4).

R4-33-212. Appointment as Administrator of Multiple Nursing Care Institutions

A. Except as provided in subsection (B), an individual licensed under R4-33-201 or R4-33-202 shall not be appointed as administrator of more than one nursing care institution.

B. An individual licensed under R4-33-201 or R4-33-202 may be appointed as administrator of a second nursing care institution if:
1. Neither nursing care institution is operating under a provisional license;
2. The two nursing care institutions are no more than 25 miles apart; and
3. The appointment at the second institution is for no more than 90 days.

C. A licensed administrator who is appointed as administrator of a second nursing care institution under subsection (B) shall:
1. For both nursing care institutions, designate in writing an individual who is on the nursing care institution premises and accountable for the services provided at the nursing care institution when the licensed administrator is not on the nursing care institution premises. The designated individual shall:
   a. Be at least 21 years old;
   b. Be qualified through education and experience to fulfill the responsibilities of a nursing care institution administrator; and
   c. Never have had licensure or certification suspended or revoked by the Board;
2. Ensure that the name of the designated individual is conspicuously displayed at all times in a manner that informs those seeking assistance who is accountable for the services provided;
3. Place the written notice of designation required under subsection (C)(1) in the personnel file of the individual designated; and
4. Be available to the individual designated under subsection (C)(1) by telephone or electronically within 60 minutes.

Historical Note

Adopted effective August 6, 1991 (Supp. 91-3). Section R4-33-211 renumbered from R4-33-126 by emergency action effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Section R4-33-212 renumbered from R4-33-126 by emergency action effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Section R4-33-212 renumbered from R4-33-126 by emergency action effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Section R4-33-212 renumbered from R4-33-126 by emergency action effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Section R4-33-212 renumbered from R4-33-126 effective November 25, 1992 (Supp. 92-4). Section R4-33-212 amended by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Section R4-33-212 renumbered to R4-33-203 by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). New Section made by final rulemaking at 21 A.A.R. 543, effective June 6, 2015 (Supp. 15-2).

ARTICLE 3. ADMINISTRATOR-IN-TRAINING PROGRAM

R4-33-301. Approval of an AIT Program

A. The Board approves an AIT internship provided at an educational institution with a NAB-accredited program.

B. The provider of an AIT program that does not meet the standard in subsection (A) may apply to the Board for approval of the AIT program. To apply for approval of an AIT program, the provider of the program shall submit to the Board:
1. A letter on official letterhead providing the following information:
   a. Name, address, and telephone and fax numbers of the provider; and
   b. Name and telephone number of an individual who can be contacted regarding the information provided;
2. A description of the procedure required under R4-33-302(2)(d) to measure the success of an AIT and a copy of any materials used to measure the success of an AIT,
3. A copy of the AIT program monitoring procedure required under R4-33-302(3) and any forms that are used in the monitoring,
4. A copy of the certificate of completion required under R4-33-302(2)(e),
5. A detailed outline of the training course required under R4-33-302(4)(d),
6. A copy of the policy and procedures manual required under R4-33-302(5), and
7. The signature of an authorized representative of the provider:
   a. Affirming that the information provided is true and complete, and
   b. Authorizing the Board to monitor the program's compliance with the standards in R4-33-302.

C. The Board shall approve an AIT program that the Board determines meets the standards in R4-33-302. The Board's approval of an AIT program is valid for one year if the program remains in compliance with the standards in R4-33-302.

D. To maintain approval of an AIT program, the provider of the AIT program shall, before the approval expires, submit:
1. The information required under subsection (B), or
2. The letter required under subsection (B)(1) and the signature of an authorized representative of the provider affirming that the materials previously submitted under subsections (B)(2) through (B)(6) continue to be true and complete and authorizing the Board to monitor the program's compliance with the standards in R4-33-302.

Historical Note

Emergency adoption effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Emergency rule adopted again with changes effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again with changes effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Emergency rule adopted again effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Emergency rule R4-33-301 renumbered as a permanent rule to R4-33-302; new rule R4-33-301 adopted effective November 25, 1992 (Supp. 92-4). Former Section R4-33-301 renumbered to R4-33-401, new Section R4-33-301 adopted by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 14 A.A.R. 516, effective April 5, 2008 (Supp. 08-1).

R4-33-302. Standards for an AIT Program

For an AIT program to be approved by the Board, the provider of the AIT program:

1. Shall be:
   a. An accredited college or university,
   b. An institution licensed by the Board of Private Postsecondary Education under A.R.S. § 32-3001 et seq.,
   c. ACHCA or the Arizona chapter of ACHCA, or
   d. Another nationally recognized organization of long-term care administrators;
2. Shall ensure that the AIT program:
   a. Provides at least 1,000 hours of full-time educational experience to the AIT in not less than six months and not more than 12 months in the following subject areas:
      i. Federal and state law regarding nursing care institutions,
      ii. Nursing care institution administration and policy,
      iii. Health care quality assurance,
      iv. Communications skills,
      v. Health economics,
      vi. Financial management of a nursing care institution,
      vii. Personnel management,
      viii. Resident care,
      ix. Facility operation and management,
      x. Safety and environmental management, and
      xi. Community resources;
   b. Allows the AIT to work only with a preceptor who meets the standards in subsection (4) and is responsible for supervising the AIT while the AIT participates in the program,
   c. Is implemented at the nursing care institution of which the preceptor is administrator,
   d. Measures the AIT's success in acquiring the knowledge and skills necessary to be a competent nursing care institution administrator, and
   e. Provides the AIT with a certificate of completion that indicates:
      i. The AIT's name,
      ii. The preceptor's name and license number,
      iii. The name and address of the facility at which the AIT program was implemented,
      iv. The beginning and ending dates of the AIT program, and
      v. The preceptor's signature affirming that the AIT successfully completed the AIT program;
3. Shall develop a procedure to monitor the AIT program, assess the AIT's progress through the AIT program, and make adjustments necessary to ensure that the AIT acquires the knowledge and skills necessary to be a competent nursing care institution administrator;
4. Shall ensure that an individual who serves as an AIT preceptor:
   a. Has been licensed by the Board for at least two years,
   b. Is appointed full-time as a nursing care institution administrator at a facility that the Department determines is in compliance with applicable standards,
   c. Is in good standing and has no disciplinary actions against the individual's license in the last three years, and
   d. Completes a training course regarding the role and responsibilities of a preceptor; and
5. Shall develop a written policy and procedures manual that includes at least the following:
   a. Procedure and forms required to apply to be an AIT;
   b. Procedure and forms required to apply to be a preceptor;
   c. Procedure for matching an AIT applicant with a preceptor;
   d. Goals of the AIT program related to each of the subject areas listed in subsection (2)(a);
   e. Learning experiences to achieve each goal;
   f. Estimated time to accomplish each goal;
   g. Responsibilities of a preceptor;
   h. Responsibilities of an AIT;
   i. Procedures for deviating from the goals of the AIT program, changing the facility at which the AIT program is implemented, changing preceptor, and extending the AIT program; and
   j. Procedure for evaluating the preceptor.

Historical Note

R4-33-302 adopted by emergency action effective June 19, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Emergency rule adopted again with changes effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again with changes effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Emergency rule adopted again effective September 10, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Emergency rule R4-33-302 renumbered as a permanent rule to R4-33-303; new R4-33-302 renumbered from emergency rule R4-33-301 and adopted with changes effective November 25, 1992 (Supp. 92-4). Former Section R4-33-302 renumbered to R4-33-402, new Section R4-33-302 adopted by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 14 A.A.R. 516, effective April 5, 2008 (Supp. 08-1). Amended by final rulemaking at 21 A.A.R. 543, effective June 6, 2015 (Supp. 15-2).

ARTICLE 5. CONTINUING EDUCATION

R4-33-501. Continuing Education Requirement

A. Continuing education is a prerequisite of license or certificate renewal.
1. A licensed administrator shall obtain 50 credit hours of Board-approved continuing education during each biennial period. During the biennial period in which an administrator is initially licensed, the administrator shall obtain two credit hours of Board-approved continuing education for each month or part of a month remaining in the biennial period.
2. A certified manager shall obtain 24 credit hours of Board-approved continuing education during each biennial period. During the biennial period in which a manager is initially certified, the manager shall obtain one credit hour of Board-approved continuing education for each month or part of a month remaining in the biennial period.

B. The Board shall award credit hours in an approved continuing education as follows:
1. Seminar or workshop. One credit hour of continuing education for each contact hour;
2. Course at an accredited educational institution. Fifteen credit hours of continuing education for each course hour;
3. Attendance at a business meeting of a national health care organization or of a state association affiliated with a national health care organization. One-half credit hour of continuing education for each business meeting attended;
4. Self-study, online, or correspondence course. Approved credit hours of continuing education requested by the course provider;
5. Serving as a preceptor. Two credit hours of continuing education for each month that an administrator serves as an AIT preceptor; and
6. Teaching a Board-approved continuing education. One credit hour of continuing education for each hour taught.

C. The Board shall limit the number of credit hours of Board-approved continuing education awarded as follows:
1. No more than 40 percent of the required credit hours may be obtained using self-study, online, or correspondence courses;
2. No more than 50 percent of the required credit hours may be obtained from serving as an AIT preceptor;
3. Hours may be obtained for teaching a particular continuing education only once during each biennial period; and
4. Hours that exceed the minimum required for a biennial period may not be carried over to a subsequent biennial period.

D. An administrator or manager shall obtain a certificate or other evidence of attendance from the provider of each continuing education attended that includes the following:
1. Name of the administrator or manager;
2. License or certificate number of the administrator or manager;
3. Name of the continuing education;
4. Name of the continuing education provider;
5. Date, time, and location of the continuing education; and
6. Number of credit hours in the continuing education.

E. An administrator or manager shall maintain the evidence of attendance described in subsection (D) for three years and make the evidence available to the Board under R4-33-503 and as otherwise required under this Chapter.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 15 A.A.R. 1975, effective November 3, 2009 (Supp. 09-4).

R4-33-502. Approval of Continuing Education

A. The Board shall approve any continuing education approved by NAB or the ACHCA.

B. The Board shall approve a continuing education only if it is taught by a qualified instructor and addresses at least one of the following subject areas:
1. Laws regarding environmental health and safety,
2. Principles of management,
3. Psychology and principles of patient or resident care,
4. Personal and social care,
5. Therapeutic and supportive care and services in long-term or assisted care,
6. Community health and social resources,
7. Quality assurance,
8. Ethics, and
9. Recordkeeping.

C. To obtain the Board's approval of a continuing education, an administrator, manager, or continuing education provider shall:
1. Submit a form, which is available from the Board, containing the following information:
   a. Title of the continuing education;
   b. Name and address of the continuing education provider;
   c. Name, telephone and fax numbers, and e-mail address of a contact person for the continuing education provider;
   d. Date, time, and place at which the continuing education will be taught;
   e. Whether the continuing education is intended for administrators or managers;
   f. Subject matter of the continuing education;
   g. Teaching methods and learning activities that will be used;
   h. Learning objectives;
   i. Description of how learning objectives will be evaluated;
   j. Whether an examination will be given;
   k. Number of continuing education hours requested; and
   l. Signature of the person requesting approval of the continuing education.
2. Submit the following documents:
   a. Copy of any examination that will be given to those who attend the continuing education;
   b. Curriculum vitae of each instructor;
   c. Agenda of the continuing education showing the hours of instruction;
   d. Certificate of attendance that meets the requirements in R4-33-501(D);
   e. Copy of any brochure prepared regarding the continuing education; and
   f. Fee required under R4-33-104.

D. The Board's approval of a continuing education is valid for one year unless there is a change in subject matter, instructor, or hours of instruction. At the end of one year or when there is a change in subject matter, instructor, or hours of instruction, the continuing education provider shall apply again for approval.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4).

R4-33-503. Audit of Compliance and Sanction for Noncompliance with Continuing Education Requirement

When notice of the need to renew a license or certificate is provided, the Board shall also provide notice of an audit of continuing education records to a random sample of administrators or managers. An administrator or manager subject to a continuing education audit shall submit the documentation required under R4-33-501(D) at the same time that the administrator or manager submits the renewal application required under R4-33-206 or R4-33-405. If an administrator or manager fails to submit the required documentation with the renewal application on or before June 30, the license or certificate expires unless the administrator or manager obtains an extension of time in which to complete the continuing education requirement under R4-33-504.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4).

R4-33-504. Extension of Time to Complete the Continuing Education Requirement

A. To obtain an extension of time under A.R.S. § 36-446.07(G) to complete the continuing education requirement, an administrator or manager shall submit to the Board a written request that includes the following:
1. Ending date of the requested extension,
2. Continuing education completed during the current biennial period and the documentation required under R4-33-501(D),
3. Proof of registration for additional continuing education that is sufficient to enable the administrator or manager to fulfill the continuing education requirement before the end of the requested extension, and
4. Administrator's or manager's attestation that the continuing education obtained under the extension will be reported only to fulfill the current renewal requirement and will not be reported on a subsequent renewal application.

B. The Board shall grant an extension of time within seven days after receiving a request for an extension of time if the request:
1. Specifies an ending date no later than October 31,
2. Includes the required documentation and attestation,
3. Is submitted no sooner than April 30, and
4. Will facilitate the safe and professional regulation of nursing care institutions or assisted living facilities in this state.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4).

36-446. Definitions

In this article, unless the context otherwise requires:

1. "Administrator" or "nursing care institution administrator" means a person who is charged with the general administration of a nursing care institution, whether or not that person has an ownership interest in the institution and whether or not the person's functions and duties are shared with others.
2. "Assisted living facility" has the same meaning prescribed in section 36-401.
3. "Assisted living facility manager" means a person who has responsibility for the administration or management of an assisted living facility, whether or not that person has an ownership interest in the institution and whether or not the person's functions and duties are shared with others.
4. "Assisted living facility training program" includes:
(a) Training required for assisted living facility manager certification.
(b) Training required by the department for assisted living facility caregivers.
5. "Board" means the board of examiners of nursing care institution administrators and assisted living facility managers.
6. "Department" means the department of health services.
7. "Directed care services" has the same meaning prescribed in section 36-401.
8. "Director" means the director of the department of health services.
9. "Nursing care institution" means an institution or other place, however named, whether for profit or not, including facilities operated by the state or a subdivision of the state, that is advertised, offered, maintained or operated for the express or implied purpose of providing care to persons who need nursing services on a continuing basis but who do not require hospital care or care under the daily direction of a physician. Nursing care institution does not include an institution for the care and treatment of the sick that is operated only for those who rely solely on treatment by prayer or spiritual means in accordance with the tenets of a recognized religious denomination. Nursing care institution also does not include nursing care services that are an integral part of a hospital licensed pursuant to this chapter.
10. "Unprofessional conduct" includes:
(a) Dishonesty, fraud, incompetency or gross negligence in the performance of administrative duties.
(b) Gross immorality or proselytizing religious views on patients without their consent.
(c) Other abuses of official responsibilities, which may include intimidation or neglect of patients.

36-446.01. Licensure or certification requirements

A. A nursing care institution shall not operate in this state except under the supervision of an administrator licensed pursuant to this article.
B. An assisted living facility shall not operate in this state except under the supervision of a manager certified pursuant to this article.
C. It is unlawful for any person who does not have a license or certificate, or whose license or certificate has lapsed or has been suspended or revoked, to practice or offer to practice skilled nursing facility administration or assisted living facility management or use any title, sign, card or device indicating that such person is an administrator or manager.

36-446.02. Board of examiners; terms; meetings; quorum; effect of vacancies; compensation

A. The board of examiners of nursing care institution administrators and assisted living facility managers is established consisting of nine members appointed by the governor.
B. The board shall include:
1. One administrator who holds an active license issued pursuant to this article.
2. One manager who holds an active license issued pursuant to this article.
3. One administrator of a nonprofit or faith-based skilled nursing facility.
4. One administrator of a proprietary skilled nursing facility.
5. Two managers of an assisted living center as defined in section 36-401.

6. One manager of an assisted living home as defined in section 36-401.
7. Two public members who are not affiliated with a nursing care institution or an assisted living facility.
C. Board members who are not affiliated with a nursing care institution or an assisted living facility shall not have a direct financial interest in nursing care institutions or assisted living facilities.
D. A board member shall not serve on any other board relating to long-term care during the member's term with the board.
E. The term of a board member automatically ends when that member no longer meets the qualifications for appointment to the board. The board shall notify the governor of the board vacancy.
F. Board members who are not affiliated with a nursing care institution or an assisted living facility shall be appointed for two year terms. Board members who are the administrator of a nursing care institution or the manager of an assisted living facility shall be appointed for three year terms.
G. A board member shall not serve for more than two consecutive terms.
H. The board shall meet at least twice a year.
I. A majority of the board members constitutes a quorum.
J. Board members are eligible to receive compensation as determined pursuant to section 38-611 for each day actually spent performing their duties under this chapter.
K. A board member who is absent from three consecutive regular meetings or who fails to attend more than fifty per cent of board meetings over the course of one calendar year vacates the board member's position. The board shall notify the governor of the vacancy.

36-446.03. Powers and duties of the board; fees
A. The board may adopt, amend or repeal reasonable and necessary rules and standards for the administration of this article in compliance with title XIX of the social security act, as amended.
B. The board by rule may adopt nonrefundable fees for the following:
1. Initial application for certification as an assisted living facility manager.
2. Examination for certification as an assisted living facility manager.
3. Issuance of a certificate as an assisted living facility manager, prorated monthly.
4. Biennial renewal of a certificate as an assisted living facility manager.
5. Issuance of a temporary certificate as an assisted living facility manager.
6. Readministering an examination for certification as an assisted living facility manager.
7. Issuance of a duplicate certificate as an assisted living facility manager.
8. Reviewing the sponsorship of continuing education programs, for each credit hour.
9. Late renewal of an assisted living facility manager certificate.
10. Reviewing an individual's request for continuing education credit hours, for each credit hour.
11. Reviewing initial applications for assisted living facility training programs.
12. Annual renewal of approved assisted living facility training programs.
C. The board may elect officers it deems necessary.
D. The board shall apply appropriate techniques, including examinations and investigations, to determine if a person meets the qualifications prescribed in section 36-446.04.
E. On its own motion or in response to any complaint against or report of a violation by an administrator of a nursing care institution, or a manager of an assisted living facility, the board may conduct investigations, hearings and other proceedings concerning any violation of this article or of rules adopted by the board or by the department.
F. In connection with an investigation or administrative hearing, the board may administer oaths and affirmations, subpoena witnesses, take evidence and require by subpoena the production of documents, records or other information in any form concerning matters the board deems relevant to the investigation or hearing. If any subpoena issued by the board is disobeyed, the board may invoke the aid of any court in this state in requiring the attendance and testimony of witnesses and the production of evidence.
G. Subject to title 41, chapter 4, article 4, the board may employ persons to provide investigative, professional and clerical assistance as required to perform its powers and duties under this article.

Compensation for board employees shall be as determined pursuant to section 38-611. The board may contract with other state or federal agencies as required to carry out this article.
H. The board may appoint review committees to make recommendations concerning enforcement matters and the administration of this article.
I. The board by rule may establish a program to monitor licensees and certificate holders who are chemically dependent and who enroll in rehabilitation programs that meet board requirements. The board may take disciplinary action if a licensee or a certificate holder refuses to enter into an agreement to enroll in and complete a board approved rehabilitation program or fails to abide by that agreement.
J. The board shall adopt and use an official seal.
K. The board shall adopt rules for the examination and licensure of nursing care institution administrators and the examination and certification of assisted living facility managers.
L. The board shall adopt rules governing payment to a person for the direct or indirect solicitation or procurement of assisted living facility patronage.
M. The board must provide the senate and the house of representatives health committee chairmen with copies of all board minutes and executive decisions.
N. The board by rule shall limit by percentage the amount it may increase a fee above the amount of a fee previously prescribed by the board pursuant to this section.
O. The board by rule shall prescribe standards for assisted living facility training programs.
P. The board may:
1. Grant, deny, suspend or revoke approval of, or place on probation, an assisted living facility training program.
2. Impose a civil penalty on an assisted living facility training program that violates this chapter or rules adopted pursuant to this chapter.

36-446.04. Qualifications; period of validity; exemption
A. The board shall issue a license as a nursing care institution administrator pursuant to its rules to any person who meets the following qualifications:
1. Is of good character.
2. Has satisfactorily completed a course of instruction and training approved by the board that:
(a) Is designed and sufficiently administered to give the applicant knowledge of the proper needs to be served by nursing care institutions.
(b) Includes a thorough background in the laws and rules governing the operation of nursing care institutions and the protection of the interests of the patients in nursing care institutions.
(c) Includes thorough training in elements of good health care facilities administration.
3. Has passed an examination administered by the board designed to test for competency in the subject matter referred to in this subsection.
4. Has met one of the following fingerprinting requirements:
(a) Has a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1.
(b) Has provided proof of the submission of an application for a fingerprint clearance card. An applicant who has been denied a fingerprint clearance card must also provide proof that the applicant qualifies for a good cause exception hearing pursuant to section 41-619.55.
B. A person who is licensed pursuant to this section must maintain a valid fingerprint clearance card during the valid period of the person's license.
C. The board shall issue a certificate as an assisted living facility manager pursuant to its rules to a person who meets the following qualifications:
1. Is of good character.
2. Has satisfactorily completed a course of instruction and training approved by the board that:
(a) Is designed and sufficiently administered to give the applicant knowledge of the proper needs to be served by an assisted living facility.

(b) Includes a thorough background in the laws governing the operation of assisted living facilities and the protection of the interests of the patients in assisted living facilities.
(c) Includes thorough training in elements of assisted living facility administration.
3. Has passed an examination administered by the board that is designed to test for competency in the subject matter prescribed in this subsection.
4. Provides documentation satisfactory to the board that the applicant has completed two thousand eighty hours of paid work experience in a health related field within the preceding five years as prescribed by board rule.
5. Has met one of the following fingerprinting requirements:
(a) Has a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1.
(b) Has provided proof of the submission of an application for a fingerprint clearance card. An applicant who has been denied a fingerprint clearance card must also provide proof that the applicant qualifies for a good cause exception hearing pursuant to section 41-619.55.
D. A person who is certified pursuant to this section must maintain a valid fingerprint clearance card during the valid period of the person's certificate.
E. In lieu of the requirements contained in subsection A, paragraph 2 or subsection C, paragraph 2, an applicant may present satisfactory evidence to the board of sufficient education and training in the areas listed in that paragraph.
F. A license is nontransferable and remains in effect until the following June 30 of an even numbered year, at which time the license may be renewed if the licensee otherwise complies with this article and unless the license has been surrendered, suspended or revoked.
G. A certificate is nontransferable and remains in effect until the following June 30 of an odd numbered year, at which time the certificate may be renewed if the certificate holder otherwise complies with this article and the certificate has not been surrendered, suspended or revoked.
H. This section does not apply to managers of adult foster care homes as defined in section 36-401.

36-446.05. Reciprocity; present administrators
The board may issue a nursing care institution administrator's license, without examination or with partial examination, to any person who holds a current license from another state or territory of the United States provided the standards for licensure in such other state or territory of the United States are at least substantially equivalent to those prevailing in this state, and provided that the applicant is otherwise qualified.

36-446.06. Temporary licenses and certificates
A. The board may issue a temporary nursing care institution administrator's license or assisted living facility manager's certificate to individuals determined to meet standards established by the board and revoke or suspend temporary licenses or certificates previously issued by the board in any case where the individual holding a license or certificate is determined to have substantially failed to conform to the requirements of such standards during the term of the temporary license or certificate.
B. A temporary license or certificate is automatically revoked if the licensee or certificate holder fails either the state or national examination during the term of the license.
C. Temporary licenses or certificates may be issued without examination, for a single nonrenewable period of one hundred fifty days, to a qualified individual for the purpose of enabling the individual to fill a nursing care administrator or assisted living facility manager position. Qualifications for a temporary license or certificate shall include good character and the ability to meet such other standards as are established by the board.
D. An applicant for a temporary license or certificate shall not have failed a state or national examination either before or after applying for the temporary license or certificate.

36-446.07. Disciplinary actions; grounds for disciplinary action; renewal; continuing education; inactive status; hearings; settlement; judicial review; admission by default; military members

A. The board may suspend or revoke the license of any nursing care institution administrator, censure or place on probation any licensed nursing care institution administrator or deny a license as a nursing care institution administrator to any person for any of the following reasons:

1. Conviction of a felony or conviction of any misdemeanor involving moral turpitude.
2. Obtaining or renewing a license by fraud or deceit.
3. Unprofessional conduct.
4. Practicing without biennial licensure.
5. Addiction to or dependency on drugs or alcohol.
6. Wrongful transfer of a license or falsely impersonating another licensee.
7. Unauthorized disclosure of information relating to a patient or a patient's records.
8. Payment to any person for solicitation or procurement, either directly or indirectly, of nursing home patronage.
9. Violation of this article or a rule adopted pursuant to this article.

B. The board may suspend or revoke the certificate of an assisted living facility manager, censure or place on probation an assisted living facility manager or deny a certificate as an assisted living facility manager to a person for any of the following reasons:

1. Conviction of a felony or conviction of a misdemeanor involving moral turpitude.
2. Obtaining or renewing a certificate by fraud or deceit.
3. Unprofessional conduct.
4. Practicing without biennial certification.
5. Addiction to or dependency on drugs or alcohol.
6. Wrongful transfer of a certificate or falsely impersonating another certificate holder.
7. Unauthorized disclosure of information relating to a resident or a resident's records.
8. Violation of this article or a rule adopted pursuant to this article.

C. The board may impose a civil penalty in an amount of not to exceed five hundred dollars on any nursing care institution administrator or assisted living facility manager who violates this article or any rule adopted pursuant to this article. Actions to enforce the collection of these penalties shall be brought in the name of this state by the attorney general or the county attorney in the justice court or the superior court in the county in which the violation occurred. Penalties imposed under this section are in addition to and not in limitation of other penalties imposed pursuant to this article.

D. The board may file a letter of concern if, in the opinion of the board, while there is insufficient evidence to support direct action against the license of the administrator or the certificate of the manager, there is sufficient evidence for the board to notify the administrator or manager of its concern.

E. Every holder of a nursing care institution administrator's license shall renew it biennially by making application to the board. The renewals shall be granted as a matter of course if the holder has successfully completed at least fifty hours of continuing education every two years as established by the board in its rules, unless the applicant has acted or failed to act in such a manner or under such circumstances as would constitute grounds for taking any of the disciplinary actions permitted by this section. The board shall maintain a log of each complaint substantiated by the board or deficiency report concerning an administrator and shall retain in the administrator's file a copy of each such complaint or report and the action taken on it, if any. The board shall review and consider the administrator's file in determining whether to renew the administrator's license.

F. Except as provided in subsection R of this section, every holder of an assisted living facility manager's certificate shall renew it biennially by making application to the board. The renewals shall be granted as a matter of course if the holder has successfully completed continuing education every two years as established by the board in its rules, unless the applicant has acted or failed to act in a manner or under circumstances that constitute grounds for taking disciplinary action permitted by this section. The board shall maintain a log of each complaint substantiated by the board or deficiency report concerning a manager and shall retain in the manager's file a copy of each complaint or report and the action taken on

it, if any. The board shall review and consider the manager's file in determining whether to renew the manager's certificate.
G. Except as provided in subsection R of this section, failure on the part of any licensed nursing care institution administrator or certified assisted living facility manager to furnish evidence of having attended the required continuing education hours during the preceding two years shall preclude renewal of the license or certificate unless the continuing education requirement is fulfilled within one hundred twenty days.
H. On written request to the board, a nursing care institution administrator in good standing may cause the administrator's name and license to be transferred to an inactive list. Any nursing care institution administrator on inactive license status shall pay a license renewal fee. On written request to the board, and subsequent approval by the board, a nursing care institution administrator on inactive license status may resume active license status on meeting twenty-five hours of continuing education requirements within six months and payment of the current fee.
I. On written request to the board, the board shall transfer an assisted living facility manager in good standing to an inactive list. An assisted living facility manager on inactive certificate status shall pay a certificate renewal fee prescribed by the board of not more than one hundred dollars every two years. On written request to the board, and subsequent approval by the board, an assisted living facility manager on inactive certificate status may resume active certificate status on meeting requirements for six hours of continuing education within six months and payment of the current fee.
J. Suspension, revocation or denial of renewal of a license or certificate or censure or probation of a licensee or certificate holder by the board becomes effective only on the board's first giving the licensee or certificate holder prior written notice and affording the licensee or certificate holder the right to request a hearing within thirty-five days of the receipt of notice. A hearing is not required before the denial of an original application for a license or a certificate. All hearings shall be conducted pursuant to title 41, chapter 6, article 10.
K. Any person wishing to make a complaint against a licensee or certificate holder under this article shall file a written complaint with the board within one year from the date of the action causing the complaint. If the board determines that the charges made in the complaint are sufficient, if true, to warrant suspension or revocation of a license or certificate issued under this article or censure or probation of a licensee or certificate holder under this article, it shall issue an order fixing the time and place for a hearing and requiring the licensee or certificate holder complained against to appear and answer the complaint. The order shall have affixed to it a copy of the complaint, and both shall be served on the licensee or certificate holder either personally or by certified mail sent to the licensee's or the certificate holder's last known address at least thirty-five days before the date set for the hearing. All hearings shall be conducted pursuant to title 41, chapter 6, article 10.
L. The board and an administrator or manager may enter into a settlement of any matter under investigation either before or after a notice of the hearing has been issued if the board determines that the proposed settlement adequately protects the public safety, health and welfare. The board shall record the terms of each settlement entered into and shall make the record available for public inspection.
M. Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.
N. If the board has initiated an investigation pursuant to this section, the board may continue the investigation and discipline the person under investigation even if that person resigns from practice after the board has initiated the investigation.
O. A licensee or certificate holder shall respond in writing to the board within thirty-five days after the board serves the complaint and notice of a formal hearing by certified mail. Service is complete on the date the board places the notice in the mail. The board shall consider a licensee's or certificate holder's failure to respond to the notice within thirty-five days as an admission by default to the allegations stated in the complaint. The board may then take disciplinary action against the licensee or certificate holder without conducting a formal hearing.

P. The board may set aside an admission by default if a licensee or certificate holder shows good cause. A licensee or certificate holder who applies to the board to set aside an admission by default shall demonstrate the following to the satisfaction of the board:
1. The failure to respond to the notice of the board was due to excusable neglect.
2. The licensee or certificate holder has a meritorious defense.
3. The licensee or certificate holder made prompt application to the board for relief.
Q. The board shall not consider an application to set aside an admission by default filed later than one hundred eighty days after the board's entry of the admission by default.
R. A license or certificate issued pursuant to this chapter to any member of the Arizona national guard or the United States armed forces reserves shall not expire while the member is serving on federal active duty and shall be extended one hundred eighty days after the member returns from federal active duty, provided that the member, or the legal representative of the member, notifies the board of the federal active duty status of the member. A license or certificate issued pursuant to this chapter to any member serving in the regular component of the United States armed forces shall be extended one hundred eighty days from the date of expiration, provided that the member, or the legal representative of the member, notifies the board of the federal active duty status of the member. If the license or certificate is renewed during the applicable extended time period, the member is responsible only for normal fees and activities relating to renewal of the license and shall not be charged any additional costs such as late fees or delinquency fees. The member, or the legal representative of the member, shall present to the board a copy of the member's official military orders, a redacted military identification card or a written verification from the member's commanding officer before the end of the applicable extended time period in order to qualify for the extension.
S. A license or certificate issued pursuant to this chapter to any member of the Arizona national guard, the United States armed forces reserves or the regular component of the United States armed forces shall not expire and shall be extended one hundred eighty days from the date the military member is able to perform activities necessary under the license or certificate if the member both:
1. Is released from active duty service.
2. Suffers an injury as a result of active duty service that temporarily prevents the member from being able to perform activities necessary under the license, certificate or registration.

36-446.08. Nursing care institution administrators' licensing and assisted living facility managers' certification fund; investment of fund monies
A. The nursing care institution administrators' licensing and assisted living facility managers' certification fund is established.
B. Pursuant to sections 35-146 and 35-147, the board shall deposit ten per cent of all monies collected pursuant to this article in the state general fund and deposit the remaining ninety per cent in the nursing care institution administrators' licensing and assisted living facility managers' certification fund. All monies derived from civil penalties collected pursuant to section 36-446.07, subsection C shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.
C. Monies deposited in the nursing care institution administrators' licensing and assisted living facility managers' certification fund are subject to the provisions of section 35-143.01.
D. On notice from the board, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

36-446.09. Violations; classification
A. Any person who manages, directs and controls the operation of a nursing care institution or an assisted living facility without a current and valid license or certificate as required by this article or who otherwise violates any provisions of this article is guilty of a class 2 misdemeanor. Each day of violation shall constitute a separate offense.

B. Action taken under subsection A shall not be a bar to enforcement of this article and the standards and rules issued and adopted pursuant to this article, by injunction or other appropriate remedy, and the board may institute and maintain in the name of this state any such enforcement proceeding.

36-446.10. Confidentiality of records; release of complainant's name and nature of complaint

A. Except as provided in subsection B, all records concerning a pending investigation, examination materials, records of examination grading and applicants' performance and transcripts of educational institutions concerning applicants are confidential and are not public records. "Records of applicants' performance" does not include records of whether an applicant passed or failed an examination.

B. During a pending investigation, the board shall inform the administrator or manager who is the subject of the complaint of the name of the complainant and the nature of the complaint if so requested.

36-446.11. Relief from civil liability

Members, employees and agents of the board and members of review committees shall not be held civilly liable for acts done or actions taken by any of these persons if such persons act in good faith following the requirements of this article. A person who in good faith reports or provides information to the board shall not be held civilly liable as a result of doing so.

36-446.12. Fees

A. The board by rule shall establish nonrefundable fees and penalties for the following for nursing care institution administrators:

1. Initial application.
2. Examination for licensure as a nursing care institution administrator.
3. A license as a nursing care institution administrator.
4. Renewing an active biennial license.
5. Renewing an inactive biennial license.
6. A temporary license as a nursing care institution administrator.
7. Readministering the state examination.
8. Readministering the national examination.
9. A duplicate license.
10. Late renewal of a license.
11. Certifying licensure status.
12. Reviewing the sponsorship of continuing education programs, for each credit hour.
13. Reviewing an individual's request for continuing education credit hours, for each credit hour.

B. The board shall prorate on a monthly basis fees paid for an initial license as a nursing care institution administrator.

C. The board by rule shall limit by percentage the amount it may increase a fee above the amount of a fee previously prescribed by the board pursuant to this section.

36-446.13. Unlawful act; unlicensed operation; injunction

A. On application by the board, the superior court may issue an injunction to enjoin the activities of a person who purports to be licensed pursuant to this article or who is engaging in the activities of a nursing care institution administrator without a license.

B. In a petition for injunction filed pursuant to this section, it is sufficient to charge that the respondent on a certain day in a named county engaged in the activities of a nursing care institution administrator without a license and without being exempt from the licensing requirements of this article.

C. For the purposes of this section, damage or injury is presumed.

D. A petition for an injunction to enjoin unlicensed activities shall be filed in the name of this state in the superior court in the county where the respondent resides or may be found or in Maricopa county. On request of the board, the attorney general shall file the injunction.
E. Issuance of an injunction does not relieve the respondent from being subject to other proceedings as provided in this article.